

**Health and Safety Executive**

**HSE proposal for extending cost recovery**

**Completing this questionnaire**

You can move between questions by pressing the 'Tab' / 'Shift-Tab' or 'Page Up' / 'Page Down' keys or by clicking on the grey boxes with a mouse. Please type your replies within the rectangular grey boxes or click on the square grey boxes to select an answer (eg 'Yes' or 'No').

**Respondent's details:**

<b>Name:</b>	Michael Tasker
<b>Job title:</b>	Commercial Safety Manager
<b>Organisation:</b>	West Lancashire Borough Council
<b>Email:</b>	michael.tasker@westlancs.gov.uk
<b>Street:</b>	Robert Hodge Centre Stanley Way
<b>Town:</b>	Skelmersdale
<b>Postcode:</b>	WN8 8EE
<b>Telephone:</b>	01695 585242
<b>Fax:</b>	01695 585126

**Size of organisation:**

Choose one option:

Not applicable <input type="checkbox"/>	1 to 9 employees <input type="checkbox"/>
10 to 49 employees <input type="checkbox"/>	50 to 249 employees <input type="checkbox"/>
250 to 1000 employees <input checked="" type="checkbox"/>	1000+ employees <input type="checkbox"/>
Self-employed <input type="checkbox"/>	

**Confidentiality**

<p>Please put a cross in the box if you do not wish details of your comments to be available to the public. (NB if you do not put a cross in the box they will be made public. This takes precedence over any automatic notes on e-mails that indicate that the contents are confidential.)</p>	<input type="checkbox"/>
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<b>What is your type of organisation:</b>	
Choose one option	
Industry <input type="checkbox"/>	Local government <input checked="" type="checkbox"/>
National government <input type="checkbox"/>	Non-governmental organisation <input type="checkbox"/>
Non-departmental public body <input type="checkbox"/>	Trade union <input type="checkbox"/>
Charity <input type="checkbox"/>	Trade association <input type="checkbox"/>
Academic <input type="checkbox"/>	Consultancy <input type="checkbox"/>
Member of the public <input type="checkbox"/>	Pressure group <input type="checkbox"/>
Other <input type="checkbox"/>	

If 'Other' please specify:
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### In what capacity are you responding:

Choose one option:

An employer

An employee

Trade union official

Health and safety professional/Safety representative

Training provider

**1. If you do not agree with the proposals outlined in this consultation document for implementing the Government and HSE Board policy of cost recovery please offer reasons for your disagreement and suggest an alternative proposal for delivering cost recovery?**

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 would have 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 are not yet clear.

Such issues include the need for the trigger level of 'material breach' or 'serious material breach' to be made clearer and would suggest the level related to the service of prohibition and improvement notices only. Also, for the need for an intervention cost recovery scheme to have been successfully piloted in both the HSE and Local Authority-enforced sectors before implementation.

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

**2. Were you clear about how the cost recovery proposals would operate?**

Yes

No

**If No please explain the reason for your answer.**

The trigger level of 'material breach' or 'serious material breach' needs to be made clearer.

If there are inaccuracies on the HSE Database of Premises, only premises on that database are likely to be inspected (with the potential recovery of charges) as compared with premises which may be under the radar and not be on the database. Cost recovery could therefore be inequitable and target the more legitimate businesses.

**3. Do you agree with the extent of the regulatory activity for which HSE would recover its costs?**

Yes

No

**If No what regulatory activities should HSE recover costs?**

It is important to ensure a level playing field for all businesses. In the current proposals, HSE is likely to be inspecting only certain identified higher risk premises, where HSE could recover costs, whereas other higher risk premises may not be inspected and therefore less likely to be subjected to recovery of costs.

**4. Do you agree with the proposals for when these costs would be incurred?**

Yes

No

**If No, please explain the reason for your answer.**

We consider there is a need for the trigger level of 'material breach' or 'serious material breach' to be made clearer and would suggest the level related to the service of prohibition and improvement notices only.

