

**EXPLANATORY MEMORANDUM TO  
THE HEALTH AND SAFETY (FEES) REGULATIONS 2010**

**2010 No. 579**

**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. Purpose of the instrument**

The Health and Safety (Fees) Regulations 2010 (“the Fees Regulations”) revoke and replace the Health and Safety (Fees) Regulations 2009 (S.I. 2009 No.515). These Regulations introduce a new charge and update existing charges made for the performance, mainly by the Health and Safety Executive (HSE), 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 statutory regimes regulating the on-shore major hazards, gas transportation, and offshore oil and gas industries.

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

3.1 Increases above inflation continue in two schemes where, historically, charges had been set below full cost. These catch-up exercises allow HSE to move towards full cost recovery as required by HM Treasury guidance, Managing Public Money. The schemes currently in catch-up are:

a) Fees payable in connection with the approval of dosimetry services (dose record keeping, external dosimetry and internal dosimetry) under the Ionising Radiations Regulations 1999 (S.I. 1999 No.3232). This scheme is expected to reach full cost recovery around 2016/17.

b) Fees payable in connection with first-aid and medical training under the Health and Safety (First-Aid) Regulations 1981 (S.I. 1981 No.917) and Offshore Installations and Pipeline Works (First-Aid) Regulations 1989 (S.I. 1989 No.1671). To the extent that they have not already done so, most such fees are expected to reach full cost recovery in 2010/11, with the exception of the fee for an original approval for first-aid training, which is expected to reach full cost recovery in 2012/13.

3.2 Other proposed increases above inflation are as follows:

3.3

a) An increase in the hourly rate for chargeable work carried out in respect of offshore safety (where a 9.4% increase is proposed, rising from £235 to £257 per hour), on-shore major hazards (where a 6.9% increase is proposed, rising from £160 to £171 per hour) and gas transportation (where a 2.9% increase is proposed, rising from £138 to £142 per hour). These increases are mainly due to the impact of the current pay agreement, which includes some above-inflation increases particularly targeted at the recruitment and retention of specialist staff in these high-hazard sectors.

b) An increase of 135.45%, rising from £567 to £1,335, in the fee payable for a site-visit to investigate a complaint in relation to medical training under the Offshore Installations and Pipeline Works (First-Aid) Regulations 1989 (S.I. 1989 No.1671). The fee has been erroneously treated as the same as that for the investigation of a complaint in relation to first-aid training, and the proposed increase reflects the much higher actual cost, in line with HM Treasury guidance.

c) An increase of 178.97%, rising from £1,160 to £3,236, in the fee payable for an application for a licence under the Control of Asbestos Regulations 2006 (S.I. 2006 No.2739). There are two aspects to this increase: first, the equivalent fee charged pursuant to the 2009 Fees Regulations has been increased by 35.34%; secondly, an additional £1,666 has been included in the fee to recoup the cost of a new policy whereby all licence-holders will receive an annual inspection.

3.4 The Fees Regulations also propose a new fee payable on each notification made under the proposed Notification of Conventional Tower Cranes Regulations 2010, which are intended to come into force on the same date as the Fees Regulations.

#### **4. Legislative Context**

The Fees Regulations are being made to affect an annual increase of the fees charged and introduce charging for the areas set out in paragraph 3.3

The level of fees proposed by the Fees Regulations is intended to ensure that, so far as possible, full cost recovery is achieved in respect of the specified statutory functions linked to health and safety.

#### **5. Territorial Extent and Application**

This instrument applies to Great Britain.

