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HEALTH AND SAFETY COMMISSION

EXTENDING THE SCOPE OF COST RECOVERY AND THE HEALTH AND SAFETY (FEES) REGULATIONS 2008

A Paper by Bill Tomkins and Mark Reyland, PFPD

Board Member leads: Justin McCracken and Vivienne Dews

Cleared by Geoffrey Podger on 30 November 2007

Issue

1. The scope of cost recovery in the COMAH, offshore, gas transportation and nuclear regimes and recommendations to Ministers on the Health and Safety (Fees) Regulations 2008 (the Fees Regulations) to Ministers.

Timing

2. For decision at this meeting. This will allow the draft Regulations to be finalised by the Legal Adviser's Office and sent to Ministers. If approved, they will be laid in Parliament in the New Year to come into force on 6 April 2008. A delay in the Regulations coming into force would result in loss of resources available to the Commission for 2008/09.

Recommendation

3. That the Commission agrees to recommend to Ministers that:
 - a. the scope of costs that HSE recovers is extended to include those costs which are incurred to operate the COMAH, offshore and gas transportation regulatory regimes but which are not directly attributable to an individual company or site – so called 'common good' work;
 - b. the scope of costs that HSE recovers is extended to include work carried out to enforce the relevant statutory provisions (RSPs or conventional health and safety) at sites covered by COMAH, nuclear licensing and, insofar as they are not already, GSMR Regulations (gas transportation) - HSE already charges for conventional health and safety work at offshore installations;

- c. the costs of capital charges are recovered from operators covered by nuclear licensing;
 - d. the remainder of the fees where HSE recovers its costs are increased or left unchanged as set out in the table attached to the draft letter at Annex A;
4. And that the Chair writes along the lines of the attached letter to Ministers at Annex A setting out the proposed changes for agreement in principle so that the draft Regulations can be finalised and sent to Ministers.

Background

5. HSC/E has no power to set fees in its own right. HSC recommends fees to the Secretary of State for Work and Pensions. If the Secretary of State is content, he makes the Health and Safety (Fees) Regulations each year to operate from 6 April.

6. HSE recovers its costs for safety case assessment, inspections, incident investigation and approvals in the “permissioning regimes” – on-shore major hazards (COMAH), offshore oil and gas, and gas transportation. It has also historically recovered the vast majority of its costs incurred in regulating the nuclear industry. It also charges for a wide variety of statutory functions (mainly licensing, approving equipment and conducting testing associated with such licences and approvals). HSE is required by HM Treasury to recover the full cost of performing these functions. Memorandum Trading Accounts (MTAs) are produced annually for each main cost recovery scheme that set out the relevant costs incurred and recovered in the previous year and provide the basis for the calculation of fees and charges in the following year. These are subject to independent audit by the NAO. MTA summaries are also available to duty holders and their representatives.

7. The annual revision of fees is considered by the Commission in December each year so that new fee rates, which reflect the expected movement in HSE’s costs, can be introduced from the following April. This year, following a review with DWP, HSE is proposing, in addition to routine changes, that the scope of HSE’s cost recovery schemes is extended.

Argument

Review of cost recovery in the main permissioning schemes

8. As the Commission is aware, as part of preparation for the 2007 Spending Review, HSE was asked to review a wide range of options for financing its expenditure other than direct funding through grant in aid. The Board’s conclusions, subsequently endorsed by Ministers, were that there were two main, practical options for the immediate future.

9. The first was that HSC/E should be recovering the costs of ‘common good’ work not attributable to a single company or site but which is an essential component and cost of a modern regulatory regime. This would be consistent with the general

government policy of recovering full costs where fees are charged. This conclusion would affect the offshore, onshore major hazard and gas transportation sectors. The impact on other schemes is much smaller. The work is made up of the developing and maintaining guidance to duty holders, internal guidance to inspectors (e.g. to achieve consistency of regulation), consulting and discussing current problems and their effective control with duty holders and their representatives, and industry specific research and policy development. HSE has carefully considered each element of this work to ensure that it is integral ('sufficiently referable' in legal terms) to the operation of the regulatory regimes in question. It would not be necessary to amend the Fees Regulations to recover these costs.

10. The second conclusion was that HSE should recover its costs for its 'conventional' health and safety work at nuclear, COMAH and (to the extent it does not already) gas transportation sites. This would be consistent with the cost recovery practice that has been in place in the offshore sector since 1999 where there are already regulations that allow the recovery of the costs of enforcing the RSPs.¹ The rationale for this extension is that such permissioned sites require regular intervention by HSE through safety report assessment (for most types of site/installations²) and regular inspection. At these visits, HSE's inspectors must also inspect compliance with conventional health and safety regulations both because a duty holder's compliance with wider health and safety regulations is an important indicator of a site's overall safety culture and the effectiveness of its safety management systems, and as inspectors are at site anyway, they cannot simply 'walk by'. At the majority of premises, where permissioning does not apply, there is no requirement for regular intervention and in the vast majority of cases it is far less frequent. Charging for conventional health and safety work at nuclear and COMAH sites and for most gas transportation work would require amendment to the appropriate regulations.

11. In the nuclear sector, HSE is also proposing to recover the cost of capital, as it does in other cost recovery schemes. This corrects an oversight made some years ago when the central public sector converted from cash to accrual (commercial) accounting. No amendment to regulations is required. The Commission will wish to be aware that the cost of the recent pay increase approved to attract new nuclear inspectors and payable to those in post will need to be met by the nuclear industry including costs falling this year to the industry of £0.9m and rising to £4m extra in a full year if the number of nuclear inspectors increases to target. Nuclear Directorate will be advising the industry of these additional costs shortly. HSE also has work in hand to develop a proposal to charge for advice to potential nuclear licensees. This will be brought forward to HSC in due course.

12. In the asbestos removal sector HSE is proposing a 10.5% increase in the fee for a new licence or renewal of an existing one. Underlying this increase is removal of lower level risk work (e.g. aertex removal) from the licensing regime in 2006. Comparatively higher risk work remains within the licensing regime and HSE is

¹ The offshore safety case regime includes a specific requirement to demonstrate in the safety case that the management system is adequate to ensure that the RSPs are complied with. That is not the case with COMAH where the purpose and contents of safety reports requires information on the management system and on the organisation of the establishment with a view to major accident prevention.

² Lower tier COMAH are not required to have a safety report under COMAH Regulations

undertaking a more extensive evaluation of the technical knowledge, competence and underpinning management systems of applicants.

“Catch-up” exercises

13. Since 2001, a number of fees has had increases of 20% (or 12% in one case) year on year to reach or catch up to full cost recovery. These fees had previously been set artificially low. Three schemes – dosimetry services under Regulation 14 of the Radiation (Emergency Preparedness and Public Information) Regulations 2001, storage of explosives under the Manufacture and Storage of Explosives Regulations 2005 and fees for approval of first-aid training – are still in catch-up mode. It has been estimated that, as a result of capping increases below full costs, there will be a potential loss of resources to HSE of approximately £100k in 2008/09.

Fee Rates

14. Table 1 (attached to the draft letter at Annex A) shows current and proposed rates/fees and the change in cash and percentage terms. Fees are listed under four headings:

- where increases are part of a previously agreed catch up exercise (as in para 13 above);
- where no change is proposed;
- where increases at or about inflation are proposed; and
- where increases significantly above inflation are being proposed (see para 9 above).

15. The proposed increases significantly above inflation flow from the proposal to recover the costs of ‘common good’ work and from the constraint that we must currently recover our costs through an hourly rate or fee. Because of the overhead and general costs incorporated in the hourly rate this can appear to be very expensive. The increases and the projected costs to industry are:

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	
Asbestos licence new/renewal application	£1,050	£1,160	10.5	£30k	

16. HSE's estimate of the additional financial consequence for industry in 2008/09 of recovering the costs of work on conventional health and safety (excluding the unforeseeable costs of investigating serious incidents) is £1.4m (£1m from COMAH, £300k from Nuclear and £100k from gas transportation). There are some practical difficulties in charging for all work at workplaces where there is no clear boundary (e.g. some gas transportation sites). In these cases, where there is doubt, HSE's guidance will stipulate that its costs should not be recovered.

17. These increases will allow HSE to continue to seek full cost recovery in line with established HSC policy. These proposals are also an integral part of the approach being taken to SR07.

Consultation

Discussion with duty holders and their representatives

18. Where possible, HSE had sought to signal informally the broad content of these proposals to industry. HSE wrote formally in early October to individual duty holders in the COMAH and gas transportation sectors advising them of the proposals and the rationale for them; to trade associations in the offshore industry; and to operators in the nuclear sector advising of the proposals to charge for capital costs within the existing charging scheme and for "conventional" health and safety under a new provision in the 2008 Fees Regulations. HSE has received 18 written responses to its proposals. These are summarised at Annex B together with HSE's comments on the points that have been raised. An electronic copy of all of the correspondence is available to Commissioners on request.

19. HSE met duty holders' representatives at meetings of the Charging Review Groups in the offshore, COMAH and gas transportation industries in late October which were largely taken up with explaining and discussing these proposals in more detail. The agreed minutes of these meetings are at Annex C.

20. It is clear, not surprisingly, that these proposals are most unwelcome to industry. The main points made in written comments and from the CRGs are:

- There is no justification for cost recovery of 'conventional' health and safety work at COMAH and gas transportation sites (this is the proposal which is proving the most contentious);
- Increases at the levels proposed are unjustified;
- Industry already pays for these functions through other taxation;
- There should be a full impact assessment³;
- Timing is too short – budgets (and in some cases prices for companies with 'economic regulators') for next year have been set;
- Proposals should be withdrawn or delayed for a year;

³ A short Impact Assessment has been completed and is at Annex D

- No proper consultation – HSE should allow enough time for proper consideration and discussion;
- “Common good” work is not part of “enforcement” and HSE does not have the vires to charge for this (HSE’s legal advice is clear that it does have the vires);
- There is no transparency in HSE’s costs of common good work or more generally;
- The way these proposals have been handled undermines the positive co-operative working relationship needed for effective regulation;
- Proposed changes will have a disproportionate impact on SMEs;
- This will reduce the predictability of the costs for duty holders.

21. HSWA does not require consultation of proposals under the fee setting provision in the Act. HSE did however want to tell duty holders and trade associations of these proposals as soon as it was able once firm proposals, with costs, could be tabled, and thus wrote in early October. For asbestos licensing, HSE used the established communications method - a web based community page – to tell duty holders about these proposals. Ministers are sighted on the reactions from industry. Internally, operational, policy and finance colleagues have co-operated on developing and handling these proposals.

Presentation

22. HSE has undertaken and is committed to respond to two specific comments by industry. It has undertaken to develop and discuss with industry alternatives to the current hourly charging in the offshore and COMAH sectors in order to improve the predictability of HSE’s costs so that these alternatives can be considered for introduction in April 2009. It will do so in a way which recognises but is not limited by the fee setting power in the 1974 Act. Secondly, HSE will review with industry the way that it produces and sets out its costs in the COMAH and offshore sectors in its MTAs in order to achieve the consistency that industry has requested.

23. HSE has responded to those duty holders and trade associations commenting on the proposals with its response to the points that have been made. HSE plans to update the scheme specific charging guides which are available on the internet to reflect the changes agreed. Industry representatives will be asked to comment on the revised guides once a draft is produced. If the Commission and Ministers approve these proposals, new rates will be confirmed to industry through Charging Review Groups and other machinery as soon as possible following clearance by Ministers.