This would be much clearer for both businesses and enforcing authorities. It would also still enable 'the polluter pays' principle to be implemented, be much easier to administer and would concentrate on the more serious breaches. It would enable Local Authorities to implement a cost recovery regime, with much reduced administration and process costs, bearing in mind that Local Authority-enforced premises are generally likely to be smaller businesses. It would also enable a simpler and an equitable way forward to charging across the board in both HSE and Local Authority enforced sectors.

**5. Do you agree with the model used for setting the hourly rates for cost recoverable work?**

Yes

No

**If No, please explain the reason for your answer.**

Costs for enforcement work by HSE have been estimated in the Impact Assessment, using an hourly rate that will be the same across HSE for all staff involved in cost recovery work. This may not be accurate in all cases due to variation in levels of staff being used.

The amounts charged by Local Authorities are likely to be less than those charged by HSE. In addition, there is likely to be more variation in the amounts charged by Local Authorities due to the variety in the type of staff used for inspections and enforcement action and salary variations from one Local Authority to another. Businesses will very quickly identify the lack of uniformity and are therefore likely to have concerns about fairness.

A pilot scheme involving the HSE and the Local Authority-enforced sector would

assist in providing a more accurate assessment of costs, including hourly rates.

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

**6. HSE will not use cost recovery to drive intervention approaches. Other than clearly stating this policy and the continued application of HSE's Enforcement Management Model and Enforcement Policy Statement, how else do you think that HSE can reassure duty holders it will not use cost recovery to drive its intervention approaches?**

When health and safety officers are currently undertaking health and safety enforcement interventions, the response from businesses is hopefully still one of co-operation. This relationship could be negatively affected if a charge was made for those interventions and subsequent actions.

However, if the 'polluter pays' principle is only used in the most non-compliant businesses, this may reassure duty holders that HSE and local Authorities will not use cost recovery to drive its intervention approaches. Such 'most non-compliant businesses' could include those businesses on whom prohibition or improvement notices are served.

**7. Do you agree with the two level dispute process outlined in this consultation document?**

Yes

No

**If No, what alternative system would you propose to ensure a practical, fair and transparent dispute process?**

**8. Do you agree that Containment Level 3 and Containment level 4 containment laboratories should be exempt from fee for intervention for a short interim period until the SRF is implemented?**

Yes

No

**If No, can you explain why you believe they should not be exempt?**

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**9. Do you agree with the proposal that HSE recovers full costs in relation to Boreholes, irrespective of material breach?**

Yes

No

**If No please explain the reason for your answer.**

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**10. Do the assumptions made in the impact assessment look reasonable in relation to the estimates made for:**

Familiarisation costs	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Cost of processing invoices	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>

**10a. What are your estimated costs for familiarisation?**

Very difficult to accurately assess.

A pilot scheme involving the HSE and the Local Authority-enforced sector would assist in providing a more accurate assessment of these costs.

**10b. What are your estimated costs for processing invoices?**

Very difficult to accurately assess.

A pilot scheme involving the HSE and the Local Authority-enforced sector would assist in providing a more accurate assessment of these costs.

**11. Are there any costs or benefits not detailed in the impact assessment**



which HSE needs to consider?

Yes

No

**Please provide additional details.**

Costs for enforcement work by HSE have been estimated in the Impact Assessment. The amounts charged by Local Authorities are likely to be less than those charged by HSE.

In addition, there is likely to be more variation in the amounts charged by Local Authorities due to the variety in the type of staff used for inspections and enforcement action and salary variations from one Local Authority to another. Businesses will very quickly identify the lack of uniformity and are therefore likely to have concerns about fairness.

**12. The impact assessment details risks and uncertainties. Which of these are most likely to be realised? Please provide your views/comments.**

Potentially many of them.

Especially, risks and uncertainties involving with Local Authorities and the differences between the type of businesses enforced by the HSE and those by Local Authorities. Local Authorities have a greater percentage of small and medium size enterprises (SME's).

