

**EXPLANATORY MEMORANDUM TO**  
**THE HEALTH AND SAFETY (FEES) (AMENDMENT) REGULATIONS 2007**  
**2007 No.1672**

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

**2. Description**

2.1 The Health and Safety (Fees) (Amendment) Regulations 2007 (“the Amendment Regulations”) amend the Health and Safety (Fees) Regulations 2007 (S.I. 2007/813). They provide for the charging of fees for work by the Health and Safety Executive (“HSE”) in relation to an “assessment agreement” and a “design proposal”, as defined in the amending provisions, for nuclear installations. The “assessment agreement” and “design proposal” relate to the assessment by HSE of the safety of designs for new nuclear installations.

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

3.1 None.

**4. Legislative background**

4.1 Section 43(2) of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”) provides that regulations may provide for “such fees as may be fixed by or determined under the regulations to be payable for or in connection with the performance by or on behalf of any authority to which this subsection applies of any function conferred on that authority by or under any of the relevant statutory provisions”. There are a number of statutory conditions which must be met:

- (a) “*authority to which this subsection applies*” - under subsection (3), subsection (2) applies to the HSE and to the Health and Safety Commission (“HSC”);
- (b) “*relevant statutory provisions*” - under section 53 of the 1974 Act, both Part 1 of the 1974 Act and sections 1 and 3 of the 1965 Act are relevant statutory provisions;
- (c) “*performance by or on behalf of [HSC/HSE] of any function conferred on that authority by or under any of the relevant statutory provisions*” - the work of assessing design proposals can be carried out by the HSE pursuant to two sets of statutory functions. Although these functions may overlap, they are legally distinct, and both functions are cited in column 1 of the Schedule to be inserted by these Regulations into the Health and Safety (Fees) Regulations 2007.

- 4.2 Firstly, the HSC has a duty under section 11(1) of the 1974 Act to “do such things and make such arrangements as it considers appropriate for the general purposes” of Part 1 of the 1974 Act. Those purposes are defined in section 1(1) of that Act and include “controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances”, which includes nuclear matter. Thus HSC’s functions include carrying out generic design assessments, because to do so is appropriate for the purpose of controlling the keeping and use of nuclear matter. It is not significant that the assessments would be carried out significantly in advance of any construction of plant in which dangerous material would be used, nor is it significant that plant may never be built; in order to be able to control its use in the future, it is appropriate to carry out generic design assessments now.
- 4.3 Pursuant to this duty, HSC, on 15<sup>th</sup> May 2007, directed HSE, under section 11(4)(a) of the 1974 Act, to exercise on its behalf its function under section 11(1) of the 1974 Act as regards assessing any “design proposal”, as defined in the Direction; the definition is the same as in the amending provisions in these Regulations. An electronic copy of the text of the Direction is attached (Annex 1). Thus, under this limb, the fee is being charged for the performance (by HSE), on HSC’s behalf, of the function conferred on HSC by section 11(1) of the 1974 Act.
- 4.4 Secondly, HSE has functions of its own in relation to the granting of nuclear site licences by virtue of sections 1 and 3 of the Nuclear Installations Act 1965 (“the 1965 Act”). Under section 11(6) of the 1974 Act, HSE has power to do anything which is “calculated to facilitate, or is conducive or incidental to, the performance of any function” of HSE. “Function” here includes HSE’s functions under sections 1 and 3 of the 1965 Act, and the design assessment work is calculated to facilitate, or is conducive to, the performance of its functions under those sections. So section 11(6) of the 1974 Act confers a power on HSE to carry out design assessments. But it probably does not confer a “function” for the purposes of section 43(2) of the 1974 Act, because it is a subsidiary power and insufficiently specific. However, section 43(2) of the 1974 Act enables a fee to be imposed “for *or in connection with*” the performance of HSE’s functions. The words “in connection with” in section 43(2) of the 1974 Act are at least as extensive as the words “calculated to facilitate or conducive or incidental to” in section 11(6). So under this limb, the fee is being charged in connection with the performance of HSE’s licensing functions under the 1965 Act.
- 4.5 The Regulations have been made on the basis of both statutory functions in order to provide the greatest possible legal certainty. It is clear that the functions overlap, but because the person for whom HSE carries out the design assessment may not ever make a licence application, and the fact that the site-specific element of the activity contemplated by the 1965 Act is absent, it was considered possible that some elements of the design assessment process might be considered

to be undesirably remote from HSE's licensing function under the 1965 Act, and more properly regarded as being undertaken under HSC's wider functions conferred by the 1974 Act. It is not possible at the outset to determine which part of the process will fall under which function, so both powers are cited.