Costs and Benefits

24. In economic terms, the costs and benefits of these proposals are neutral since they represent a transfer of resources from the relevant industries to the general tax payer. A short impact assessment is attached at Annex D.

Financial/Resource Implications for HSE

25. Prudent estimates of the resources that would be raised by these proposals have been included in financial modelling that HSE has carried out for the SR2007 period. Once fully operating, it is expected that this would amount to £5.4m per annum. Even so, HSE's funding in real terms is expected to fall over the period but these proposals would allow the HSE effort devoted to the industry sectors in question to be at least maintained. In their absence, HSE would need to make further commensurate reductions.

26. The cost of developing these proposals since July has been £60k.

Environmental and Other Implications

27. None.

Action

26. See para 3. PFPD will complete work on a ministerial submission on behalf of the Chair depending on the Commission's recommendations.

ANNEX A

DRAFT

Lord McKenzie

Parliamentary Under Secretary of State

Department for Work and Pensions

December 200

THE HEALTH AND SAFETY (FEES) REGULATIONS 2008

This letter sets out the Commission's proposals for updating the charges made by HSE for a wide range of activities. The proposed changes are set out in the attached Annex 1. We propose that these come into operation on 6 April 2008. We would welcome your agreement in principle to the proposals, pending completion of work on a new set of Health and Safety (Fees) Regulations setting out the charges to be made. DWP and HSE officials are now working on the 2008 version.

For the most part the increases proposed are around the rate of inflation except for

- the three schemes in "catch-up" (where costs and fees did not match historically and where annual increases of 20% in two cases and 12% in the other are again proposed this year)⁴;
- the large scale "permissioning" schemes where significant increases in hourly rates and in two schemes charging for conventional health and safety work are proposed; and
- the nuclear industry where we propose charging for conventional health and safety work and including capital charges in the existing scheme.

When you met my predecessor and Geoffrey Podger on 26 June for a regular KIT meeting you discussed the HSE's review of options for increasing HSE income from cost recovery. You agreed that HSE and DWP officials should pursue

- recovering a greater proportion of the costs of 'common good' work that cannot be attributed to a single company or site;
- rationalising the work which is charged for in the large scale "permissioning" schemes (nuclear, offshore, onshore major hazards and gas transportation) so that the costs of the enforcement of 'conventional' health and safety are recovered in them all ;
- recovering the costs of its work as a statutory consultee on land use planning (LUP) in relation to major hazard sites.

The first two of these options lead to increases in charges significantly above inflation as set out below:

⁴ The schemes involved are dosimetry services under the Radiation (Emergency Preparedness and Public Information) Regulations, explosives storage under the Manufacture and Storage of Explosives Regulations and First Aid training approval.

Charging Scheme	Current fee (2007/08)	Proposed fee (2008/09)	Percentage increase	Projected cost to industry
Offshore	£155 per hour	£213 per hour	37.4	£2.9m
COMAH ⁵	£117 per hour	£155 per hour	34.5	£1.1m
Gas transportation	£115 per hour	£137 per hour	19.1	£80k
Asbestos licence for new or renewal application	£1,050	£1,160	10.5	£30k

⁵ The rates chargeable for work carried out under the COMAH Regulations by HSE do not form part of the Fees Regulations. However, in line with the Fees Regulations, increases are brought forward so that changes in COMAH charges and those for other safety case regimes all operate from the same date.

We are also proposing that charging at nuclear, and COMAH and gas transportation sites be brought into line with existing practice offshore so that enforcement of “conventional” health and safety regulations are subject to cost recovery. We estimate that this will result in an increase in the costs we recover of about £1.1m pa.

In the nuclear sector only, HSE is seeking to recover cost of capital charges for the first time which will mean, approximately, an additional £300k. These costs are already being recovered in other charging regimes so this will bring about consistency.

On LUP, your officials are seeking to hold discussions on recovering the cost of HSE’s input as a statutory consultee with DCLG.

HSE advised duty holders and trade associations of the proposed increases in rates in early October so that they had a chance to discuss proposals and develop their responses. Not surprisingly the reactions have been very critical and opposed to the changes. The main comments were

- There is no adequate justification for charging for all health and safety work at COMAH sites (this is the proposal which is proving the most contentious);
- Increases at the levels proposed are unjustified;
- Timing is too short – budgets for next year have been set;
- The lack of predictability about the costs HSE imposes creates problems;
- Proposals should be withdrawn or delayed for a year;
- No proper consultation – HSE should allow enough time for proper consideration and discussion;
- HSE’s costs lack transparency;
- “Common good” work is not part of “enforcement” and HSE does not have the vires to charge for this (HSE has taken advice on this point. Under S 18 (1) of HSWA the Executive is required to “...make adequate arrangements for the enforcement of the relevant statutory provisions...”. The “common good” activities for which charging is now proposed are necessary aspects of making such adequate arrangements.);
- The way these proposals have been handled undermines the positive co-operative working relationship needed for effective regulation;
- Proposed changes will have a disproportionate impact on SMEs.

The Commission considered these comments very carefully along with HSE’s proposals at its meeting on 11 December. On balance and only after careful consideration we concluded that we should recommend to you that these changes should be implemented. The arguments against pursuing this course did not seem to us strong enough for us not to recommend pursuing full cost recovery. The proposed extension of cost recovery is an intrinsic element of ensuring that HSE retains an effective operating capacity in these critical areas.

If you would find further detail on, for example, the comments that we received from duty holders and their representatives and HSE’s responses to them, we would be happy to provide it.

It would be particularly helpful to have your agreement in principle to these proposals early in the New Year. This will ensure that the Regulations come into force on 6 April 2008.

Yours etc

Table 1

Schemes where increases are for catch-up purposes

SERVICE	2008 FEE	2007 FEE	CASH CHANGE	% CHANGE	COMMENTS
FEEES FOR VARIOUS APPLICATIONS IN CONNECTION WITH THE IONISING RADIATIONS REGULATIONS 1999 and THE RADIATION (EMERGENCY PREPAREDNESS AND PUBLIC INFORMATION) REGULATIONS 2001					
DOSE RECORD GROUP 1	£560	£466	£94	20.17	FULL COST CATCH UP
GROUP 1 LINKED	£560	£466	£94	20.17	FULL COST CATCH UP
GROUP II EXTERNAL DOSIMETRY ONE SUB-GROUP	£560	£466	£94	20.17	FULL COST CATCH UP
GROUP III INTERNAL BIO-ASSAY etc	£560	£466	£94	20.17	FULL COST CATCH UP

SERVICE	2008 FEE	2007 FEE	CASH CHANGE	% CHANGE	COMMENTS
LICENCE TO STORE EXPLOSIVES :					
(A) 1 YEAR DURATION	£170	£144	£26	18.06	Catch up
(B) 2 YEAR DURATION	£245	£216	£29	13.43	Catch up
(C) 3 YEAR DURATION	£300	£270	£30	11.11	Catch up
REGISTRATION IN RELATION TO THE STORAGE OF EXPLOSIVES					
(A) 1 YEAR DURATION	£100	£86	£14	16.28	Catch up
RENEWAL OF REGISTRATION					
(A) 1 YEAR DURATION	£50	£43	£7	16.28	Catch up

FEES FOR APPLICATIONS FOR APPROVALS UNDER THE HEALTH AND SAFETY (FIRST-AID) REGULATIONS 1981					
FEE FOR AN ORIGINAL APPROVAL	£1,350	£1,204	£146	12.13	12% Catch up
FEE FOR AN ADDITIONAL SITE VISIT	£485	£431	£54	12.53	12% Catch up
FEE FOR RENEWAL OF APPROVAL	£95	£83	£12	14.46	12% Catch up
FEE FOR AN INITIAL SITE VISIT	£535	£479	£56	11.69	12% Catch up
FEE FOR ANY ADDITIONAL SITE VISIT	£485	£431	£54	12.53	12% Catch up
FEE FOR VISIT TO INVESTIGATE COMPLAINT	£535	£479	£56	11.69	12% Catch up
FEE FOR A CANCELLED SITE VISIT	£535	£479	£56	11.69	12% Catch up
FEES FOR APPLICATIONS FOR APPROVALS UNDER THE OFFSHORE INSTALLATIONS AND PIPELINES WORKS (FIRST AID) REGULATIONS 1989					
FEE FOR AN ORIGINAL APPROVAL OF FIRST AID TRAINING	£1,350	£1,204	£146	12.13	12% Catch up
FEE FOR AN ORIGINAL APPROVAL OF MEDICAL TRAINING	£1,980	£1,766	£214	12.12	12% Catch up
RENEWAL - FIRST AID	£95	£83	£12	14.46	12% Catch up
RENEWAL - MEDICAL	£95	£83	£12	14.46	12% Catch up
ADDITIONAL SITE VISIT - FIRST AID	£485	£431	£54	12.53	12% Catch up
ADDITIONAL SITE VISIT – MEDICAL	£1,280	£1,144	£136	11.89	12% Catch up
INITIAL SITE VISIT - FIRST AID	£535	£479	£56	11.69	12% Catch up

INITIAL SITE VISIT - MEDICAL	£1,280	£1,144	£136	11.89	12% Catch up
ADDITIONAL SITE VISIT - FIRST AID	£485	£431	£54	12.53	12% Catch up
ADDITIONAL SITE VISIT MEDICAL	£1,280	£1,144	£136	11.89	12% Catch up
FEE FOR SITE VISIT TO INVESTIGATE COMPLAINT	£535	£479	£56	11.69	12% Catch up
FEE FOR A CANCELLED SITE VISIT-FIRST AID	£535	£479	£56	11.69	12% Catch up

Fees where no change is proposed

FEE PAYABLE IN RESPECT OF APPLICATIONS FOR THE GRANTING AND TRANSFER OF PETROLEUM-SPIRIT LICENCES	2008 FEE	2007 FEE	CASH CHANGE	% CHANGE	COMMENTS
TRANSFER OF PETROLEUM-SPIRIT LICENCE	£8	£8	£0	0.00	

FEES FOR EXPLOSIVES CERTIFICATES UNDER THE CONTROL OF EXPLOSIVES REGULATIONS. REGULATION 4

H. RENEWAL OF ABOVE EXPLOSIVES CERTIFICATE WHERE AN APPLICATION IS ALSO MADE UNDER THE 1968 ACT	£15	£15	£0	0.00	
J. RENEWAL OF THE ABOVE CERTIFICATE	£18	£18	£0	0.00	
REPLACEMENT OF ANY OF THE ABOVE CERTIFICATES (G TO J) IF LOST	£10	£10	£0	0.00	

SERVICE	2008 FEE	2007 FEE	CASH CHANGE	% CHANGE	COMMENTS
FEES FOR NOTIFICATIONS AND APPLICATIONS UNDER THE GENETICALLY MODIFIED ORGANISMS (CONTAINED USE) REGULATIONS 2000					
NOTIFICATION ... UNDER REGULATION 9(1)	£465	£465	£0	0.00	
NOTIFICATION ...IN CLASS 2 UNDER REGULATION 10(1)	£929	£929	£0	0.00	
NOTIFICATION ... UNDER REGULATION 9(1)...AND CLASS 2 UNDER REG. 10(1)	£929	£929	£0	0.00	
NOTIFICATION ...IN CLASS 3 UNDER REGULATION 11(1)	£1,007	£1,007	£0	0.00	
NOTIFICATION ... UNDER REGULATION 9(1)...AND CLASS 3 UNDER REG. 11(1)	£1,007	£1,007	£0	0.00	
NOTIFICATION ...IN CLASS 4 UNDER REGULATION 11(1)	£1,161	£1,161	£0	0.00	
NOTIFICATION ... UNDER REGULATION 9(1)...AND CLASS 4 UNDER REG. 11(1)	£1,161	£1,161	£0	0.00	
NOTIFICATION ... OTHER THAN UNDER REGULATION 12(1)	£929	£929	£0	0.00	
NOTIFICATION ... UNDER REGULATION 9(1)...OTHER THAN UNDER REG. 12(1)	£929	£929	£0	0.00	

