

**EXPLANATORY MEMORANDUM TO**  
**THE HEALTH AND SAFETY AND NUCLEAR (FEES) (AMENDMENT)**  
**REGULATIONS 2023**

**2023 No. 247**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 This instrument amends the Health and Safety and Nuclear (Fees) Regulations 2022 (“the Fees Regulations 2022”)<sup>1</sup> by: increasing some of the fees that were fixed or determined by the Fees Regulations 2022 by 2%; introduces a new cost recovery regime for consents to work with ionising radiation; clarifies that fees can be charged in relation to certain explosives matters even if an application has not been made; and makes some minor drafting amendments.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Great Britain.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 here.

**6. Legislative Context**

- 6.1 The effect of the amendments in this instrument are: a 2% increase to some of the fees that were fixed or determined by the Fees Regulations 2022 to maintain full cost recovery; a cost recovery regime for a new consent authorisation system for work with ionising radiation, which implements a Government-agreed recommendation from the International Atomic Energy Agency (IAEA)<sup>2</sup>; clarification that certain licensing authorities may charge fees in connection with certain matters arising under the Explosives Regulations 2014<sup>3</sup>, the Acetylene Safety (England and Wales and

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<sup>1</sup> <https://www.legislation.gov.uk/ukSI/2022/1378/made>

<sup>2</sup> <https://www.iaea.org>.

<sup>3</sup> <https://www.legislation.gov.uk/ukSI/2014/1638/contents/made>

Scotland) Regulations 2014<sup>4</sup> and the Dangerous Goods in Harbour Areas Regulations 2016<sup>5</sup> without the licence holder making an application under the relevant legislation.

## 7. Policy background

### *What is being done and why?*

- 7.1 The amendments will: increase some of the fees that were fixed or determined by the Health and Safety and Nuclear (Fees) Regulations 2022 (“the Fees Regulations 2022”) to ensure full cost recovery consistent with the principles in Managing Public Money (MPM)<sup>6</sup>; ensure costs can be recovered for the expansion of regulatory effort required to meet the International Atomic Energy Agency (IAEA) recommendations about consents to work with ionising radiation; and will remove a limited number of ambiguities around fees and charges that have been identified.

### *Explanations*

#### What did any law do before the changes to be made by this instrument?

- 7.2 The Fees Regulations 2022 enable the Health and Safety Executive (HSE) and the Office for Nuclear Regulation (ONR) to charge fees for a range of activities detailed in those Regulations in order to recover their costs, in line with Government policy and the principles in MPM. This allows the duty holder to trade in hazardous substances for example, or to carry out work in high hazard conditions, once HSE / ONR are happy with the control mechanisms in place. The Fees Regulations 2022 also allow HSE to recover costs where there has been a material breach of Health and Safety Law via Fee for Intervention<sup>7</sup>.
- 7.3 The type of regulatory work charged for includes, for example: assessing and accepting safety cases; issuing licenses; issuing certificates; granting approvals; accepting notifications; material breaches.

#### Why is it being changed?

- 7.4 A number of amendments to the Fees Regulations 2022 have been identified which will ensure the Regulations remain fit for purpose, recover actual costs and that HSE can recover the fees and charges for which the policy intent exists.
- 7.5 A 2% increase to the some of the fees that were fixed or determined by the Fees Regulations 2022. Such increases are implemented periodically by HSE and ONR to ensure that fees provide for full cost recovery consistent with the principles in MPM
- 7.6 Cost recovery regime for ionising radiation consents: in 2019, at the request of the UK Government, the IAEA carried out a full mission examining all aspects of the UK’s approach to managing health risks associated with ionising radiation. The UK Government accepted the International Atomic Energy Agency’s (IAEA) recommendations for improvements in full, one of which was the need for greater regulatory activity on the consent authorisation process under the Ionising Radiation Regulation 2017 (IRR17).<sup>8</sup> The current approach is very light-touch but in future, the issuing of consents will require a prior assessment of applications for use of ionising

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<sup>4</sup> <https://www.legislation.gov.uk/ukxi/2014/1639/made>

<sup>5</sup> <https://www.legislation.gov.uk/ukxi/2016/721/contents/made>

<sup>6</sup> <https://www.gov.uk/government/publications/managing-public-money>

<sup>7</sup> <https://www.hse.gov.uk/fee-for-intervention>

<sup>8</sup> <https://www.legislation.gov.uk/ukxi/2017/1075/contents/made>

radiation, which will require considerably more regulatory effort from the Health and Safety Executive (HSE) and the Office for Nuclear Regulation (ONR). HSE and ONR will seek to recover the full cost of this additional regulatory effort.

- 7.7 Minor wording changes and clarifications: amendments are made to clarify that the relevant licensing authority (in most cases HSE) can charge a fee for work carried out under the Explosives Regulations 2014, the Acetylene Safety (England and Wales and Scotland) Regulations 2014 and the Dangerous Goods in Harbour Areas Regulations 2016, where the work is not triggered by an application from the holder of the relevant licence. The changes will ensure that all licensing authority time spent on the matters can be recovered. Several typographical amendments are also made to correct minor errors that have been identified.