- 4.6 “Assessment agreements” identify the scope of HSE's assessment of a design proposal. Preparing such agreements is carried out pursuant to section 11(6) of the 1974 Act, as facilitating the performance of HSE's functions. As regards HSE's functions referred to in paragraphs 4.2 to 4.3, preparing the agreements will facilitate the performance of HSE's function acquired under section 11(4)(a) of the 1974 Act, of exercising the functions which are the subject of HSC's Direction of 15<sup>th</sup> May 2007. As regards the functions referred to in paragraph 4.4, preparing the agreements will facilitate the performance of HSE's nuclear licensing functions. Accordingly, section 11(6) is cited in both entries in column 1 of the Schedule to be inserted by these Regulations into the Health and Safety (Fees) Regulations 2007. As indicated in paragraph 4.4, the words “for or in connection with” in section 43(2) of the 1974 Act are at least as extensive as the words “calculated to facilitate or conducive or incidental to” in section 11(6). So the fee charged for preparing an assessment agreement is charged in connection with the performance of HSE's functions as set out above.

#### *Possible alternative powers*

- 4.7 HSE has powers to recover its expenses under section 24A of the 1965 Act. However, those cost recovery powers are restricted to the recovery of costs from nuclear site licensees (and applicants for licences) of expenses incurred in relation to HSE's nuclear licensing work under that Act, or in relation to research into nuclear safety at the direction of HSC. Accordingly, those powers would not enable HSE to recover its expenses associated with assessing design proposals where – as is likely to be the case - that work is not also related to a specific licensed nuclear site or site licence application.
- 4.8 Under section 13(1)(g) of the 1974 Act, HSC has the power to impose charges by agreement where services or facilities are provided by it or on its behalf. It is arguable that this provision enables HSC to charge for the provision of design assessments. However, it is considered preferable to legislate in this case, to provide extra legal certainty and increased transparency in a controversial area.

## **5. Extent**

- 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 HSC's policy is that HSE should charge for a range of activities collectively described as permissioning work. This includes HSE's work to licence new nuclear installations under the 1965 Act. HSE recovers the costs of this licensing work under section 24A of the 1965 Act, not under fees Regulations made under section 43(2) of the 1974 Act. However, as explained under paragraph 4.6 above, powers under section 24A would not enable HSE to recover its expenses associated with assessing design proposals for new nuclear installations where – as is likely to be the case – that work is not also related to a specific licensed nuclear site or site licence application.
- 7.2 In June 2006 HSE responded to growing interest in new nuclear build by putting forward to DTI, as part of HSE's Expert Report on new energy technologies, a progressive design assessment approach for any new nuclear power stations, in the event that a decision is made to build them. This approach was accepted and in January 2007 HSE published guidance on its approach to undertaking generic design assessments. The design assessment process would start before receipt of an application for a licence to build a new nuclear power station. Design assessment offers benefits to an expansive nuclear industry, while reinforcing HSE's position as an independent safety regulator. On 15th May 2007 HSC directed HSE to carry out assessments of design proposals.
- 7.3 HM Treasury guidance requires full cost recovery for chargeable statutory functions. The Government has given a commitment that the nuclear industry, not the taxpayer, would meet the costs of any new nuclear capacity.

### *Consultation*

- 7.4 HSE has well established mechanisms for consulting the nuclear industry on regulatory matters. Bilateral discussions with prospective designers and vendors of nuclear reactors have confirmed that they are happy to incur these costs.

### *Consolidation*

- 7.5 The Health and Safety (Fees) Regulations are updated annually. The Amendment Regulations are therefore expected to be revoked by and incorporated in the eventual 2008 Regulations, when these replace the 2007 Regulations.

## *Guidance*

- 7.6 HSE does not plan to publish any guidance on the Amendment Regulations as they put no duties on people. HSE will make clear to those seeking assessment of their designs that they will be charged a fee for this work, to recover HSE's costs.

## **8. Impact**

- 8.1 An Impact Assessment for this instrument is attached (Annex 2).

## **9. Contact**

Graham Collins at the Health and Safety Executive can answer any questions regarding the instrument. Tel: 0207 717 6365 or e-mail: [graham.collins@hse.gsi.gov.uk](mailto:graham.collins@hse.gsi.gov.uk)

**Direction under section 11(4) of the Health and Safety at Work Act 1974**

1. In pursuance of an authorisation given by the Health and Safety Commission on 15<sup>th</sup> May 2007 and on the Commission's behalf, I hereby direct the Health and Safety Executive ("the Executive") to exercise, on behalf of the Commission, the function conferred on the Commission by section 11(1) of the Health and Safety at Work Act 1974, by virtue of section 1(1)(c) of that Act, as regards assessing any design proposal.

