

EXPLANATORY MEMORANDUM TO

THE HEALTH AND SAFETY AND NUCLEAR (FEES) REGULATIONS 2021

2021 No. 33

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Health and Safety and Nuclear (Fees) Regulations 2021 (“the Fees Regulations”) revoke and replace The Health and Safety and Nuclear (Fees) Regulations 2016 ([S.I. 2016 No. 253](#)) and increase the fees charged by HSE and other licensing authorities (see paragraph 7.1 and 7.2) by 2.2%. Making the Fees Regulations also extends the legal basis to charge for HSE and the Office for Nuclear Regulation (ONR) as the 2016 Fees Regulations cease to have effect five years after coming into force.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 This instrument is being made to enable the Health and Safety Executive (HSE) and the Office for Nuclear Regulation (ONR) to continue to recover fees and charges from April 2021 and apply an inflationary increase.

Explanations

What did any relevant EU law do before exit day?

- 6.2 Section 2(2) of the European Communities Act 1972¹ provided the powers for measures in relation to the control and regulation of genetically modified organisms and biocides.

Why is it being changed?

- 6.3 The majority of the fees in this SI are made using the power in the Health and Safety at Work etc. Act 1974². Some fees (in regulations 13, 21 and 22), which relate to EU instruments, and where fees were not introduced to the 2016 Fees Regulations using the powers under the Health and Safety at Work etc. Act 1974 are amended using the power in paragraph 7 of Schedule 4 to the European Union (Withdrawal) Act 2018³. This provision allows for the amendment of fees post EU Exit in relation to retained EU law.

What will it now do?

- 6.4 There is no change to the provisions themselves (save for increasing the fees), but this change in powers was necessary as a result of the powers in section 2(2) of the European Communities Act no longer being available.

7. Policy background

What is being done and why?

- 7.1 It is the policy of the Government, HSE and ONR to charge fees for a range of activities detailed in this instrument in order to recover their costs. This allows the duty holder, for example, to trade in hazardous substances or carry out work in high hazard conditions, once HSE/ONR are satisfied with the control mechanisms in place. It allows HSE to recover its costs where there has been a material breach of Health and Safety Law (Fee for Intervention) in industries not covered by permissioning type regimes.
- 7.2 The 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 The charges set out in the Regulations are reviewed annually with the fees charged being amended as appropriate. HSE's policy objective, in accordance with Managing

¹ <https://www.legislation.gov.uk/ukpga/1972/68/section/2>

² <https://www.legislation.gov.uk/ukpga/1974/37/part/I/crossheading/financial-provisions/enacted>

³ <https://www.legislation.gov.uk/ukpga/2018/16/schedule/4>

Public Money⁴, is to set fees with the aim of recovering the full cost of its regulatory activities where it has been determined that the costs of these services should be passed to the recipient of the service.

- 7.4 There are two amendments to the Fee for Intervention regulations which are:
- i) To remove the bar on recovery of costs via Fee for Intervention after a Crown Body has been notified that they would have been charged with a criminal offence if it were not for s48(1) Health and Safety at Work Act etc (HSWA)⁵. This bar prevented HSE from recovering reasonably incurred costs which arise after this date associated with the issue of Crown Censures. The removal of this bar will ensure greater parity between Crown Bodies and other duty holders, from whom costs can be recovered after a decision has been made to prosecute them – either via Fee for Intervention, or via a Court Order (for costs which are incurred after an Information has been laid).
 - ii) Regulation 25 provides for circumstances in which a Fee for Intervention must be repaid by the Executive. The duty to repay a Fee for Intervention only applies where a person has been acquitted (including a verdict of not proven in Scotland), or where the inspector no longer holds the opinion that the person is or has contravened one or more of the relevant statutory provisions. This has been clarified because the current provision led to unintended consequences which prevented the Executive from recovering reasonably incurred costs where a prosecution did not result in a conviction, but where a breach could still be demonstrated; for example, where the Executive decided to offer a caution following the laying of an information based on the same facts.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being partly made under paragraph 7 of Schedule 4 to the European Union (Withdrawal) Act 2018. No statement is required to be made by the Minister in accordance with that Act.

9. Consolidation

- 9.1 These regulations are not being consolidated. Informal consolidated text of instruments is available to the public free of charge via the National Archives website www.legislation.gov.uk.

10. Consultation outcome

- 10.1 There is no consultation requirement for inflationary increases in cost recovery rates but HSE meets regularly with industry stakeholders and annually (January to March) through Cost Recovery Review Groups (e.g. onshore chemicals and offshore oil and gas sectors) to discuss changes to the hourly rates and associated regulatory intervention plans.

⁴ <https://www.gov.uk/government/publications/managing-public-money>

⁵ <https://www.legislation.gov.uk/ukpga/1974/37/contents>

10.2 Consultation with the nuclear industry has been deemed unnecessary as no changes to nuclear fees charging arrangements are introduced in these Regulations.

11. Guidance

11.1 HSE's⁶ and ONR's⁷ website provides guidance on all fees and charges, as well as the relevant query and dispute process.

12. Impact

12.1 The impact on business, charities or voluntary bodies is circa £1m per annum. This is based on planned activity levels for the various cost recovery regimes and impact of the inflationary increase in rates.

12.2 There is no significant impact on the public sector.

12.3 A full Impact Assessment is not required and has not been prepared for this instrument because the impact on business in terms of direct costs is less than £5m per annum.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 HSE is concerned with securing the health, safety and welfare of persons at work. This includes protecting the public against risks to their health and 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 the business.

13.3 It would be inappropriate to treat small businesses differently in these circumstances and HSE calculates fees and charges that are commensurate with the level of work involved. This includes hourly rates, where appropriate, which mean that the total sum charged often depends on the level of complexity and risk of the business.

14. Monitoring & review

14.1 The Fees Regulations are reviewed annually and include a statutory review clause within five years of them coming into force.

15. Contact

15.1 Dave Thomas at the Health and Safety Executive Telephone: 0203-028-3151 or email: dave.thomas@hse.gov.uk can be contacted with any queries regarding the instrument.

15.2 David Murray, Director of Finance and Corporate Services, at the Health and Safety Executive can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mims Davies, Minister for Employment at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

⁶ <https://www.hse.gov.uk/aboutus/index.htm>

⁷ <http://www.onr.org.uk/>