**13. Do you think there are any other risks or uncertainties HSE need to consider in the impact assessment?**

Yes

No

**Please provide your views/comments.**

Most health and safety enforcement action by Local Authorities involves small businesses, a different scenario to the size and type of businesses currently involved in being charged.

There is the risk that disproportionate costs may be put on small businesses.

Estimates in the Impact Assessment are based on the HSE Database of Premises. Therefore, the accuracy of the estimates will very much depend on the accuracy of the database, which may not be up to date.

**14. Are you satisfied with the conclusions of the Equality Impact Assessment related to this consultation document?**

Yes

No

**If no what conclusions are you concerned about?**

**15. Are there any additional factors which you believe should be taken into account in the impact assessment?**

Yes

No

**If yes what additional factors need to be taken into account?**

A pilot scheme involving the HSE and the Local Authority-enforced sector would assist in providing a more accurate assessment of what, if any, additional factors need to be taken into account.

The impact on small businesses needs very careful consideration.

**16. Do you have any specific comments on cost recovery not covered by the questions above?**

Yes

No

## Local Authority section

Please only answer the questions in this section if you are responding on behalf of a local authority.

**Are you responding on behalf of a local authority?**

Yes

No

**17. Would your Local Authority wish to have a legal duty (non-discretionary) to operate a fee for intervention cost recovery scheme?**

Yes

No

**Please explain the reason for your answer.**

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 would have 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 are not yet clear.

Such issues include the need for the trigger level of 'material breach' or 'serious material breach' to be made clearer and we would suggest the level related to the service of prohibition and improvement notices only. Also, for the need for an intervention cost recovery scheme to have been successfully piloted in both the HSE and Local Authority-enforced sectors before implementation.

There are also a number of other practical issues of concern in the implementation of such a scheme by Local Authorities, as outlined in the consultative document, which would require addressing before any implementation:

- Although the scheme has the potential to bring income into a Local Authority, the costs of administering the charge and any following-up will significantly reduce the actual income.
- It is unclear what would happen to income generated by the scheme. If income was not to come directly to the Local Authority, it would not be possible to easily offset the income received against the costs of the enforcement action.
- The scheme is currently being used by the HSE for certain large and very high risk premises only. Use of the scheme for other premises under their enforcement control has yet to be tested and proved to be successful, although it is understood a pilot scheme is due to be introduced by the HSE.
- Most health and safety enforcement action by Local Authorities involves small businesses, a different scenario to the size and type of businesses currently involved in being charged.
- When officers from Local Authorities are currently undertaking health and safety enforcement interventions, the response from businesses is hopefully

still one of co-operation. This relationship could be negatively affected if a charge was made for those interventions and subsequent actions. However, the 'polluter pays' principle may mean that charging may be appropriate in the most non-compliant businesses. Such cases could include those businesses on whom prohibition or improvement notices are served, i.e. where the most serious material breaches are found.

- When officers from Local Authorities are undertaking health and safety enforcement interventions, the response from some businesses can be to challenge the need for certain health and safety legal standards. If businesses were charged for enforcement, there could be the perception (wrongly) that such enforcement by a Local Authority was affected by the need for income generation.
- The Consultation Document identifies that, in the future, HSE will only be inspecting higher risk premises. The definition of 'higher risk premises' in both the HSE and Local Authority enforcement sectors is currently under discussion, so it is not currently clear what effect this will have on the Local Authority enforcement role as regards inspections. Consequently, it is therefore difficult to estimate the effect on Local Authorities charging for their enforcement work and the type of inspections they will be undertaking.
- Costs for enforcement work by HSE have been estimated in the Impact Assessment. The amounts charged by Local Authorities are likely to be less than those charged by HSE. In addition, there is likely to be more variation in the amounts charged by Local Authorities due to the variety in the type of staff used for inspections and enforcement action and salary variations from one Local Authority to another. Businesses will very quickly identify the lack of uniformity and are therefore likely to have concerns about fairness.
- One area of the Consultation Document is proposing cost recovery where there is 'material breach' of health & safety law which results in an improvement notice, prohibition notice, electronic mail or a letter. In another part of the Document a reference is made to '**serious** material breach'. The trigger level for recovering costs could therefore be confusing. Any confusion would be minimised by the definition of 'material breach' of health & safety law meaning enforcement action which results in an improvement notice or prohibition notice only.
- The HSE already have existing systems in place for cost recovery which would need adapting only. However, Local authorities currently do not have such systems in place and greater setting up costs and resources would therefore be involved, at a time when major service reductions are taking place in all Local Authorities to achieve cost savings.
- If Local Authorities were to recover costs in a similar way to the HSE, with Local Authorities having a greater percentage of small and medium size