2. In this Direction-

(a) "design proposal" means —

a proposal for any new nuclear installation, including matters relating to the installation's construction, commissioning, operation and decommissioning, which is to be assessed prior to any application to the Executive for a licence under section 1(1) of the Nuclear Installations Act 1965 which may be made based upon that design proposal; and

(b) "nuclear installation" means a nuclear reactor or an installation within the meaning of section 1(1)(b) of the Nuclear Installations Act 1965.

Signed

Chairman  
Health and Safety Commission  
Date 31 May 2007

# **The Health and Safety (Fees) (Amendment) Regulations 2007**

## **Impact Assessment**

### **Purpose and Intended Effect**

#### **Objectives**

- 1 The objective of the regulations amendment is to recover the costs incurred by the HSE in the process of considering nuclear reactor design proposals. This objective will be achieved through charging vendors for the costs that have been placed upon HSE through the need to assess their design.

#### **Background**

- 2 As a preliminary to licensing vendors designing nuclear reactors provide the HSE with their designs for consideration. As part of the assessment process various costs are likely to be incurred by the HSE. These may be in the form of additional man hours spent, administrative costs, and so on. These additional costs to HSE (and ultimately society) are a direct consequence of a new design being submitted. If approval were to be carried out through the private market then costs would be charged back to the firm. The proposal for amending the health and safety fees regulations (2007) will allow HSE to charge these additional costs incurred back to the industry. This proposal should not have a direct effect upon the level of health and safety enjoyed by the public, however it should free up HSE resources to be used in other areas of business.

#### **Rationale for Government Intervention**

- 3 The underlying economic rationale for intervention is that of the polluter pays principle. In this case the vendor proposing a nuclear reactor design is causing a cost (that of the assessment process) which would be effectively borne by the taxpayer through diverting HSEs resources from other avenues of public benefit. (e.g. such as health and safety prosecutions, policy development, analysis etc).

HSE reviews designs for new reactors in order to reduce the degree of both risk and information asymmetry suffered by society.

- 4 HSE assessment of designs for nuclear reactors is a preliminary to mandatory licensing and is likely to have reputational benefits for the industry, adding credibility to their design proposal which may be of benefit not only within the UK market but also abroad.

## **Options**

- 5 Reactor vendors are expected to provide HSE with designs for assessment. This is of benefit to the industry as credibility is added to the quality of designs submitted. As the new regulation amendments refer to the costs of assessing new designs for nuclear installations two options have been identified:
  - a. Do nothing – HSE continues to incur the cost of assessing applications.
  - b. Charge these fees back to the industry, which effectively purchases HSE's services at cost price.
- 6 The proposed option 2 is a small amendment to the health and safety fees regulations (2007) and would come into immediate effect.

## **Costs and Benefits**

- 7 In this impact assessment we consider the costs to be those costs incurred by HSE in the process of assessing a design. We consider the benefits to be those costs averted by charging back to industry for the work carried out in the assessment of a design.
- 8 Costs and benefits under option 1 (do nothing) will be zero. HSE will continue to incur the costs associated with assessing designs. The costs and benefits under option 2 are outlined below.
- 9 Estimates of costs and benefits provided in this RIA are given in the form of current prices and are not discounted. The proposed charging of fees back to industry will come into effect in 2007 and will have an associated one off cost to industry. Benefits will come into immediate effect after the regulation amendments. Any additional future designs submitted would have costs and benefits required to be expressed as discounted net present values (NPVs).



### *Assumptions*

- 10 The following assumptions will be used in the assessment of costs and benefits:
- i. There will be 3 designs submitted<sup>1</sup>
  - ii. No further designs will be submitted for the foreseeable future
  - iii. Each application will take 45 staff years to complete.
  - iv. Work will be carried out by a team of Band 2 and Band 3 HSE inspectors, with some technical assistance (the degree of which is dependant upon the complexity of design proposals submitted).
  - v. The number of staff required will increase over a nominal 3yr period.
  - vi. Future compliance will be at a rate of 100%
- 11 Assumptions made on the number of applications made is key to the level of overall costs and benefits estimated within this impact assessment. This assumption is sourced from the Nuclear Industry Association (NIA) website.

### **Sectors and Groups Affected**

- 12 The Nuclear sector is the only sector that will be affected by the proposal under option 2 in this impact assessment. Costs incurred by HSE in the approval of nuclear reactor designs will be transferred to the submitter of the new design. Consultation with industry has confirmed that industry is happy to incur these costs..

### **Benefits**

- 13 Benefits are assumed to be equal to the costs saved, as HSE will be able to divert resources elsewhere. There will effectively be a transfer of costs to industry.