#### **6. European Convention on Human Rights**

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

## 7. Policy background

### What is being done and why

- 7.1 It is HSE policy to 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 This reflects HM Treasury guidance, Managing Public Money, which requires full cost recovery for chargeable statutory functions. The fees set by the existing Health and Safety (Fees) Regulations are reviewed annually, and replacement Regulations are proposed to implement any appropriate changes.
- 7.4 Tower crane incidents in recent years, some involving fatalities, have heightened general awareness of these cranes and the risks to worker and public safety that they can pose. The difficulty of obtaining information on tower crane installations can hinder the health and safety enforcing authority in its investigation of incidents involving cranes, and has drawn criticism from those seeking reassurance on behalf of the public. HSE is introducing a register of conventional tower cranes (i.e. cranes assembled from parts on construction sites) and proposes a £20 notification fee to recoup the initial cost of setting up the register and its subsequent operating costs, with expected volumes of approximately 2,500 per year imposing an additional cost on industry of £50k per annum.
- 7.5 HSE already recovers its costs of initial assessment and grant of licences under the Control of Asbestos Regulations 2006. HSE proposes to modify and strengthen its intervention strategy to include all licence holders receiving a minimum of one annual inspection. HSE proposes a new flat rate fee of £3,236 covering the cost of both licensing and annual inspection over a three year period. The anticipated additional cost to industry is £530k per annum.
- 7.6 HSE reviews and revises fees annually in accordance with HMT guidance. Amendments in year to the Fees Regulations follow the same process of consultation and scrutiny as for the annual review and revision.

## 8. Consultation outcome

- 8.1 HSE does not have a statutory obligation to consult on the introduction of the Fees Regulations. In practice, however, HSE has developed well-established mechanisms (e.g. Charging Review Groups for the large permissioning schemes) for the exchange of information with duty holders each year about any proposed changes in fees. Relevant trade associations were informed in October and November 2009 about the proposed increases in fees in the Offshore, COMAH (Control of Major Accident Hazards) and Gas Transportation industries. The Chemical Industries Association has expressed its concerns about the above inflation COMAH rate increases (referred to in paragraph 3.2(a)) both in writing and at a personal meeting with Lord McKenzie, the Department for Work and Pensions Lords Minister, on 14 January 2010.
- 8.2 For other schemes, relevant industries are notified once the basis for any changes has been settled, usually in February each year. The asbestos liaison group (ALG), whose members include the trade associations representing licence holders and trade unions representing the employees, have been informed of the proposal described in paragraphs 3.2(c) and 7.5 above, and have raised no objection.
- 8.3 Duty holders were consulted about the proposals to charge for the Tower Cranes Register notifications and the level of fee to be charged by virtue of a public consultation document (over a period of three months ending in October 2009) and the results of the consultation exercise have been analysed. A summary of the responses to the consultative document can be found at <http://www.hse.gov.uk/consult/condocs/cd221-responses.htm>
- 8.4 A wide range of organisations responded, including trades unions, construction contractors, and crane owners/hirers. Very few comments were received from sectors other than construction. There was substantial agreement (63%) that the aims and criteria set out in the consultative document were appropriate and provided a sensible basis for setting up a register. A number of respondents (~15%) challenged the need for a register and the assumption it would bring health and safety benefits.
- 8.5 No consensus emerged on the proposed scope of the regulations and the range of information to be notified; 48% of responders 'agreed' with proposed limit to the type of tower cranes to be notified. 49% of respondents 'agreed' that the proposed information requirements contained in the draft regulations struck the right balance to be sufficiently informative without being burdensome. No responses were received concerning the level of fee to be charged.

## **9. Guidance**

HSE publishes cost recovery guides for the large schemes on its website.

<http://www.hse.gov.uk/charging/comahcharg/comahch1.htm>

## **10. Impact**

- 10.1 The impact on business relates to increased costs to licence holders and the potential for these increases to be reflected in their prices. The impact on charities or voluntary bodies is a potential increase in costs where they are customers of licence holders.
- 10.2 The impact on the public sector is nil as the costs of the schemes will be recovered from industry through the fees.
- 10.3 A full Impact Assessment was prepared for the proposed introduction of the Tower Cranes Register pursuant to the Notification of Conventional Tower Cranes Regulations 2010 and can be viewed at <http://www.hse.gov.uk/ria/full.htm>
- 10.4 A partial Impact Assessment was prepared in connection with the intended modification and strengthening of HSE's intervention strategy for the licensing and inspection of duty holders working with asbestos pursuant to the Control of Asbestos Regulations 2006 – see Annex A.