NOTIFICATION OF ADDITIONAL INFORMATION UNDER REGULATION 15(3)	£696	£696	£0	0.00	
APPLICATION FOR WRITTEN AGREEMENT UNDER 18(2)	£696	£696	£0	0.00	

FEES FOR NOTIFICATIONS AND APPLICATIONS UNDER THE NOTIFICATION OF NEW SUBSTANCES REGULATIONS

EVALUATION OF A NOTIFICATION UNDER REGULATION 4* (BASE SET)	£4,987	£4,987	£0	0.00	No change proposed as NONS scheme ends May 2008 and will be replaced by REACH
REPEAT NOTIFICATION UNDER REGULATION 4	£2,374	£2,374	£0	0.00	
EVALUATION OF A NOTIFICATION UNDER REGULATION 5(1)(a)	£2,619	£2,619	£0	0.00	
EVALUATION OF A NOTIFICATION UNDER REGULATION 5(1)(b)	£5,154	£5,154	£0	0.00	
EVALUATION OF A NOTIFICATION UNDER REGULATION 5(1)(c)	£3,613	£3,613	£0	0.00	
REGULATION 6 (1) (EQUAL TO OR MORE THAN 100KG)**	£1,614	£1,614	£0	0.00	
REGULATION 6 (2) (UP TO 100KG)**	£1,014	£1,014	£0	0.00	
REGULATION 6 (1) OR 6 (2) RTP	£1,614	£1,614	£0	0.00	
EXEMPTION RELATING TO REGULATION 23	£2,619	£2,619	£0	0.00	
PORD	£646	£646	£0	0.00	
RISK ASSESSMENT UNDER REGULATION 4	£2,393	£2,393	£0	0.00	Plus VAT.
RISK ASSESSMENT UNDER REGULATION 6(1)	£578	£578	£0	0.00	Plus VAT.
RISK ASSESSMENT UNDER REGULATION 6(2)	£578	£578	£0	0.00	Plus VAT.

Fees at or around inflation (taking into account roundings)

SERVICE	2008 FEE	2007 FEE	CASH CHANGE	% CHANGE	COMMENTS
FEES PAYABLE UNDER THE MINES AND QUARRIES PROVISIONS					
APPROVAL OF EXPLOSIVES	£325	£317	£8	2.52	
AMENDMENT	£225	£221	£4	1.81	
RENEWAL	£80	£77	£3	3.90	
BREAK TEST SHOT	£250	£244	£6	2.46	
DEFLAGRATION SHOT	£200	£194	£6	3.09	
DETONATOR SHOT	£1,530	£1,492	£38	2.55	
DETONATOR DELAY TIME TEST	£1,210	£1,181	£29	2.46	
GALLERY SHOT	£285	£279	£6	2.15	
VELOCITY OF DETONATION	£495	£481	£14	2.91	

FEES FOR APPLICATIONS FOR APPROVAL UNDER THE AGRICULTURE (TRACTOR CABS) REGULATIONS 1974					
ORIGINAL APPROVAL OF TRACTOR CAB	£465	£455	£10	2.20	
REVISION OF TRACTOR CAB APPROVAL	£255	£250	£5	2.00	
FEE FOR APPLICATION FOR APPROVAL UNDER THE FREIGHT CONTAINERS (SAFETY CONVENTION) REGULATIONS 1984					
FREIGHT CONTAINERS APPROVALS	£90	£87	£3	3.45	
FEES FOR VARIOUS APPLICATIONS UNDER THE CONTROL OF ASBESTOS REGULATIONS 2006					
FURTHER ASSESSMENT FOLLOWING A CONDITIONAL REFUSAL OF A LICENCE	£300	£283	£17	6.01	
AMENDMENT TO A LICENCE (E.G., LICENCE TERM REDUCED, CHANGES TO LICENCE CONDITIONS)	£300	£283	£17	6.01	
ADMINISTRATIVE CHANGES TO LICENCES (E.G., CHANGE OF ADDRESS, REPLACEMENT OF LOST LICENCE, CHANGE OF TRADING NAME)	£80	£76	£4	5.26	

FEES FOR EXAMINATION OR SURVEILLANCE BY AN EMPLOYMENT MEDICAL ADVISER					
IONISING RADS MEDICAL - SURVEILLANCE	£36	£35	£1	2.86	
OTHER CASES	£68	£66	£2	3.03	
X-RAYS	£70	£67	£3	4.48	
LABORATORY TESTS	£40	£39	£1	2.56	
ASBESTOS MEDICALS - BASIC FEE	£70	£66	£4	6.06	
X-RAYS	£70	£67	£3	4.48	
LABORATORY TESTS	£40	£39	£1	2.56	
COSHH MEDICALS - BASIC FEE	£70	£66	£4	6.06	
X-RAYS	£70	£67	£3	4.48	
LABORATORY TESTS	£40	£39	£1	2.56	
COMPRESSED AIR MEDICALS - BASIC FEE	£70	£66	£4	6.06	
X-RAYS	£70	£67	£3	4.48	
LABORATORY TESTS	£40	£39	£1	2.56	
CONTROL OF LEAD AT WORK FIRST ASSESSMENT	£70	£66	£4	6.06	
SUBSEQUENT ASSESSMENT LABORATORY TESTS	£40	£39	£1	2.56	
SUBSEQUENT ASSESSMENT CLINICAL MEDICAL	£40	£39	£1	2.56	

NUCLEAR/SPECIALIST INSPECTOR	£130	£126	£4	3.17	
NUCLEAR/SPECIALIST INSPECTOR	£130	£126	£4	3.17	
TYPE APPROVAL RADIATION GENERATOR	£130	£128	£2	1.56	
APPROVAL OR REASSESSMENT REG.14 REPPIR 2001	£1,820	£1,770	£50	2.82	
NUCLEAR/SPECIALIST INSPECTOR	£130	£126	£4	3.17	

FEES PAYABLE UNDER THE MANUFACTURE & STORAGE OF EXPLOSIVES REGULATIONS 2005 & CERTAIN OTHER PROVISIONS CONCERNING EXPLOSIVES, INCLUDING ACETYLENE & UNDER THE PERTROLEUM (CONSOLIDAITON) ACT 1928 & THE PETROLEUM (TRANSFER OF LICENCES) ACT 1936				
LICENCE TO MANUFACTURE EXPLOSIVES NOT BEING AMMONIUM NITRATE BLASTING INTERMEDIATE NOR RELATING TO ON-SITE MIXING	£605	£586	£19	3.24
LICENCE TO MANUFACTURE AMMONIUM NITRATE BLASTING INTERMEDIATE	£150	£144	£4	2.78
LICENCE TO MANUFACTURE EXPLOSIVES BY MEANS OF ON-SITE MIXING	£225	£216	£9	4.17
RENEWAL OF ANY OF THE ABOVE LICENCES	£80	£77	£3	3.90
FEE FOR WORK BY SPECIALIST INSPECTOR	£122	£116	£6	5.17
LICENCE TO STORE EXPLOSIVES	£605	£586	£19	3.24
RENEWAL OF LICENCE	£80	£77	£3	3.90
VARYING A LICENCE - (a) TO MANUFACTURE EXPLOSIVES NOT BEING AMMONIUM NITRATE BLASTING INTERMEDIATE, OR (b) TO STORE EXPLOSIVES	£415	£401	£14	3.49
VARYING A LICENCE TO MANUFACTURE AMMONIUM NITRATE BLASTING INTERMEDIATE	£150	£144	£6	4.17
TRANSFER OF LICENCE	£50	£49	£1	2.04
REPLACEMENT OF ANY OF THE LICENCES REFERRED TO IN THIS PART IF LOST	£50	£49	£1	2.04
RENEWAL OF A LICENCE:				
(A) 1 YEAR DURATION	£80	£79	£1	1.27
(B) 2 YEAR DURATION	£135	£131	£4	3.05
(C) 3 YEAR DURATION	£190	£184	£6	3.26
REGISTRATION IN RELATION OT THE STORAGE OF EXPLOSIVES				
(B) 2 YEAR DURATION	£135	£129	£6	4.65
(C) 3 YEAR DURATION	£155	£149	£6	4.03
RENEWAL OF REGISTRATION				
(B) 2 YEAR DURATION	£85	£81	£4	4.94
(C) 3 YEAR DURATION	£110	£108	£2	1.85
VARYING A LICENCE:				
(A) VARYING NAME OF LICENSEE OR ADDRESS OF SITE	£33	£32	£2	6.25

(B) ANY OTHER KIND OF VARIATION					
TRANSFER OF LICENCE OR REGISTRATION	£33	£32	£1	3.13	
REPLACEMENT OF LICENCE OR REGISTRATION REFERRED TO ABOVE IF LOST	£33	£32	£1	3.13	
LICENCE FOR IMPORTATION OF COMPRESSED ACETYLENE	£37	£36	£1	2.78	
REPLACEMENT OF LICENCE THE ABOVE LICENCE IF LOST	£37	£36	£1	2.78	
FEE FOR WORK BY SPECIALIST INSPECTOR	£122	£116	£6	5.17	

FEE PAYABLE IN RESPECT OF APPLICATIONS FOR THE GRANTING AND TRANSFER OF PETROLEUM-SPIRIT LICENCES

PETROLEUM SPIRIT NOT EXCEEDING 2,500 LITRES	£40	£39	£1	2.56	
PETROL EXCEEDING 2,500 BUT NOT 50,000	£55	£54	£1	1.85	
PETROL EXCEEDING 50,000	£115	£111	£4	3.60	
TRANSFER OF PETROLEUM-SPIRIT LICENCE	£8	£8	£0	0.00	
ACETYLENE IS TO BE MANUFACTURED OR KEPT (PREMISES)	£37	£36	£1	2.78	
AMENDMENT LICENCE	£37	£36	£1	2.78	
ACETYLENE IS TO BE MANUFACTURED OR KEPT (APPARATUS))	£37	£36	£1	2.78	
FEE FOR WORK BY SPECIALIST INSPECTOR	£122	£116	£6	5.17	
ACETYLENE IS COMPRESSED	£37	£36	£1	2.78	
AMENDMENT OF AN APPROVAL	£37	£36	£1	2.78	
FEE FOR WORK BY SPECIALIST INSPECTOR	£122	£116	£6	5.17	