### Non quantified benefits:

- We do not address the issue of opportunity costs of alternative use of resources as this remains uncertain.
- Credibility of plans submitted by vendors

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<sup>1</sup> <http://www.niauk.org/new-build.html>

### *Social Benefits*

- 14 Under option 2 more resources will be available to HSE. It is expected that this could lead to health and safety benefits through HSEs other activities however this is impossible to quantify without knowing how these resources would be employed.
- 15 If one fatality were to be prevented then this would lead to a benefit of approximately £1.4m in today's prices. This estimate is taken from the HSEs appraisal values available at: shown in Table 1 below<sup>2</sup>. In this impact assessment we have not attempted to estimate the benefits of injuries and illnesses averted.

Table 1: HSE appraisal Values (2005 quarter 3).

	<b>Human cost</b>	<b>Lost output</b>	<b>Resource costs</b>	<b>Total</b>
<b>Fatality</b>	£940, 800	£493, 300	£850	<b>£1,435,000</b>
<b>Major injury</b>	£17,200	£15,700	£5,600	<b>£38,500</b>
<b>Other reportable injury (O3D)</b>	£ 2,500	£2,500	£500	<b>£5,500</b>
<b>Minor injury</b>	£200	£100	£50	<b>£350</b>
<b>Average case of ill health</b>	£4,600	£2,800	£800	<b>£8,300</b>

### *Environmental Benefits*

- 16 There will be no environmental benefits associated with the fees regulations amendments.

### *Economic Benefits*

- 17 As outlined above there will be a saving to the HSE equal to the costs of carrying out an assessment however this is not considered to be an economic benefit as it is a transfer of cost to the industry. It is unlikely that any impact upon the level of inward investment in the UK as the total costs charged back to industry will be small relative to the size of the potential market for the products of nuclear installations. The nuclear industry provides over 16% of the world electricity<sup>3</sup>.

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<sup>2</sup> <http://www.hse.gov.uk/economics/eauappraisal.htm>

<sup>3</sup> <http://www.niauk.org/nuclear-energy-worldwide.html>

## Costs

- 18 The exact costs are difficult to ascertain as each application will be different and thus costs will vary proportionately to the amount of work that they require. The amount of HSE resources used will be dependant upon:
- the quality and timeliness of the design submissions received;
  - the significance of any issues arising;
  - the responsiveness of requesting parties to HSE issues and questions;
  - the availability of resource in HSE;
  - the ability to make best use of information from overseas nuclear regulators;
  - HSE's experience with similar reactor designs.
- 19 Industry has agreed through consultation that HSE's costs incurred (including those of services contracted out to third parties) during a design assessment will be charged back to those submitting designs. Costs reasonably incurred shall be limited to £6m in total per design submission. If we assume an assessment takes 3 years to complete and costs are spread evenly over this period then the total cost for a single submission discounted at a rate of 3.5%<sup>4</sup> would be £6m in NPV terms. For all 3 assumed design submissions this would equate to a total cost of £17m in NPV terms. Note that these cost estimates are a very rough approximations and lie at the upper end of the scale of total costs.
- 20 Estimates of costs are based upon salaries of band 2 and band 3 inspectors and an estimated number of 45 staff years per application. It is assumed that there will be 3 applications.

### *Total Compliance Costs to Business*

- 21 An upper limit of cost of 6m will be incurred by the industry per application, £17m in NPV terms for all of the assumed design submissions.

### *Costs to the Health and Safety Executive*

- 22 There would only be a negligible administrative cost associated with sending out an invoice that would be incurred by HSE. This cost would rise proportionately with the number of applications that were made.

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<sup>4</sup> HMT treasury green book: <http://greenbook.treasury.gov.uk>

### *Total Costs to Society*

- 23 There will be no cost to society other than those costs which may be passed on to consumers. Although the potential earnings from the sale of HSE assessed nuclear reactor designs are likely to be very large and the costs recouped by HSE will be relatively small, it is possible that some if not all of these costs will be passed on to consumers.

### *Uncertainties*

- 24 We are uncertain of the costs estimated as their size is dependant upon the complexity of the application and the quantity of design submissions.

### **Small Firms Impact Test**

- 25 Due to the large cost associated with building a nuclear installation it is perceived that there will be no small firms being charged for this service by HSE.

### **Competition Assessment**

- 26 There will be no impact upon domestic, nor international, competition as costs are not considered to be large enough to be a barrier to entry.

### **Enforcement, Sanctions and Monitoring**

- 27 Enforcement of the regulations amendments will be through state law.

### **Implementation and Delivery Plan**

- 28 The amendments to the regulations will take immediate effect.

### **Ministerial Sign-off**

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister

*Bill McKenzie (Lord McKenzie of Luton)*

Date 7 June 2007