## **11. Regulating small business**

- 11.1 These Regulations apply to small business.
- 11.2 It is HSE policy to recover the full cost of permissioning work from duty holders. Where a licence is granted, a safety case assessed and accepted or a notification received and assessed, the duty holder gains specific economic advantage - generally they can carry out hazardous activity lawfully. HSE is concerned with securing the health, safety and welfare of persons at work, and protecting persons other than persons at work against risks to health or safety arising out of or in connection with the activities of persons at work. In general, the standards and behaviours at work required by law are the same regardless of the size of a business. It would be inappropriate to treat small businesses differently in these circumstances.

## **12. Monitoring & review**

The fees set by the existing Health and Safety (Fees) Regulations are reviewed annually, and replacement Regulations are proposed to implement any appropriate changes. In practice, this means that the Health and Safety (Fees) Regulations are replaced annually. HSE discusses any proposals for changes in rates charged or for new cost recovery schemes with those affected. For example, for larger schemes, proposals will be discussed at Charging Review Group meetings held in

the autumn of each year, and any views expressed by those affected will be considered before formal proposals are put to the HSE Board and then Ministers. Generally, the impact of the current Regulations is also considered by Charging Review Groups.

### **13. Contact**

Paula Wheeler at the Health and Safety Executive Tel: 0151 951 3618 or e-mail: [paula.wheeler@hse.gsi.gov.uk](mailto:paula.wheeler@hse.gsi.gov.uk) can answer any queries regarding the instrument.

#### Attachments:

Annex A – Partial Impact Assessment for the modified approach to asbestos licensing.

<p><b>Description of the intervention:</b></p> <p><b>Background:</b></p>	<p>Changes to asbestos licence assessment payments to include operational inspection costs in addition to those of the Asbestos Licensing Unit's (ALU) which are already charged for.</p> <p>Asbestos is a prohibited substance, a category 1 carcinogen and past exposures are responsible for around 4,000 deaths annually. Licensed asbestos contractors are licensed to work with asbestos. Licence applicants are assessed by HSE to ensure they are fit to hold the licence, and their performance needs to be monitored to ensure they perform as is expected of a licence holder. There is a public expectation that because HSE licences the industry, they can have confidence in the licence holder they use. To ensure standards, additional HSE resource, committed to asbestos licensing, is required.</p> <p>The asbestos liaison group (ALG)<sup>1</sup>, whose members include the trade associations representing licence holders and trade unions representing the employees, have been informed of the proposal and have raised no objection (even claiming it is still too low). Competent licensed contractors are normally granted a licence for 3 years. At just over a £1,000 per year for a 3 year licence, assuming the applicant is performing as they should be, the industry has no problem affording this.</p>
<p><b>Objectives:</b></p>	<p>To enable cost recovery to cover increases in ALU staff resources and to include operational inspection, as agreed by the FOD MB.</p> <p>To ensure standards in asbestos management are maintained and improved upon.</p> <p>To reduce incidences of Asbestos related illness.</p>
<p><b>Options:</b></p>	<p>Options considered by the FOD MB were:</p> <p><b>Option 1:</b> Do nothing – keep the existing licence fee.</p> <p><b>Option 2:</b> Keep the existing licence assessment fee and add in a charge for additional ALU staff.</p>

<sup>1</sup>See: <http://www.hse.gov.uk/aboutus/meetings/committees/alg/index.htm>

**Calculation of costs:**

**Option 3:** Option two plus an additional charge for each inspection separately based on an hourly rate.

**Option 4:** Charging for both assessment and inspections. This would use the agreed FOD MB inspection strategy for inspection of licensed asbestos work as a basis for charging an “up front” fee (charged at the time of application for a license), covering the regulation of the licensing regime (assessment and inspection). This option would increase the frequency of inspection and ensure all licence holders receive a minimum number of inspections a year.

**Option 1:** Do Nothing - continue with the existing licence assessment fee. (i.e. the status quo, with no impact on costs or benefits).