enterprises (SME's), there is concern that SME's would be placed under greater relative financial pressure by having to pay disproportionate costs. This would be in conflict with existing Local Authority work in working with businesses in line with the Total Business Concept.

**18. Assuming your Local Authority is required to implement cost recovery, are the HSE estimates in the impact assessment an accurate representation of what would happen in your Local Authority with reference to:**

**a) the proportion of visits that would result in finding a material breach?**

Probably not, due to the different type and size of businesses being inspected by Local Authorities.

**b) the estimated cost recovery rate?**

No – probably reduced.  
Local Authorities are likely to be charging less than HSE due to salary differentials. Also, Local Authorities deal with a much higher percentage of smaller businesses, where the amount charged to a business is likely to be less and where the rate of recovery is likely to be less.

**c) if the estimates are not correct, what estimates do you feel HSE should use in these areas when estimating LA costs?**

Very difficult to achieve, due to the variation of premises from one Local Authority to another and the variety of levels of inspectors used. Much more work would be required to achieve accurate estimates.

A pilot scheme involving the Local Authority-enforced sector would assist in a more accurate assessment of costs.

**19. What do you expect to be the costs of establishing a cost recovery scheme? Please give separate estimates for:**

**a) training of inspectors**

Difficult to estimate:

- The time needed per officer (with varying levels of experience and approach)
- The number of officers (A high proportion of part-time staff may lead to a greater number of officers requiring training, as compared with officers who are mainly full-time).
- The costs of officer time due to the variety of salaries in different levels of enforcement officers.
- The ease with which a significant change in approach and culture of many inspectors could be achieved.

**b) internal communication efforts**

Areas to be covered by the phrase 'internal communication efforts' is unclear and therefore cannot be estimated.

**c) process and system testing**

Very difficult to estimate:

- Computer software changes
- Changes to work procedures and Quality Assurance systems
- Differing invoicing systems being used by different organisations

**d) changes in computer systems**

Very difficult to estimate as major changes would be needed to computer software systems, relating to:

- Processing of interventions and inspections data.
- Premises details and actions stored on database.
- Recognition of additional fields such as time spent, enforcement action taken, costs, inspector involved, etc.

These changes would be much more significant, from a computer software point of view, than the recent implementation of the new national Food Hygiene Rating Scheme, which in itself presented and continues to present significant IT challenges.

**e) setting up an invoicing system etc**

Difficult to estimate in the current financial climate due to Administration Section resources being significantly reduced and therefore the availability of such staff for such additional work would present challenges in itself, apart from the actual costs. A complex system would be needed if such invoicing would be undertaken automatically.

**f) annual running costs for a cost recovery system?**

Although a cost recovery system could be incorporated into a corporate cost recovery system, it is very difficult to estimate in view of all the above-mentioned issues.

**20. Do you have systems in place that will allow your Local Authority to accurately record the time spent on regulatory interventions to allow invoice generation?**



Not at present.

In theory, systems could be put into place but would require significant changes to:

- Computer software systems
- Distinction between time for inspection, advice, investigation, administration, enforcement, etc.
- Invoicing procedures
- Financial procedures

**Are there any further comments you would like to make on the issues raised in this consultation document that you have not already responded to in this questionnaire?**

Although 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, there are a number of concerns about the implementation of the scheme for the Local Authority–enforced premises and businesses.