CLASSIFICATION OF AN EXPLOSIVE	£65	£62	£3	4.84	
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FURTHER FEES PAYABLE IN RESPECT OF CERTAIN TESTING REQUIRED BY THE EXECUTIVE					
LICENCE FOR IMPORTATION OF COMPRESSED ACETYLENE					REASONABLE COST TO THE EXECUTIVE
APPROVAL OF APPARATUS IN WHICH ACETYLENE IS TO BE MANUFACTURED OR KEPT					REASONABLE COST TO THE EXECUTIVE
CLASSIFICATION OF EXPLOSIVE					REASONABLE COST TO THE EXECUTIVE
FEES FOR EXPLOSIVES CERTIFICATES UNDER THE CONTROL OF EXPLOSIVES REGULATIONS. REGULATION 4					
A. CERTIFICATE FOR ACQUIRING AND KEEPING EXPLOSIVES AT SITE	£180	£173	£7	4.05	
B. RENEWAL OF ABOVE CERTIFICATE	£145	£142	£3	2.11	
C. CERTIFICATE FOR ACQUIRING & KEEPING EXPLOSIVES AT A SITE FOR STORAGE NO MORE THAN 2000KG	£190	£184	£6	3.26	
D. RENEWAL OF THE ABOVE CERTIFICATE	£175	£168	£7	4.17	
E. CERTIFICATE FOR ACQUIRING & KEEPING EXPLOSIVES AT A SITE FOR STORAGE OF MORE THAN 2000KG	£245	£237	£8	3.38	
F. RENEWAL OF THE ABOVE CERTIFICATE	£215	£210	£5	2.38	
G. CERTIFICATE FOR ACQUIRING AND KEEPING SHOOTERS POWDER ONLY AT SITE,WHERE APPLICANT ALSO MAKES EXPLOSIVES CERTIFICATE APPLICATION TO CHIEF OF POLICE AT THE SAME TIME	£23	£22	£1	4.55	
H. RENEWAL OF ABOVE EXPLOSIVES CERTIFICATE WHERE AN APPLICATION IS ALSO MADE UNDER THE 1968 ACT	£15	£15	£0	0.00	
I. CERTIFICATE FOR ACQUIRING AND KEEPING SHOOTERS POWDER ONLY AT SITE,WHERE NO RELEVANT EXPLOSIVES CERTIFICATE APPLICATION TO CHIEF OF POLICE IS TO BE DETERMINED AT THE SAME TIME	£42	£41	£1	2.44	
J. RENEWAL OF THE ABOVE CERTIFICATE	£18	£18	£0	0.00	
REPLACEMENT OF ANY OF THE ABOVE CERTIFICATES (A TO F) IF LOST	£33	£32	£1	3.13	
REPLACEMENT OF ANY OF THE ABOVE CERTIFICATES (G TO J) IF LOST	£10	£10	£0	0.00	

HARBOURS EXPLOSIVES LICENCE	£660	£641	£19	2.96	
HARBOURS EXPLOSIVES LICENCE PER HOUR WORKED	£122	£116	£6	5.17	
CHANGE OF LICENCE NAME OR ADDRESS	£52	£51	£1	1.96	

Schemes where increases substantially above inflation are proposed

FEES PAYABLE IN RESPECT OF OFFSHORE INSTALLATIONS	£213	£155	£58	37.42	FEE NOT SHOWN ON FACE OF REGULATIONS
FEES PAYABLE IN RESPECT OF GAS SAFETY FUNCTIONS	£137	£115	£22	19.13	FEE NOT SHOWN ON FACE OF REGULATIONS
ASBESTOS LICENCE (NEW OR RENEWAL APPLICATION)	£1,160	£1,050	£110	10.48%	
FEES PAYABLE IN RESPECT OF COMAH FUNCTIONS UNDER REGULATION 22 OF THE COMAH REGULATIONS	£117	£155	£28	34.5	FEE NOT SHOWN ON FACE OF THE COMAH REGULATIONS

ANNEX B

Fully Closed – FOI Section 41 Information provided in confidence

**→ COST RECOVERY / FEES REGS 2008 PROJECT
RESPONSES BY DUTY HOLDERS TO
NOTIFICATION OF HSE PROPOSALS FOR
INCREASED RATES EXTENSION OF CHARGING**

Organisation	Comments	Comment / HSE Response
COMAH		
Davas (Tom Smith)	Concerned about relationship between explosives licensing charges and COMAH charges	<ul style="list-style-type: none"> ○ Response sent 25 October; advised that charges for explosives licensing and for classification of explosives going up by inflation rate.
Chemical Industries Association (Dr Diana Montgomery)	<p><i>Letter requesting further information before charging review group on 30/10/07</i></p> <ul style="list-style-type: none"> ○ Changes of the degree proposed ought to be subject of “a proper consultation process, if not a full Regulatory Impact Assessment”. ○ Wanted to know what a relatively small amount of time in relation to “conventional h & s meant; ○ Chargeable hours fall from 44500 in 2006/7 to 29,000 in 2008/9. Why? ○ What is “common good work”? <p><i>Letter of 9 November setting out CIA views</i></p> <ul style="list-style-type: none"> ○ Scale and immediacy of increases “totally unreasonable”; ○ SMEs in particular will be adversely affected – especially by extending charging to rsp work; 	<ul style="list-style-type: none"> ○ response sent 25 October ○ HSE advised duty holders as soon as proposals firmed up; and only come into operation in April 2008; <ul style="list-style-type: none"> ○ HSE will monitor impact carefully [More RSP work is at top tier COMAH sites]; ○ HSE strongly supports the view that a shared agenda is

	<ul style="list-style-type: none"> ○ Shared understanding of regulatory and business agenda is in the best interests of country; this charging review militates against that; ○ Do not accept that doing a regulatory impact assessment would be disproportionate - guidance suggests an RIA should be done irrespective of estimated amount involved. An RIA should be carried out; ○ Question HSE's rationale for charging for rsp work; do not accept that such work gives an insight to safety culture of duty holder; ○ HSE should re-think expansion of charging; ○ Similar incidents can occur at non COMAH sites and will not be chargeable; ○ If this goes ahead HSE consider limiting charge for rsp work to 10% of a sites' COMAH charges in the previous financial year. This will limit impact and give greater certainty; ○ Welcome developments of intervention plans for top tier COMAH sites; want this approach extended to all 	<p>the best way of delivering effective proportionate regulation;</p> <ul style="list-style-type: none"> ○ HSE has produced a short impact assessment [and is posting it on its website]; ○ HSE is not planning to increase amount of effort on RSP work; no plans to levy a charge for REACH work; ○ Do not agree that charging for RSP work should be "capped"; ○ HSE proposals are in line with Treasury guidance and HSC policy; ○ HSE recognises this point; ○ HSE does not agree that a pre-determined limit like this is appropriate; a high level of health and safety performance is the best way of minimising these costs ○ HSE will extend use of intervention plans – but needs to do so within resources available; ○ HSE welcomes and values industry
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	<p>COMAH sites;</p> <ul style="list-style-type: none"> ○ Industry contributes as much information in meetings with HSE as it benefits; charging for this should be dropped; ○ HSE should consider phasing in these major changes; ○ Want assurance that the appeals process is not subject to charging; ○ There have been delays in billing – charges for 2006 work still being made; HSE needs to ensure billing is timely; ○ HSE should commit to charging at the current rate for work already begun; ○ Disappointing that CIA only told of these increases on 1 October; a much earlier communication (and HSE must have known for a considerable time before) would have allowed for detailed consultation with members. 	<p>contribution; and hopes it will continue to make it;</p> <ul style="list-style-type: none"> ○ Phasing would delay achieving full cost recovery; ○ There are no plans to charge for this; ○ HSE accepts the need for prompt invoicing; ○ Work is charged at the rate applicable on the day the work is done; ○ HSE advised the CIA, other trade associations and duty holders as soon as proposals firmed up.
<p>CBI, Explosives Industry Group (Charles Smith)</p>	<ul style="list-style-type: none"> ○ Explosives industry (and others) expected to pay for “internal HSE activities – e.g. inspector training, developing guidance on which site inspection is based – should be accepted an overhead ○ Already pay for explosives licensing scheme under MSER ○ Proposed scheme not justified. EIG will do its utmost to oppose what is “...just a money making scheme for Industry to meet the internal costs within HSE”. 	<ul style="list-style-type: none"> ○ These overhead costs are an essential part of delivering HSE’s regulatory service effectively; ○ The proposed increases for explosives licensing work will increase fees by 3 – 4%.

<p>Engineering Employers Federation (Gary Booton)</p>	<ul style="list-style-type: none"> ○ The common good costs are recognisable as part of overall cost but not transparent and not open to external scrutiny; ○ Extending charging to all Health and safety activity is detrimental to certainty. Only the hourly rate is certain. External factors (HSE initiatives, spurious complaints) could add to costs; ○ Surprised only informal consultation carried out – contrasts with annual formal consultation by EA for its charging schemes 	<ul style="list-style-type: none"> ○ HSE agrees and is looking at ways of increasing transparency by changing the structure of Memorandum Trading Accounts [and publishing them on its internet site]; welcome industry wish to be more involved in research work; ○ All regulatory work helps HSE gain a better understanding of, and assess, a company's safety management system and culture; ○ HSWA does not require consultation on proposals for fees. Also "consultation" is implicitly about the possibility of alternatives and an artificial consultation exercise not in anybody's interest.
<p>Scotch Whisky Association (Alison Galbraith)</p>	<ul style="list-style-type: none"> ○ Disappointed HSE proposed 32% increase with little warning / notice. Need adequate planning time to budget for additional cost; ○ Represents a 65% increase since charging was introduced in 1999. This is unacceptable particularly when other costs (e.g. raw materials) also rising for market driven reasons; ○ May deter companies from 	<ul style="list-style-type: none"> ○ Treasury guidance and HSC policy require full cost recovery; proposed increases follow a review which showed that "common good" costs were wrongly excluded in the past; ○ HSE hopes that SWA

	<p>seeking advice from inspectors in case a charge follows</p> <ul style="list-style-type: none"> ○ Inspectors working to revenue targets and lack of control of non-contact time ○ No added value to industry ○ Withdraw proposal for 2008 and engage in dialogue with industry over how much and what timescale 	<p>urge members not to stop seeking advice</p> <ul style="list-style-type: none"> ○ Expected annual cost recovery 'targets' are set primarily on the basis of the necessary workload for each permissioning regime; HSE will continue this approach ; targets will be regulatory operational targets some of which attract cost-recovery
<p>Akcros Chemicals Ltd. (G Walton)</p>	<ul style="list-style-type: none"> ○ Appalled HSE is increase of 32.5% and extension to all activities at COMAH sites; ○ Independent SME competing in global economy – increases of this level weakens competitive position ○ Costs of “common good” work should be funded by central government ○ Support HSE and its staff but not passing on cost to a “small group of sites within the UK.” 	<ul style="list-style-type: none"> ○ Proposed increase follows a review of elements of cost included; this showed that ‘common good’ costs should be included; ○ View that cost of this should be met from taxation will be reported HSC; ○ HSE welcomes support for HSE’s work and hope we can continue to work together in future.
<p>Humber Chemical Focus (G R Hughes)</p>	<ul style="list-style-type: none"> ○ HCF has worked in partnership with HSE for a number of years; ○ If industry to contribute more to developing / maintaining guidance it should be free to download; ○ No justification for charging for internal HSE guidance; 	<ul style="list-style-type: none"> ○ HSE welcomes the way Humber Chemical Focus has worked with HSE in the past and trusts this will continue; ○ HSE will consider this proposal; ○ The guidance in question is COMAH specific. On the issue of transparency