**Option 2:** Keeping the existing licence assessment fee and adding in a charge for additional ALU staff

The additional annual cost to firms of is **£119,442.86**.<sup>2</sup> The cost incorporates the addition of 3 ALU staff at band 3, 4 and 6; and full recovery of these costs. We also assume that the number of new and renewal applications, reassessments, amendment of condition or duration of licence and amendment or replacement of a licence remain unchanged from the 2008/09 period. Around 30,000 licence notifications for working with asbestos are received per year, therefore, the additional cost per job is approximately £3.98. However, this will be higher for small businesses who would operate fewer jobs and smaller for large firms.

**Option 3:** Keeping the existing licence assessment fee and adding in a charge for additional ALU staff, plus an additional charge for each inspection separately based on an hourly rate

The additional annual cost to firms is **£368,642.86**.<sup>3</sup> This is based on the minimum number of inspections and could be much greater. Again we assume that the number of applications, reassessments, amendment of condition or duration of licence and amendment or replacement of a

<sup>2</sup> See Annex and data in the Asbestos fees Regs 2010 calculations spreadsheet. See TRIM (2009/387597).

<sup>3</sup> See footnote 2.

<sup>4</sup> See footnote 2.



	<p>licence remain unchanged from the 2008/09 period. The cost also incorporates the addition of 3 ALU staff at band 3, 4 and 6; and full recovery of these costs. Here each inspection is charged on an hourly rate The hourly inspection rate is calculated as £178 and total additional inspection costs are based on a minimum of 1400 inspections at 3 hours each. The additional cost per job would be approximately £8.05.</p> <p><b>Option 4:</b> Charging for both assessment and inspections in an upfront fee.</p> <p>The additional annual cost to firms is <b>£652,608.86</b>.<sup>4</sup> Instead of an hourly rate there is an upfront fee to cover inspection. We assume that the number of new and renewal applications, reassessments, amendment of condition or duration of licence and amendment or replacement of a licence remain unchanged from the 2008/09 period. The cost also incorporates the addition of 3 ALU staff at band 3, 4 and 6; and full recovery of these costs. Assuming 30,000 notifications of licensed work are received each year the extra cost per job would be approx £21.75</p> <p><u>Note:</u> In options 2-4 additional costs will be passed onto the dutyholder in the form of a higher fee. This represents a transfer of costs from the taxpayer (via HSE) to dutyholders. As a consequence there is no overall impact on society or HSE’s resources for these options. On the basis of recovering the full economic cost, option 2 recoups spending on additional staff but does not include a charge for inspections.</p>
<p><b>Impact on industry (including any effect on the Admin Burdens Baseline):</b></p>	<p>The extra costs are placed on asbestos licence applicants and holders. All or part of these costs could be passed on to clients, through higher contract prices. The extent to which this will happen will depend on the price elasticity of customers’ demand for asbestos licence holders’ services.</p> <p>A potential outcome of the increased fee could also be a decrease in the number of what could be called “speculative” applicants, who go through the assessment process but fall well short of what is required for a licence holder.</p>
<p><b>Benefits (quantified where possible):</b></p>	<p><u>Option 1 – Do nothing</u> No impact on benefits.</p> <p>Option 4 is the preferred option of the Field Operations</p>

	<p>Directorate Management Board (FOD MB) on the basis of practicality and recovering the economic cost to HSE and society. Asbestos licence holders work on sites for differing periods of time, and with different personnel. Charging an hourly rate with this peripatetic industry would therefore be extremely problematical making option 3 unfeasible. Option 2 charges for assessment and additional staff costs but omits inspections thereby placing an additional burden on HSE resources.</p> <p>Option 4 is regarded as best placed to enable ALU to be resourced with sufficient staff, and FOD Construction Division (CD) ops to carry out sufficient inspections to ensure the effective regulation of the asbestos licensing regime. This would include the gathering of more relevant information to be considered at licence reapplication or revocation.</p>
<b>Consultation:</b>	This approach has been discussed with HSE's Chief Economist and the Policy Capability Team.
<b>Chief Economist's comments:</b>	I am satisfied that the costs and benefits of this proposal have been properly assessed and where possible quantified.
<b>Recommendation:</b>	That based on proportionality, a full impact assessment is not produced.

**Signed:**...Alan Spence..... **Date:** .....5 February 2010.....  
**HSE's Chief Economist**