EXPLANATORY MEMORANDUM TO

THE HEALTH AND SAFETY (FEES) REGULATIONS 2008

2008 No. 736

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Health and Safety (Fees) Regulations 2008 ("the Fees Regulations") revoke and replace the Health and Safety (Fees) Regulations (S.I. 2007 No. 813) and the Health and Safety (Fees) (Amendment) Regulations 2007 (S.I. 2007/1672). They update charges made, mainly by the Health and Safety Executive (HSE), for the performance of a wide range of statutory functions in areas such as licensing activities, approving equipment and conducting testing associated with the issue of such approvals. HSE also charges for safety case assessment, inspection and approvals in relation to the "permissioning" regimes (involving HSE assessing and approving safety cases) of on-shore major hazards, gas transportation, offshore oil and gas.

2.2 Substantial increases are being proposed from 6 April 2008 with these regulations in the hourly rates used to compute charges in the offshore oil and gas industry, gas transportation and onshore major hazard industries (covered by the Control of Major Accident Hazard Regulations 1999 (S.I. 1999/743). Details are at paragraph 3.2 below. This is to enable full cost recovery for HSE work to include essential work with these sectors where the cost of the work cannot be attributed to a single site. Such work includes discussion with industry representatives of emerging problems and their resolution and policy development.

2.3 The Fees Regulations extend charging to the enforcement of general health and safety requirements (which cover a wide range of activities including falls from height, .manual handling and use of protective equipment). Charging for such general health and safety already applies to the offshore industry (regulation 15) and in a limited way to the gas transportation industry. The extension to charge for the enforcement of all general health and safety applies to the following high hazard industries: the nuclear industry; the gas transportation industry where gas is transported above 8 bar in pressure and therefore requires a major accident prevention document; and onshore major hazard sectors (petrochemicals, pharmaceuticals and liquid petroleum gas storage) where the dangerous substance is used as part of the main activity

of the site and where sufficient quantities are present to require a safety report under those regulations.

2.4 The Fees also extend charging to advice given to potential nuclear licensees (regulation 17) on any matter relating to an application for a nuclear site licence subject to provisions in regulation 12 regarding estimates for such work.;

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Increases above inflation continue in three schemes where, historically, charges had been set below full cost. A catch-up exercise has been underway since 2001 and continuing with this will allow HSE to move towards full cost recovery as required by HM Treasury's Managing Public Money. The schemes currently in catch-up are:

Dosimetry services under the Ionising Radiation Regulation;

Licensing to store and register explosives under the Manufacture and Storage of Explosives Regulations 2005;

Approvals under the Health and Safety (First Aid) Regulations 1981.

3.2 The proposed hourly rates for charging and levels of increase in the offshore oil and gas, gas transportation and onshore major hazard sectors are set out in the table below

Charging Scheme	Current fee (2007/08)	Proposed fee (2008/09)	% increase	Projected cost to industry p.a.	Average Cost p.a. per installation, site, operator
Offshore 300 install's	£155 per hour	£213 per hour	37.4	£2.9m	£9,500
COMAH 1200 sites	£117 per hour	£155 per hour	34.5	£1.1m	£1,000
Gas Trans 43 operators	£115 per hour	£137 per hour	19.1	£80k	

4. Legislative background

4.1 These regulations are being made to enable HSE to increase the amount and scope of charges made to those it regulates for matters such as granting licences and assessing safety cases as well as charging high hazard industries for the enforcement of general health and safety provisions. The power to make regulations is given to the Secretary of State by S43(2) of the Health and Safety at Work Act 1974

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7 Policy background

7.1 The Health and Safety Commission's policy is that HSE should charge for a range of activities collectively described as permissioning work. This allows the duty holder, for example, to trade in a dangerous substance or carry out work in hazardous conditions, once HSE is satisfied with the control mechanisms in place.

7.2 Permissioning activities that are charged for include:

i) assessing and accepting safety cases;

ii) issuing licences;

iii) issuing certificates;

iv) granting approvals;

v) granting exemptions from regulations;

vi) accepting notifications.

7.3 HM Treasury guidance requires full cost recovery for chargeable statutory functions. Fees in the Fees Regulations are reviewed annually with a new set of regulations created to reflect any changes.

7.4 Under the Health and Safety at Work Act 1974 HSE does not have an obligation to consult on the introduction of these regulations. However in practice it has developed mechanisms for advising duty holders and seeking comments each year about proposed changes in fees.

7.5 Relevant trade associations were informed in October 2007 about the proposed increases in fees in the Offshore, COMAH and Gas Transportation industries and the extension of charging to enforcement of other health and safety regulations in the nuclear onshore major hazard and gas transportation sectors. HSE did receive a number of representations objecting to the extension of charging for general health and safety from representatives of the COMAH and Gas Transportation industries. As a result of those representations HSE has reduced the extent of it's proposed charging and decided to only charge those industries for enforcement of general health and safety where there is a sufficiently large quantity of the dangerous substance, in the case of COMAH to require a safety case and in the Gas Transportation industry to charge only for work on that part of a network which requires a major accident hazard prevention document.

7.6 For other schemes like NONS, Asbestos and First-Aid, relevant industries are notified once any changes have been agreed, usually in February each year.

8. Impact

8.1 A Full Impact Assessment was not prepared on these changes as the impact on the voluntary sector will be nil and the impact on the private sector will be negligible.

9. Contact

Mark Reyland at the Health and Safety Executive can answer any questions regarding the instrument, Tel: 0151 951 3249 or e-mail: mark.reyland@hse.gsi.gov.uk