	<ul style="list-style-type: none"> ○ Opens door to charging for telephone calls / letters seeking advice. How does this sit with HSE's commitment to providing free advice; ○ If industry is paying for research what are the intellectual property rights implications? ○ Charging for RSP work has many implications. At sites with a large proportion of non-COMAH activity some are considering the COMAH part of the site off; ○ Will the Environment Agency take the same approach in setting its charge out rate? ○ Is charging for non-COMAH work allowable under the Seveso Directive? ○ Often COMAH visits involve two or more inspectors and this leads to questions about effective use of inspector time ○ Industry must be better able to measure improvements in performance. HSE should provide <ul style="list-style-type: none"> • Provide a written report of 	<p>we are considering restructuring the annual Memorandum Trading Accounts; also anxious to pursue idea of greater industry involvement in research work;</p> <ul style="list-style-type: none"> ○ HSE does not think this will materialise in reality but will look at it further; ○ We do not believe there is an intellectual property issue here; ○ The COMAH Regulations apply to all of an establishment and erecting a fence would not change that position in law. HSE is still working on the detail and will be revising the Charging Guides and will seek comments at the draft stage; ○ The EA is proposing an increase of 2.7% to £120 per hour; ○ Ministers can make provisions for fees under S 43(2) of HSWA; ○ HSE will continue not to charge for trainee inspectors; ○ HSE is developing intervention plans for COMAH sites progressively and should increase
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	<p>each site inspection within an agreed timescale</p> <ul style="list-style-type: none"> • HSE should spend more time explaining points • A clearer rationale for visits, number of inspectors and time required to review COMAH reports. <p>○ A significant increase will impact on working relationships severely restricting open communication and sharing ideas.</p>	<p>transparency. Reactive work is another matter – largely in industry's own hands;</p> <p>○ Monitoring of this work is subject to NAO audit; Charging Review Groups are also a means of ensuring an effective and efficient charging scheme</p> <p>Point is accepted; We will do all we can to promote continuing open communications and sharing ideas and lessons</p>
British Coatings Federation Ltd. (Wayne Smith)	<p>○ BCF has serious concerns about proposals – following lowering of thresholds for environmental pollutants - and requests time to consult members</p>	<p>○ Time for contact with trade association was limited; so HSE wrote to COMAH sites; Apologies BCF not directly contacted;</p> <p>○ Deadline for comments for inclusion in HSC paper is 16 November.</p>
BOC (Mike O'Mahoney)	<p>○ BOC wants assurance only relates to the COMAH part of the HHSE website and guidance</p> <p>○ How will this be demonstrated</p> <p>○ Not appropriate for all industry sectors to fund improved guidance that is not generically applicable and want assurance that only generic guidance is chargeable to all sectors;</p> <p>○ On charging for RSP work what guidance will be given to inspectors on when this will be done – do not agree that this takes only a relatively small amount of time especially for</p>	<p>○ Only the cost of COMAH specific guidance is included</p> <p>○ HSE is recasting the Memorandum Trading Accounts;</p> <p>○ HSE is still working out the details of this and will revise the Charging Guide. BOC's view of the revised guide will be sought at draft stage.</p>

	lower tier sites	
Hydro Polymers Ltd (John Edmondson)	<ul style="list-style-type: none"> ○ Top tier site including a PVC resin manufacturing process; last accident on site involved a lifting operation where the incident was caused by another company (the eye bolt manufacturer) 	<ul style="list-style-type: none"> ○ HSE is firmly of the view that all the costs of health and safety regulation should be subject to cost recovery; ○ Still working out details and a revision of the COMAH Charging Guide on which HSE will seek views in due course
Liquid Petroleum Gas Association (Rob Shuttleworth)	<ul style="list-style-type: none"> ○ Object to both cost increases and extension of scope; ○ Charges already include a high proportion of non-contact activities. Adding to them will make costs less transparent and accountable; ○ RSP activities not included when the COMAH Regulations were made; ○ If COMAH sector is to be charged for research, the items must be identified for which part of the COMAH sector will benefit; ○ Industry must be consulted about research projects; ○ For all three (science spend, standards, guidance, regulatory communications and technical activities and post Buncefield Review) HSE must produce detailed transparent, public accounts for how all money has been spent; ○ Totally unclear as to why COMAH sites should be charged for RSP validation. If COMAH sites are to be charged for this so should non-COMAH sites, particularly those with a poor safety record. 	<ul style="list-style-type: none"> ○ Both HMT guidance and HSC policy require full cost recovery; ○ HSE is considering how to re-cast the Memorandum Trading Accounts produced for each scheme and posting them on its web site; ○ HSE agrees and will explore how to do this; ○ The rationale for charging for RSP work is that this work helps HSE gain a better understanding of, and assess a company's safety management system and culture

<p>Calor Gas Ltd (Dr. Terry Ritter)</p>	<ul style="list-style-type: none"> ○ Supports Liquid Petroleum Gas Association position; ○ Calor currently has a high proportion of charges to it for non-contact activity. Adding to them makes costs even less transparent and accountable; ○ Increases fall into three categories – Science spend, standards, guidance regulatory communications, research and technical activities and post Buncefield review ○ RSP items not considered when COMAH Regulations made; ○ Consultation with industry inadequate – not given enough information ○ If research is charged research projects and technical activities must be identified to the part of the COMAH sector for which they are being done ○ LPG industry has pro-actively produced its own Codes of Practice and guidance and would be adversely affected in bearing some of the cost for other less active industries; ○ Should be consulted in advance on research proposals; ○ Unacceptable that COMAH sector bear costs of post-Buncefield review 	<ul style="list-style-type: none"> ○ HSE is looking at how to re-cast the Memorandum trading Accounts for each charging scheme and at posting them on the website; ○ Note this point; Buncefield-specific work is not being charged other than to the relevant Buncefield site ‘operator’; ○ We have been very positive about the guidance CALOR and others produce for the LPG industry; ○ HSE wants to encourage greater involvement in research planning
Gas transportation		
<p>National Grid Gas plc (John Duckworth)</p>	<ul style="list-style-type: none"> ○ Extremely concerned at level of increases; ○ No proper consultation though changes mean HSE will need to make significant changes to the Health and Safety (Fees) Regulations; 	<ul style="list-style-type: none"> ○ HSWA does not require HSE to consult in relation to setting fees. Consultation is implicitly about alternatives and an

	<ul style="list-style-type: none"> ○ Non direct costs proposed for inclusion in rates are not in relation to enforcement and thus <i>ultra vires</i>. ○ Cannot charge for all health and safety intervention work at present. So regulations will need revision. Not equitable to charge for activities if other network operators not charged when “activities and risks may be identical.” ○ Gas is a regulated industry. In final stages of agreeing five year price control with Ofgem. Proposed increases not included in discussions. 	<p>artificial exercise is in nobody's interest. Wanted to give those affected as much notice as we could so we could hear concerns and report them to HSC;</p> <ul style="list-style-type: none"> ○ HSE's clear cut advice is that these costs are not <i>ultra vires</i>. ○ HSE does not share the view that charging for work under GS(M)R is inequitable. HSE's rationale is based on the fact that all its regulatory work helps it gain a better understanding if, and assess a company's safety management system and culture; ○ Recognises that these proposals come at an unhelpful time for companies in a regulated sector
<p>Scotia Gas Networks plc (Stephen Gay)</p>	<ul style="list-style-type: none"> ○ Very concerned at scale of proposed increases; ○ Adding costs of “common good” work appears to be an unfair way of charging for work that may benefit non COMAH / GS(M)R organisations. ○ Need to consider extending charging across the economy – e.g. construction industry, other utilities ○ Currently engaged in price control review. Uncertainty of the sort generated by these proposals makes for difficulty in setting annual budgets. Ofgem is seeking significant cost savings on for example 	<p>HSE's intention is only to charge for 'common good' costs deriving from work relating to COMAH/GS(M)R. So for example only research costs specific to these regulations;</p> <p>HSE has looked at these options but there are considerable practical difficulties;</p> <p>Recognise the particular difficulties this causes companies in regulated sectors.</p>

	mains replacement. HSE's approach completely at variance with economic regulator.	
Offshore		
International Marine Contractors Assoc. (Jane Bugler)	<ul style="list-style-type: none"> ○ Financial information in letter does not clearly identify financial impact to duty holders. ○ HSE is moving away from developing guidance and looking to trade associations to develop good practice guidance for members. Increase of £42 on current rate is excessive. ○ On research being included as an element of cost – if this is included further discussion with industry should take place before research contract is awarded. 	<ul style="list-style-type: none"> ○ HSE recognises the desire of the industry for greater certainty and is working on a scheme to meet that (which was described at the Offshore CRG on 31 October); ○ HSHSE is working with industry to identify guidance needed. HSE's guidance is wider than that industry publications including internal operational guidance, safety notices, operations notices, information notes; ○ Fully understand point about greater involvement in research work.
BROA (Edmund Brookes)	<ul style="list-style-type: none"> ○ Want to discuss a number of issues at CRG on 31 October; ○ "Block charging"; ○ Some sectors are charged less than offshore. What is the justification? ○ Why the charge out rate is so much higher than MCA's? ○ Concern at sudden and very significant increase; ○ Charge out rate will compare even less favourably with MCA rate of £94 per hour; ○ Question whether HSE has capacity to charge under Reg 	

	<p>15 (2) fir common good work;</p> <ul style="list-style-type: none"> ○ Support need to manage research work ; industry should be asked to comment on research proposals; ○ Need transparency and further / wider explanations on reasoning behind increase in rate; ○ Overhead is rising as chargeable hours decline; ○ Reduce overhead, redeploy resource to front line to do work not being done now ○ Support work on alternative approach ○ Such work must include MOU sector. 	
Nuclear		
<p>AWE (Heather Young)</p>	<ul style="list-style-type: none"> ○ Not consistent with Hampton Principles and recommendations; ○ Nor with BRE – no regulatory impact assessment; ○ Only recovering costs from industries already subject to charging is inconsistent and disproportionate discriminates against larger industries; ○ Inspectors may feel pressure to spend more time at chargeable sites and reduce focus on smaller industries; ○ Lack of transparency – not clear industry getting value for money. 	<p>HSE charges for RSP work at some high hazard sites but not others. The proposal will apply a consistent approach;</p> <p>HSE has looked at the need for an RIA but does not think it would be proportionate to produce a full assessment;</p> <p>Proposals follow from a review of what is charged for and what not;</p> <p>Inspectors will not behave like this; their work is risk based and not driven by the prospect of raising income; Do not believe this is true for ND; there is regular financial dialogue with licensees.</p>

General		
<p>CBI (Dr Janet Asherson)</p>	<ul style="list-style-type: none"> ○ Concern about substantial increases expressed by members; ○ Lack of transparency to enable business and others to scrutinise apportionment of direct and non-direct costs ○ Business also provides considerable help with training and developing guidance of wider application than those sites subject to charging; ○ Particularly disadvantageous for SMEs – especially lower tier COMAH sites – where the proportion of non-COMAH to COMAH work will be larger; ○ Possibility of double counting where more than one charging scheme applies ○ Increasing charges but no incentives in schemes for HSE to improve efficiency; ○ Accept S.50 of HSWA but this issue of strategic importance and thus expect a full, open and timely debate in the spirit of Hampton and the better regulation agenda; ○ Propose that charging for all RSP work be abandoned and increases above inflation delayed till 2009 	<ul style="list-style-type: none"> ○ HSE sees the importance of transparency and is looking at how to extend Memorandum trading Accounts to show of the cost elements we are now seeking to recover ○ HSE expects impact on small well-run sites to be proportionately small ○ We will ensure there is no double counting – no evidence of this happening in charging schemes to date; ○ Accept there is no market driven incentive to efficiency but HSE has made significant improvements in particular by bearing down on overheads; ○ HSE agrees that we want frank dialogue about these plans but did not wish to conduct artificial consultation. That is why we told duty holders and representative organisations as far ahead of CRGs as we could.