Many of these concerns are outlined earlier in this response. However, there are also others which have not yet been addressed. These are as follows:

1. Estimates in the Impact Assessment are based on the HSE Database of Premises. Therefore, the accuracy of the estimates will very much depend on the accuracy of the database, which may not be up to date.
2. If there are inaccuracies on the HSE Database of Premises, only premises on that database are likely to be inspected (with the potential recovery of charges) as compared with premises who may be under the radar and not be on the database. Cost recovery could therefore be inequitable and target the more legitimate businesses.
3. Local Authorities also currently undertake a wide range of other regulatory services, some even at the same time as health and safety enforcement. These include:
  - Food safety
  - Licensing
  - Environmental protection
  - Public health
  - Animal welfare

There is no cost recovery, in these areas of regulatory work, of the type currently

being proposed for health and safety enforcement work.

Businesses are very likely to be concerned by these inconsistencies and to be confused when presented with a bill for the health and safety element of an inspection but not for the other elements of the type described above. There are likely to be questions from businesses during an inspection to ask whether questions being asked are 'under health & safety' (i.e. potentially chargeable) or e.g. 'under food safety' (i.e. not chargeable).

4. Significant behavioural change is going to be necessary from inspectors, employers, managers, business organisations, administration teams, etc. upon the implementation of a cost recovery scheme.

5. In the Impact assessment document in Policy option 6, the preferred option, it states "... several uncertainties remain in our estimates. Although it is not currently possible to quantify these uncertainties, they are most likely to have a downward impact on the level of costs recovered". Therefore the estimates are likely to be optimistic.

6. Concerns have been expressed that some businesses will be less likely to report accidents under RIDDOR due to the risk that an investigation / inspection may lead to cost recovery. There is already concern that many RIDDOR events go unreported.

7. If a cost recovery scheme was implemented for Local Authorities from 1 April 2012, this would not give sufficient time for the reconfiguration of all processes, procedures and systems, especially computer systems, which would be required.

8. A pilot scheme involving the Local Authority-enforced sector would assist in a more accurate assessment of costs and would provide a valuable and considered assessment of many of the issues raised in the Consultation Document and in Local Authority concerns.

Many of the concerns highlighted could be eliminated or significantly reduced by clarifying the trigger level at which a 'material breach' has taken place. If this were to be if a prohibition or improvement notice was served, as compared to also including letters and e-mails, this would be much clearer for both businesses and enforcing authorities. It would also still enable 'the polluter pays' principle to be implemented, be much easier to administer and would concentrate on the more serious breaches. It would enable Local Authorities to implement a cost recovery regime, with much reduced administration and process costs. It would also enable an equitable way forward to charging across the board in both HSE and Local Authority enforced sectors and provide a level playing field for businesses.

**Is there anything you particularly liked or disliked about this consultation?**

The addition of the Local Authority perspective has complicated the Consultation Document and it is not clear whether the document is aimed primarily at duty holders or other stakeholders.

The Consultation Document is confusing in that Paragraph 2.1.2 states that "...fee for intervention would only apply to the activity undertaken by HSE and would not apply to the activity undertaken by Local Authority officers". The paragraph then goes on to state "This proposal is not finalised and using this consultation HSE is continuing to seek the views of Local Authorities"

Paragraph 3.3.3 then states "In the light of the consultation responses, and subject to the necessary legislation, the proposals could be amended to enable Local Authorities to recover the costs of their interventions from as early as April 2012".

The Consultation Document is consulting on how charging will be enacted in HSE, not whether it will. However, the consultation about the Local Authority role seems to be mainly whether to charge or not and if so, when. The playing field needs to be level for all businesses where enforcement takes place.

**Please send your response by 14 October 2011 to:**

Cost Recovery Consultation  
Health and Safety Executive  
6.4 Redgrave Court  
Merton Road  
Bootle  
Merseyside L20 7HS

Tel: 0151 951 5955

Fax: 0151 951 3363

**E-mail:** [costrecoveryconsultation@hse.gsi.gov.uk](mailto:costrecoveryconsultation@hse.gsi.gov.uk)

**Thank you for taking the time to complete this questionnaire**