



ARTICLE NO: 1B

**CORPORATE OVERVIEW &
SCRUTINY COMMITTEE**

**MEMBERS UPDATE 2011/12
Issue: 3 NOVEMBER 2011**

Article of: Assistant Director Community Services

Relevant Managing Director: Managing Director (People and Places)

Relevant Portfolio Holder: Councillor A Fowler

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SUBJECT: HEALTH AND SAFETY EXECUTIVE – CONSULTATION DOCUMENT

Wards affected: Borough wide

1.0 PURPOSE OF ARTICLE

1.1 To inform Members of the Council's response to the Health and Safety Executive Consultation Document 'HSE proposal for extending cost recovery', (attached as Appendix 1).

2.0 BACKGROUND

2.1 The Health and Safety Executive (HSE) recently published a Consultation Document 'HSE proposal for extending cost recovery' – CD235.

2.2 This consultation set out the HSE proposal to revise the Fees Regulations, to reinstate existing fees and to extend the range of activities for which HSE recovers costs.

2.3 The HSE put forward its proposal for extending cost recovery, following health and safety inspections of workplaces, which identify material breaches of health and safety law.

2.4 In order to be able to extend such cost recovery, HSE proposed new legislation which will place a duty on HSE itself to recover costs for certain regulatory interventions.

2.5 This current legislative proposal to extend cost recovery only applies to HSE and will not place a duty on Local Authorities to recover cost nor grant them the power to cost recover. However, that said, HSE stated in the document that it was keen to hear the views of Local Authorities and that, depending on the

feedback received as a result of the consultation, the proposals could be adapted to enable Local Authorities to cost recover for regulatory activity.

- 2.6 If this proposed legal change, of allowing HSE to extend cost recovery, was also applied to Local Authorities, Councils would then also have a legal duty to cost recover, therefore it would not be a discretionary “power” that each Local Authority could apply if they so wish. Given the apparent differing views in the Local Authority community, HSE felt that to impose this duty without formal consultation would be inappropriate.
- 2.7 The consultative document was consulting on how charging would be enacted in HSE, not whether it will or will not. The document itself sought general and specific views on the proposals for cost recovery and how it would operate, as well as asking for any other specific relevant comments not already covered in the document.
- 2.8 The document also posed specific questions for Local Authorities about whether they would wish to have a legal duty (non-discretionary) to operate a fee for a cost recovery scheme. Councils were also asked for estimates of costs of establishing such a scheme.

3.0 ACTION TAKEN

- 3.1 Following discussions with the Portfolio Holder, details of the consultation document were circulated to all Members, who were asked for any comments so that these could be incorporated into the response process.
- 3.2 Responses were received from two Members and these details were used in formulating the final response to the consultation document.
- 3.3 Work was also undertaken with the other Local Authorities in Lancashire to assess the HSE proposals, as they had regional and national implications, as well as more local ones.
- 3.4 Following this and further consultation with the Portfolio Holder, a response from this Council was sent to HSE. A copy of this response is attached as Appendix 1.
- 3.5 The response indicated that there is agreement with the principle of recovering costs from businesses who do not comply with health and safety law and that compliant businesses would pay nothing. However, we had to say we would not wish to have a legal duty (non-discretionary) to operate a fee for intervention cost recovery scheme, at this stage, because some important issues were not yet clear.
- 3.6 Such issues include the need for the trigger level of ‘material breach’ or ‘serious material breach’ to be made clearer and we suggested the trigger level related to the service of prohibition and improvement notices only. Also, we considered there was a need for an intervention cost recovery scheme to have been successfully piloted in both the HSE and Local Authority-enforced sectors before implementation.

3.7 It was also considered important that cost recovery levels are as simple as possible, clear and transparent and not dependent on the subjective decision of an individual officer.

3.8 Other key points in the response included:

- It was very difficult to accurately assess estimated costs provided in the document.
- The importance of ensuring a level playing field for all businesses.
- The impact on small businesses needs very careful consideration.
- It was difficult to assess the effect of the proposals on the relationship between enforcement agencies and businesses.
- Local authorities currently undertake a wide range of other regulatory services, some even at the same time as health and safety enforcement, where there is no cost recovery of the type proposed.

4.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

4.1 The Council's Health and Safety Enforcement Service has a significant impact on the health, safety and welfare of residents, businesses and employees within West Lancashire and contributes significantly towards improving the health of the local communities.

5.0 FINANCIAL AND RESOURCE IMPLICATIONS

5.1 Financial and resource implications for the Council, as an employer, are likely to be very minimal or none. The implications for the Council, as an enforcing authority, are very difficult to assess at this stage since the consultation document primarily relates to HSE enforcement.

6.0 RISK ASSESSMENT

6.1 This item is for information only and makes no recommendations. It therefore does not require a formal risk assessment and no changes have been made to risk registers as a result of this report.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

1. West Lancashire Borough Council – Response to HSE Consultation Document – ‘HSE proposal for extending cost recovery’.