Annex C

COMAH & GAS TRANSPORTATION CHARGING REVIEW GROUPS

Minutes of the Joint Meeting held on 30 October 2007

Present:

K Allars, Chairman, HSE

Industry Members

J Duckworth	National Grid Gas
I McPherson	UKPIA
S Gay	Scotia Gas Networks
J Watson	LPGA
D Montgomery	CIA
J Roche	CIA
K Dixon-Jackson	CIBA
W Piatkiewicz	NFA
S Lewis	NFA
M Woods	BCGA
T Smith	Explosives Industry Group (CBI)
K Shepherd	TSA

Competent Authority Members

S Wing	HSE (Gas CRG Chair)
M Lacaille	HSE
B Davis	EA
M Reyland	HSE
S Welsh	HSE
K McFadyen	HSE (Secretary)

Welcome and Introductions

1. The Chairman welcomed everyone to the meeting. He explained that the agenda covered the standard business items as well as the proposals for changing the coverage of charging and the 2008/09 hourly rates. Although this was not a formal consultation on those proposals, the views of industry were important and would be conveyed to the HSC and to Ministers. To facilitate this it was intended to submit the draft minutes to members for approval by 9 November with a request that all comments be received by 16 November so that the final agreed minutes can be submitted to the HSC Secretariat by 20 November as an attachment to the HSC paper on charging for discussion at its meeting on 11 December. He sought members' agreement to the minutes being attributable to members/representatives rather than simply 'industry comments'. This was agreed.

2. Introductions were made. Apologies for absence had been received from D Hutchison, Northern Gas Networks; B Murray, Independent Pipelines Ltd; J Asherson, CBI; C Clarke, Wales & West Utilities; J Burns, SEPA and R Shuttleworth, LPGA for whom Mr Watson was deputising. It was also noted that A Gilbert would no longer be the main contact for the NFA. Her replacement was to be confirmed. Also J Mowatt had changed jobs and would be replaced by P McNulty as the T&G contact.

Minutes of the CCRG Meeting held on 10 October 2006

3. The CCRG minutes had been previously agreed and published on HSE's website. The GCRG did not meet last year and their business had been dealt with by correspondence.

Matters Arising

4. There was an action on HSE at para 7 of the CCRG minutes. Mr Reyland said that it was unclear what further analysis was required on the salary costs. They covered ERNIC and superannuation costs which were common to all the Competent Authority members. Members agreed to consider the action as cleared.

5. The Chairman referred to para 19 of the CCRG minutes, regarding an alternative charging method. He said that this had not moved on yet, but that HSE and CIA would be discussing the merits and priorities of putting effort into developing such a scheme.

2006/07 Outturns

6. These were in the standard format agreed some time ago.

- a) HSE: The outturn confirmed that the hourly rate of £114 that had been charged was the correct rate to break even.
- b) EA: The target was £114 but had out turned at £115 which offset the slight over recovery the previous year. There had been some revision between the categories which accounted for the variation in some percentages from the previous year.
- c) SEPA: The outturn indicated that the SEPA rate should have been £527 rather than that charged. COMAH is a very small part of SEPA activity for which costs are recovered and the amount they have recovered has been reducing.
- d) GSMR: The outturn matched the hourly rate.

Proposed Increased Charge Out Rates 2008/9 and separately an increase in the HSE activities to be charged for

7. Mr Lacaille explained that it was HSE policy and Treasury guidance that all the costs of permissioning work should be recovered. A review had concluded that this was not being done. He emphasised that there was no cross subsidy between the various permissioning regimes. The proposed increase in charging rate reflected the costs of activities described as 'common good', and a separate increase in additional chargeable activity included for relative statutory provision work on COMAH sites.

The work that would increase the rate was essential to support the permissioning function and covered:

- Developing guidance to industry
- Consulting industry representatives
- Developing guidance to inspectors to help ensure consistency of approach
- Policy development
- Industry specific research

The aim was to recover costs, not to make a profit. The charging guidance on the internet would be revised and the proposed revisions shared with industry. HSE was not required to formally consult on the increased cost-recovery proposals, but would like industry views. A paper will be going to the HSC meeting on 11 December and will include industry reaction to the proposals. Following the HSC meeting HSE will make a submission to Ministers.

8. The Chairman said that there had already been an amount of correspondence from industry on this matter. Issues raised in correspondence so far were:

CIA – Lack of consultation and the cost of the relevant statutory provisions which they felt would be larger than the £1m quoted. HSE had replied that the recent high COMAH costs were actually reducing now that the Buncefield incident response work was tailing off. The list of items in the ‘common good’ was the list that would cause the rate to increase. There was nothing else, although the choice of words in HSE’s letter may have unfortunately have given that impression. HSE would also be revisiting the issue of a different fee-based system within the current limited HSWA powers.

Scotch Whisky Association – Queried the apparent haste and lack of consultation, whether inspectors would be working to revenue targets and sought withdrawal of the proposals.

Explosives Industry Group – Lack of consultation, the legitimacy of the work added and the relationship between COMAH and explosives licensing (HSE had replied that the effect of the proposed changes will not change existing charging regimes for Explosives work as set out in the Fees regs, including explosives site licencing (under MSER) and classification (under CLER etc)).

Engineering Employers Federation – The legitimacy of the work, coverage of the RSPs and lack of consultation.

Hydro Polymers – RSP charging.

National Grid – Haste, lack of consultation, OFGEM pressure on prices versus increased costs, size of increase, legitimacy of the work and various legal questions.

BOC – Size of the increase, lack of consultation, who pays for guidance, RSPs.

Others coming in are concerned about research costs and suggesting guidance should be free. All correspondence will be replied to.

9. There have also been issues raised internally by inspectors and at the meeting, covering:

- a) Enclave sites, whether enforcement of RSPs will be for the whole site or just the enclave.
- b) Charging for RSPs under GSMR where there is no designated site, e.g. street works.
- c) The amount industry benefits from standards work.
- d) The situation of adjacent sites where one is a COMAH site and the other not which could be anti-competitive when RSPs are chargeable only on the COMAH site.
- e) Research, and whether companies will have greater access to IPR outcomes.
- f) Paying for guidance through the rate, and then again through having to purchase it later.

All issues raised will be included in the HSC paper.

10. The Chairman asked Dr Welsh to comment on the research aspects. Dr Welsh said that the major hazard science programme was broad ranging from research to identify the mechanisms for tumour formation in certain genetically modified vaccines to probabilistic safety assessment of dynamic loads from extreme weather conditions on the structural integrity of offshore platforms – with COMAH in the middle. The commissioned science provides the essential technical underpinning to provide ‘lines to take’ for making regulatory judgements about compliance in a proportionate way, this has always been the case and in recent years Major Hazards science has been particularly scrutinised and challenged, through detailed business cases to ensure there is a direct link to operational delivery – no research is carried simply for its own sake. Examples of current science priorities include the development of techniques for assessing the ‘COMAH’ implications from the Global Harmonisation scheme for classification of dangerous substances; work to judge the suitability of risk based inspection of hazardous plant and equipment underpinned by non destructive/invasive techniques and of course, following Buncefield - a range of fundamental research will be needed to understand the vapour cloud explosion mechanism.

The Chairman thanked Dr Welsh, and opened the meeting for further comments.

11. CIA (DM) Did not think there was any data on non-COMAH activity on sites. Their members’ response to the Chairman’s letter thought there would be an increase of 30% - 40%, and the costs, based on activity at CIA member sites, would be closer to £10m rather than £1m. In light of this uncertainty she felt there should be a Regulatory Impact Assessment and that HSE should allow everyone to input to it in order to understand the impact on large and small companies, and on different sectors, as some might be more impacted than others. The Chairman said that at the lower end of COMAH activity the impact of RSPs would likely be higher than for top tier sites, but that he did not accept that RSP work cost would be anywhere near £10m. The chairman added that proactive non-COMAH work on large top tier sites could be in the region 2 days/year. For small lower tier sites, because of the lower COMAH charges, this could therefore be closer to 90% of the total HSE resource on the site.

12. CIA (JR) Queried the percentage of research to be devoted to COMAH. Dr Welsh replied that it was £350k next year.

13. CIBA (K D-J) Expressed concern about COMAH costs for companies with small capitalisation, and felt there should be some cut-off for HSE charges. It appeared that HSE could charge what it wants for investigations.

14. CIA (DM) Agreed with K D-J, saying that the number of inspectors that turned up on site could sometimes seem excessive. She cited an incident where nine people attended, including two photographers. There needs to be transparency and accountability. It also seems to take a long time for reports to appear. The Chairman responded that if an operator receives a bill that it considers to be inappropriate, then there is a procedure for challenging it. If HSE cannot justify the work it will be admitted and the bill reduced. On timely reports he conceded that in some case it does take time to get everything right. However industry can query this through the inspector’s line manager, and up to himself, if necessary.

15. NFA (WP) Felt that hourly charging was detrimental to efficiency.

16. CIBA (K D-J) Charging LT sites at the same rate was discriminatory. The Chairman responded that in general less time was spent on non major hazard issues at TT sites because they more likely had a more robust H&S infrastructure not necessarily found in LT sites. However, there was no intention to send in inspectors just to raise revenue. KS said that the effect on LT sites would be disproportionate and asked whether the increase could be staged. The Chairman said this had been mentioned by a few respondees, but HSE was seeking to recover costs it should have been recovering in the past. However this would be considered again, but members should note that no retrospective cost-recovery was proposed.

17. NG (JD) Queried whether charging was different in the different permissioning regimes. The Chairman said that RSPs are already charged for in the offshore regime, but other things, the 'common good' activities, are being brought into that, and the offshore rate is going up as well to account for them.

18. NG (JD) Cannot see the justification for charging for RSPs by HID staff where the same type of site, and sometimes the same site, is also inspected by FOD and RSPs not charged for. As an example, JD mentioned that FOD carried out an inspection at an NG site last week looking at HAVs issues. Is it the intention that FOD will start charging for their work? Mr Wing commented that this was similar to the adjacent COMAH/non-COMAH site situation, and the Chairman confirmed that FOD will indeed start to charge for appropriate activity on COMAH and Gas sites.

19. NFA (SL) The regulations only provide for charging for specific COMAH related activities and it is wrong to apply the same charges to non-COMAH activities.

20. LPGA (JW) Felt the extension of charging went beyond the EU Directive. The Chairman said that he did not believe this to be the case, but this will be looked at as part of the HSC submission and clearly what HSE does has to be within the powers in HSWA.

21. CIBA (K D-J) Buncefield will result in extra costs to industry. If there is another comparable incident with different causes there will be more additional costs to industry. The Chairman responded that industry has to learn the lessons from such major incidents and do the necessary work to improve its safety envelope. Site-specific learning from non-COMAH and international incidents will be chargeable if needing to be applied to COMAH sites. If a company thinks the cost is disproportionate, the disputes procedure can be used. K D-J asked if charges would be raised for a non-COMAH incident, to which the Chairman responded that they would.

22. NFA (WP) Commented that it is inappropriate for HSE COMAH inspectors to charge COMAH rates for non-COMAH issues when on COMAH sites. Charging should be at the rate appropriate for the task in hand, not the location of the task.

23. NFA (WP) Asked if charging for non-permissioning regimes was a possibility. The Chairman said it could not be ruled out in the longer term, but is NOT part of this proposal.