*What will it now do?*

- 7.8 The Health and Safety and Nuclear (Fees) (Amendment) Regulations 2023 (“the Fees Regulations 2023”) will allow HSE and ONR to continue recovering costs in line with government policy and the principles set out in Managing Public Money (MPM). The proposed amendments will: ensure fees and charges continue to provide full cost recovery; that the considerable expansion in regulatory effort for the new consent authorisation process for ionising radiation is fully funded; and any areas of uncertainty that have been identified in the wording are removed.

## **8. European Union Withdrawal and Future Relationship**

- 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 by the Minister in accordance with that Act.
- 8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under sections 43 and 82 of the Health and Safety at Work etc. Act 1974<sup>9</sup>.

## **9. Consolidation**

- 9.1 There are no current plans for consolidation of the Fees Regulations 2023 with the Health and Safety and Nuclear (Fees) Regulations 2022 (“the Fees Regulations 2022”).

## **10. Consultation outcome**

- 10.1 The Secretary of State considers that no consultation was required by section 101(6)(b) of the Energy Act 2013 before the making of these Regulations.
- 10.2 There is no consultation requirement for increases in cost recovery rates that maintain full cost recovery, 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.
- 10.3 There is no statutory duty to carry out a public consultation on the change to cost recovery for consents to work with ionising radiation and would be inappropriate as delivery of the International Atomic Energy Agency (IAEA) recommendations is an

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<sup>9</sup> <https://www.legislation.gov.uk/ukpga/1974/37/contents>

agreed Government priority that cannot be departed from, as is the Government's approach to cost recovery. Comprehensive informal consultation, focussed on those stakeholders who are required to gain consent from their regulator, being the Health and Safety Executive (HSE) or the Office for Nuclear Regulation (ONR), has been undertaken and the increase in costs explained. The informal consultation took the form of workshops and presentations. The change to the process was generally supported with very little opposition to the costs expressed by industry.

## **11. Guidance**

- 11.1 HSE's<sup>10</sup> and ONR's<sup>11</sup> websites provide guidance on all fees and charges, as well as the relevant query and dispute process.

## **12. Impact**

- 12.1 The impact on business from the increase in fees and charges on the face of the Regulations of 2% is estimated to be less than £50,000 per annum, calculated based on current fees and charges recovered from industry in 2021/22.
- 12.2 The new cost recovery regime for ionising radiation consents is estimated to deliver around £1.3 million per annum in fees, split between HSE (£1.2m) and ONR (£0.1m). This is estimated on the basis of an average consent taking just over 3 days for HSE to review and 2 days for ONR to review, an estimate of 400 consents being processed per annum by HSE and 25 processed by ONR.
- 12.3 The wording clarifications will not result in a cost to business because they do not change what has been happening in practice and only serve to provide legal certainty and remove ambiguity.
- 12.4 In respect of costs recovered for the new consent process, a sizeable proportion fall on the public sector. In respect of other changes, the impact on the public sector is negligible. A very small percentage of fees come from other public sector bodies, but this is a very small percentage of the total income from the Health and Safety and Nuclear (Fees) Regulations 2022 ("the Fees Regulations 2022").
- 12.5 The Health and Safety and Nuclear (Fees) Regulations are amended periodically. The most recent amendment was the Fees Regulations 2022 and before that, the Health and Safety and Nuclear (fees) Regulations 2021 ("the Fees Regulations 2021"). At the time the Fees Regulations 2022 came into force, it was estimated that there was no impact on business as a result of the changes, because there was no change in policy, duties or fees charged. When the Fees Regulations 2021 came into force, it was estimated that the total cost of those regulations was about £1million per annum.
- 12.6 A full Impact Assessment has not been prepared for this instrument because the total cost impact is estimated to be less than £5 million per annum; therefore the measure falls under the administrative exclusions as set out under the Better Regulation Interim Guidance<sup>12</sup> for which a proportionate, rather than a full, impact assessment is sufficient.

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<sup>10</sup> See information on Fee for Intervention at: <https://www.hse.gov.uk/fee-for-intervention/index.htm>. See HSE charging guides at: [https://www.hse.gov.uk/charging/charging\\_guides.htm](https://www.hse.gov.uk/charging/charging_guides.htm)

<sup>11</sup> <http://www.onr.org.uk/documents/2018/how-we-charge-for-nuclear-regulation.pdf>

<sup>12</sup> <https://www.gov.uk/government/publications/better-regulation-framework>

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The Health and Safety Executive (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 rather than its size.

### **14. Monitoring & review**

- 14.1 A separate review clause is not required for these Regulations as they amend the Health and Safety and Nuclear (Fees) Regulations 2022 which already contain a review clause. The first review for the Fees Regulations 2022 must be carried out by 21st December 2027.

### **15. Contact**

- 15.1 Dave Thomas at the Health and Safety Executive Telephone: 0203-028-3151 or email: [dave.thomas@hse.gov.uk](mailto: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 Social Mobility, Youth and Progression at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.