24. CIA (DM) Expressed concern over the timing of the proposals as industry only heard about them after budgets had been set. Also reiterated the earlier question of phasing-in the increase over several years.

25. BCGA (MW) Queried whether there was an accumulator built into the rate, and asked whether the costs of moving staff out of London was coincidental to this rate rise. The Chairman said that the staff relocation was not relevant; it was a normal efficiency saving process.
26. NFA (WP) Asked whether industry can see the COMAH-specific research projects. Mr Welsh said that they were published on HSE's website. NFA queried whether corporate intelligence was being lost from previous projects and industry would end up paying twice for the same thing. Mr Welsh said there was a mechanism to minimise this possibility.
27. LPGA (JW) Asked whether data on the additional 'common good' work would be kept to judge the effect on the rate. The Chairman responded that it would.
28. NG (JD) When charging was being introduced there was formal consultation with industry: why is this not so when the principles are changing? The Chairman conceded a well made point, and that HSE would recheck the advice, but also explained that he understood HSE's legal advice to be that the HSWA specifically precludes the need for consultation on regulations for fees such as Reg 22 of COMAH.
29. CIA (JR) Asked whether the extras being charged for will appear on invoices. The Secretary said they would not, as they were not direct activities but part of the overhead in the hourly rate. Invoices would continue to show Assessment, Inspection, Investigation and Enforcement activities only, but the MTA would be made more explicit to show the cost involved in those additional activities. The break-down of 'common good works' will be reviewed by the group each year.
30. CIA (DM) Queried whether meetings with industry associations and trade associations that have both COMAH and non-COMAH sites would have HSE staff time apportioned, and for the COMAH portion be calculated as part of the overhead. (Secretary's note: Industry Associations are not chargeable entities - we can only charge site operators.)
31. CBI (TS) Queried whether companies which contributed time and effort to committees such as ACDS and its sub-committees might have their charges reduced in recognition. Also, that many of the consultations should take place at ACDS – and yet ACDS had been abandoned. It was wrong to say such discussions took place if they did not – and there certainly shouldn't be a provision for charging for such discussions if they didn't take place. The Chairman said that charges were for work done by the Competent Authority staff attributable to COMAH site operators, and there was not presently a means of reductions for positive interactions.
32. CIA (JR) Many guidelines go to Europe, and other countries will be getting benefit from UK industry's costs.
33. CIA (JR) It will be difficult to know how much to budget for. The Chairman responded that there will be an intervention plan for each site indicating what will be done, and that will be shared with the company to assist in budgeting. Companies can discuss the plan with local inspectors and, as appropriate, agree on specific timescales for intervention activity – including the proactive number of hours likely to be involved.

34. TSA (KS) One terminal has already been charged £25k this year for COMAH work – next year that would equate to £33k, and for that money companies with a small number of employees could probably employ someone full time to monitor health and safety. The Chairman responded that that would be fine, but HSE would still be the regulator and would charge for appropriate interventions with the company.

35. EIG (TS) Guidance in the explosives sector is poor. The guidance should be appropriate and there should be more industry input if they are paying for it.

36. The Chairman drew contributions to a close saying that all letters, e-mails and comments or options proposed will be input to the HSC paper. He thanked everyone for the constructive discussion.

Proposed rates for 2008/9

37. The proposed rates are:

- a) EA Rate: The proposed EA rate is £120, a 2.7% increase. EA are still doing a detailed cost review and will have regard to what HSC say. The increased rate reflects higher pensions contributions offset by efficiency savings. EA's work on pollution prevention and control is sometimes difficult to separate from COMAH activity, but if there is any doubt it is treated as pollution prevention and control. EA has not decided at this stage whether they will be going the same way as HSE on RSPs. Noted
- b) SEPA Rate: The proposed SEPA rate is £132 which is an inflationary increase. Noted
- c) HSE COMAH Rate: The proposed rate is £155.
- d) HSE GSMR Rate: The proposed rate is £137.

The HSE rates were noted subject to the comments made under the previous item.

Any Other Business

38. Mr Reyland said that it was necessary to revisit the continued lack of independent members of the queries and disputes panel. He wrote to members two years ago and got no volunteers. He will be writing to members again.

39. The question of the recently issued late invoices was raised. The Secretary said this was a result of problems with a new IT system and hopefully should not happen again. Members were very concerned about such late invoicing, which the Chairman apologised for.

40. The Chairman informed members that this was the Secretary's last meeting, as the responsibility for cost recovery work was being transferred to Bootle in the new financial year. He thanked the Secretary for his work over a number of years.

41. The Chairman reminded members that the minutes should be with them by 9 November, and that comments would be required back in a week.

Date of Next Meeting

42. The next meeting was scheduled for 30 October 2008.

OFFSHORE CHARGING REVIEW GROUP

Minutes of the Meeting held on 31 October 2007

Present

Ian Whewell, HSE, Chair

HSE Members

Mike Lacaille
Mark Reyland
Shaun Welsh
James Munro
Bill Miller
Kelvin McFadyen, Secretary

Industry Members

Robert Paterson, Oil & Gas UK
Bob Kyle, Oil & Gas UK
Edmund Brookes, BROA
Phil Ley, OCA
Alan Macleod, IADC

Introduction

1 The Chairman welcomed everyone to the meeting. Edmund Brookes was attending for Paul Holman, Phil Ley for Bill Murray and Alan Macleod had replaced Dominic Cattini as the IADC representative. Apologies had been received from Jane Bugler, IMCA.

Minutes of the meeting held on 1 November 2006

2 The minutes had been circulated, agreed and published on the website.

Matters Arising

3 The only matter arising concerned the question of industry input to the review of HSE activities which was mentioned at the last meeting. The Chairman said that this was a fundamental review of HSE's business at a high level. The review was not at operational level and therefore detailed stakeholder input would not have taken forward matters relevant to this group.

2006/07 Outturn

4 Mr Reyland said that the analysis was in the previously agreed format. It showed that the rate to break even should have been £156 compared to the £147 charged. There was no retrospective charging but this outturn influenced the increase to £155 for the current year. Mr MacLeod said that there was a surplus of some £641k in 2005/06 and asked the position for 2006/07. The 2006/07 accounts showed a deficit of £479k which offset a lot of the previous surplus. Mr Reyland said that there was no retrospective charging and that

the current MTA analysis may need to change from 2009 to reflect additional cost categories and would welcome any views on how it could be presented to be passed to the Secretary.

Action: Members to provide any views on presentation and content of the MTA

Proposed Rate for 2008/09

5 Mr Lacaille explained that it was HSE policy and Treasury guidance that all the costs of permissioning work should be recovered. A review had concluded that this was not being done. In particular the proposed scheme increases reflected the costs of activities described as 'common good' which were not being recovered. This was work that was essential to support the permissioning function and covered:

- Developing guidance to industry
- Consulting industry representatives
- Developing guidance to inspectors for consistency of application
- Policy development
- Industry specific research

6 Mr Lacaille emphasised that this was dedicated work associated with the regulation of the offshore industry and there was no cross subsidy between the various permissioning regimes or other HSE work. He emphasised that the aim was to recover costs not make a profit. The guidance on the internet would be revised and these revisions shared with industry. HSE was not required to formally consult on his but would like industry views. A paper will be going to the Health and Safety Commission (HSC) meeting on 11 December and will report industry reaction to the proposals. Following the HSC meeting HSE will make a submission to Ministers early in the New Year, with revised rates coming into effect in April 2008.

7 Given the importance of the changes to charging to be discussed it was proposed to name commenters rather than just as 'industry', and HSE sought members' agreement to this. This was given. Mr Lacaille added that the minutes of the meeting would accompany a paper going to the HSC. In order to meet the timescale for that paper it was aimed to get the minutes to members by 9 November and members were asked to provide with comments on the minutes back within a week together with any further issues members wished to draw to the HSC's attention.

8 Mr Brookes suggested a summary of discussion rather than verbatim the minutes as they would probably be too long to be read.

9 Comments had already been received from IMCA and the Chairman indicated these related to three issues. More certainty on future costs and invoices, the need for industry input to research planning and the size of the increase, especially the proportion attributable to guidance. The Chairman said that the first two issues would be covered by agenda items. In relation to the proportion of the rate increase attributable to guidance he indicated that whilst it was agreed that industry would be encouraged to take the lead on producing guidance there was none the less considerable resource put into information both for industry and inspectors and this accounted for the size of the increase. The

Chairman said that HSE has also a lot of input to trade association guidance not previously accounted for.

10 Mr Brookes said that the e-mail he had sent in was in the nature of advance tabled questions relating to certainty of costs and pointing out that other agencies, e.g. MCA do not charge for guidance. The chair indicated that in identifying these additional areas of work for which costs should be recovered HSE was following treasury guidelines which required it to recover costs.

11 Mr Kyle asked if HSE was seeking to recover all costs. Mr Reyland replied that it was only the costs relevant to chargeable activities for the industry. These already include overhead items such as accommodation and IT costs, but more should have been included in the rate in accordance with the Treasury's Managing Public Finance guidance. The Chairman said that it should be looked at from the view of what would HSE not have to spend if the industry were not there.

12 Mr Paterson said that the original intention of charging when reviewed in 1997 was to cover the extra costs of permissioning regimes. The focus was charging for the major hazard work (including assessment of the safety case) that was overlaid onto the regulatory regime for conventional health and safety. The HSC permissioning Policy statement draws a clear distinction between the two elements present in regulating health and safety in permissioning regimes

- permissioning element (major hazard element, including safety case assessment)
- conventional element (general framework of health and safety law)

This is a split that has to date existed quite satisfactorily in the COMAH regime. With hindsight it is clear that the offshore industry had allowed the offshore charging regime to go too far in terms of accepting charges for regulating conventional health and safety. The current discussions should be seen as an opportunity to limit future charging of the offshore industry to only those aspects of regulatory oversight that concerned the permissioning process (safety case assessment) and checking regulatory compliance with the legislation relevant to major hazard work

Mr Lacaille said that HSE was not extending the scope of charging offshore but simply ensuring that all its relevant costs are included in the rate.

13 Mr Paterson expressed the view, notwithstanding the previous points, that many of the activities for which additional charges were now proposed were too remote from the scope of Reg. 15 of the Fees Regulations which indicates that a fee is payable [if an HSE activity] relates to enforcement or any relevant statutory provision against ... an operator in relation to the installation to which the current safety case relates. The enforcement and the installation were linked directly. Whereas research, or preparation of guidance, (undoubtedly important supporting activities) did not have the necessary direct link to enable them to be drawn into the scope of the charging regime. Guidance, like research, may support enforcement, but are not part of, and indeed too remote from, "enforcement in relation to an installation". Mr Lacaille said that HSE would ensure what was proposed was legal, adding that the scope onshore was being extended to bring it in line with offshore.

14 The Chairman said that if industry is managing the major hazard risks well it should follow that conventional H&S risks will also be well managed. Mr Kyle said that a good

proportion of the cost will be conventional H&S – for example one of OSD’s two major work activities for the last 4 years - Key Programme 2 “Safety in Deck and Drilling operations”, was entirely focussed on conventional health and safety, including, the management of lifting operations; training & competence; planning, selection & control of equipment; tubular handling; communication etc.. Mr Brookes added that the boundaries could be very fuzzy and need to be absolutely clear.

15 Mr MacLeod said that some duty holders may not have the staff or depth to do all the work. For the extra cost they could employ their own staff to do the validation work. The extra costs do not seem to be providing added value. Industry already invests heavily in safety and now HSE wants to charge more.

16 The Chairman responded that HSE has been doing this work associated with offshore without recovering all its costs. Conventional H&S cannot be ignored and is difficult to separate out because it is an integral part of the management systems in place for the control of risks offshore. Mr Kyle said it may be difficult but not impossible. The Chairman said that there were two different issues here. One is whether conventional H&S should be chargeable, the other the cost of support activities.

17 Mr Kyle said that some of the support activity would be major hazard, some conventional. The current proposed increase in charging rate was very significant for an industry that believes it is already paying too much. He asked if this would affect the process of H&S management by HSE and stop extra inspectors going to meetings and not contributing. He added if enforcement of RSPs includes the preparation of guidance, then that is too remote from the enforcement function. Mr Lacaille said that HSE’s legal advice was that it was allowed.

18 Mr Kyle said that enforcement was not the total function of HSE. The Chairman said that enforcement is the ultimate activity to ensure compliance. Everything that HSE does contributes to the framework in which HSE operates.

19 Mr Kyle asked whether in calculating the costs HSE had looked historically or based them on a work plan. Mr Reyland said that the start point in calculating a forward rate was to look back at data for the last full year. Assumptions were then made about future variations (including inflation, staffing, work plans etc). Detailed work plans for 08/09 have not been agreed at this stage.

20 Mr Brookes said that chargeable hours were down but corporate and capital costs were up and wondered if costs were under control. Mr Reyland replied that costs were under control, it is the relative overhead that is going up whilst chargeable hours have reduced. The outturn percentage figures may present a truer picture of stability.

21 Mr Macleod said that it was a big increase with a lot going into support services. If the increase were for front line staff pay it might be more justifiable. Mr Kyle said that it was important that HSE had a competent and well resourced, and appropriately rewarded offshore inspectorate. He accepted HSE had to compete with the offshore industry, but that HSE needed to pay more. Industry did not mind paying more to ensure there were sufficient good quality inspectors; however the charging rate increase last year was predicated on the need to pay inspectors a more competitive salary. And nothing had

happened. The proposed payroll increase in the proposal fell woefully short of any attempt to realistically address this issue.

22 Mr Kyle said that basing the costs of “common good work” on history is flawed as this is a mature industry and a lot standards, guidance and research has already been done. The Chairman responded that HSE had work plans and were not moving into extra guidance. If less guidance is needed it frees inspectors up for front line work. Mr Brookes asked whether this was extra inspectors for the sake of it. The Chairman admitted that HSE cannot do all the front line work it might want to. Inspectors are being increasingly moved from support to the front line, but HSE still cannot always do all it wants. Mr Kyle said that the industry fully supports HSE and if this is what it needs to do the job that should be stated. He added that there were some areas of overlapping guidance, and that a guidance plan was needed. The Chairman agreed saying it should be dealt with through the Offshore Industry Advisory Committee.

23 Dr Welsh gave a detailed explanation of HSE’s major hazard research strategy and confirmed that arrangements were in place for more industry involvement in future research and science planning

24 Mr Paterson queried the difference between the research and science spend. Mr Reyland explained that it was the difference between the cost of managing and evaluating research and the actual spend on commissioning research. Dr Welsh added that the term science, which was introduced some years ago, covers both ‘research – e.g. ground breaking innovative scientific investigation and support work e.g. manipulating existing data, intelligence and knowledge to resolve new technical problems.

25 Industry have not been involved in the science plan this year but will be next in order to get a common understanding of what is necessary. There will also be internal focus groups to look at HSE’s business needs. Starting in May 2008 for the 2009 onwards science plans industry will be involved. This early start is necessary to meet the Fees Regs. timescale. What HSE spends will have to demonstrate a direct business benefit.

26 Mr Macleod said there needs to be more harmonisation and sharing between regulators around the North Sea. There is a mixed bag of compliances that affect the operators of mobiles moving between sectors. Some science spend towards this would be beneficial to industry.

27 Mr Kyle said that the areas of science spend sound fine and fully supported the philosophy. However, there had been a lot done in the past that was not seen as relevant.

28 The Chairman said that any research proposals have to be described accurately and be relevant otherwise it would not be approved. None of the research spend here covers occupational safety or human factors as these are part of a separate budget.

29 Mr Kyle said there was a science and technology working group including industry, HSE and Department of Energy set up some two years ago led by Rae McIntosh, who has now retired. The Chairman said that this now fell within Steve Walker’s remit and he would ask him to get this moving again.

Action: Chair to contact Steve Walker to progress working group.

30 The Chairman asked if everything had been covered on this item. Mr Brookes said that what members needed to do now was go away and think about what has been discussed. The Chairman said that was fine. What was needed was for members to agree the minutes and come back with any further concerns in the same timescale.

Alternate Charging Methods

31 The Chairman said that HSE has been working on the development of a fee system related to the work done, not a blanket charge that could be viewed as a tax. The matching of cost recovery to the effort HSE expends is called referability. James Munro has been working to develop such a scheme. This has received tacit agreement from HSE's solicitors of its referability for fixed installations, but more work needs to be done on mobile installations, and for very small production installations. He asked Mr Munro to give a brief overview of the work so far.

32 Mr Munro reiterated that it was not a fully developed yet and there remained a number of issues to be bottomed out. This system is based on a two year historic average of the intervention hours. This average is rolled forward year on year. It is a banded system with a fixed fee in each band and the rolling average allows installations to move between bands depending upon their performance. Referability is achieved through the charge for each band being set at the minimum hours of each band plus 12%. Solicitors have said that referability should be within 15% of actual time. The industry had asked for arrangements for dealing with installations involved in major incidents or interventions. To facilitate this the maximum hours in the top band had been proposed as 700. Any installation in the top band exceeding 700 hours of intervention time would have those extra hours charged at an hourly rate on top of the band rate. However during subsequent discussion Mr Kyle felt that with the proposed new scheme such arrangements may not be necessary.

33 There are risks with this scheme in that referability needed to be demonstrated, but there are also advantages in that it should give industry the predictability of charges it wants. Further work needs to be done to analyse the scheme, test it, talk to industry and deal with any internal changes required for invoicing. Industry asked if the scheme could be tested by running in parallel with the hourly charge next year. The Secretary said it could be possible to run it retrospectively against the current year.

34 Mr Kyle said that the scheme looked desirable and would discuss it at their members meeting in two weeks. He asked what the resource priority was for this and when it could go live. The Chairman said that if it proved to be viable the 2009/10 financial year would be the earliest it could be introduced. If there were particular difficulties with mobile installations it may be possible to introduce the scheme in two parts.

Any Other Business

35 Mr Reyland said that it was necessary revisit the independent members of the disputes procedure appeals panel. He wrote to members two years ago and got no volunteers. He will be writing to members again.

Action: Mr Reyland to write to members seeking nominations for an independent member of disputes panel.

36 The Chairman informed members that this was the Secretary's last meeting as the responsibility for cost recovery work was being transferred to Bootle in the new financial year. He thanked the Secretary for his work over the years.

Date of next meeting

37 The next meeting was set for Wednesday 29 October 2008.

ANNEX D

SHORT IMPACT ASSESSMENT: CHANGES TO HSE's COST RECOVERY REGIMES

<p>Description of the intervention:</p>	<p>Changes to HSE cost recovery regimes that will increase costs to duty holders in permissioning regimes (Nuclear, Offshore, CoMAH and Gas Transportation). The increases are to reflect the inclusion of:</p> <ul style="list-style-type: none"> i) Cost of work considered to be integral to these regulatory regimes but which do not fall to a specific site or duty holder. These include costs associated with the development and maintenance of guidance to duty holders, internal guidance to inspectors, seeking to better control industry-wide problems with industry representatives, industry specific research and policy development. ii) Costs associated with the enforcement of Relevant Statutory Provisions – i.e. 'conventional' health and safety legislation - at sites covered by these regulatory regimes (barring the offshore sector, where such costs are already included in HSE's charges).
<p>Objectives:</p>	<p>It is a well established principle that, wherever possible, risk-creators should bear the costs of the associated regulatory regime. The objective of the increase in charges is to ensure that all relevant costs are included in the charge that HSE makes to duty holders in affected permissioning regimes. The inclusion of charges for activity associated with the enforcement of Relevant Statutory Provisions is to reflect the fact that inspection and investigation time used to cover duty holders' compliance with wider health and safety regulations also provides an indicator of a site's overall safety culture.</p>
<p>Calculation of costs:</p>	<p>The total increase in costs to duty holders in 2008/09 is estimated to be approximately £5.5 million. This consists of:</p> <ul style="list-style-type: none"> i) £4.1 million due to increasing charges so that they more fully reflect the cost of relevant regulatory regimes (roughly, £2.9m from offshore, £1.1m from CoMAH and £80,000 from gas) ii) £1.34 million due to charging for enforcement of Relevant Statutory Provisions in affected regulatory regimes (roughly, £1m from CoMAH, £0.3m from Nuclear and £0.1m from gas). <p>These costs are based on the best information currently available. It is expected that costs in future years will vary in line with HSE's relevant costs.</p>
<p>Impact on industry (including any</p>	<p>The entire cost of the proposed change falls on firms operating in these permissioning regimes. There is no effect on admin burdens.</p>

<p>effect on the Admin Burdens Baseline):</p>	<p>It is possible that the proposed changes will have a disproportionate impact on SMEs operating in affected sectors. This is because there is a flat-rate element to some charges that will weigh more heavily on SMEs. However, data on the size of firms operating in affected sectors is not routinely collected and a precise estimate of the effect on SMEs (whether defined by direct employees, capitalisation or turnover) is not possible. In general though these sectors are dominated by larger firms and SMEs are likely to be a small proportion of affected firms.</p> <p>A further possibility is that competition between firms will be affected in sectors where some firms operate outside affected permissioning regimes – domestically or internationally - and hence do not bear any increase in charges, and some firms are affected by the proposed change. However, no examples are available from which we may estimate the significance of such an effect compared to other differentiating factors.</p> <p>The increase in costs may also lead duty holders to reduce inventories of harmful substances on site so as to fall below the thresholds for top and lower tier CoMAH site designation.</p>
<p>Benefits (quantified where possible):</p>	<p>Benefits take form of reduced costs to HSE and, indirectly, to taxpayers. These benefits are directly equivalent to costs and hence are estimated to be £5.5 million.</p>
<p>Consultation:</p>	<p>This approach has been discussed with HSE's Chief Economist and the Better Regulation Team.</p>
<p>Chief Economist's comments:</p>	<p>The effect of the proposed change is to transfer costs to duty holders in affected sectors so that they fully meet all HSE costs. As such the financial loss for duty holders is fully offset by the financial gain for HSE. As HSE costs are ultimately met by taxpayers the effect is a transfer of resources from duty holders to the general population. This is in line with the risk-creator pays principle.</p> <p>As no new activity is proposed there would be no purpose to a full cost-benefit analysis (in contrast, a new intervention requires cost-benefit analysis to ensure that it is economically justified). The proposals seek only to change how certain existing activities are financed, as illustrated by the fact that the net financial impact of the change on society is zero (i.e. overall costs and benefits balance). Further analysis would not assist in determining the question of how such activity should most appropriately be financed.</p>
<p>Recommendation:</p>	<p>That based on proportionality, a full impact assessment is not produced.</p>

Signed: Philip Agulnik.....**Date:** 27 November 2007
HSE's Chief Economist