

The HSE's cost-recovery scheme, Fee for Intervention (FFI), came into force on 1 October.

Under the Health and Safety (Fees) Regulations 2012, the HSE will charge employers who break the law for the costs associated with the regulator's related inspection, investigation and enforcement activities. The Regulations are designed to shift the cost of health and safety enforcement from the public purse to businesses that contravene health and safety laws. Under FFI, when an HSE inspector visits a business and identifies a "material breach" of health and safety law, the business will have to pay a fee based on a rate of £124 per hour.

The fee will be applied to each intervention where a material breach is identified and any other associated work. Where the material breach is identified during a visit, costs for the whole visit are recoverable, from as soon as the HSE inspector enters the site to when they leave. The fee will also cover all work to ensure that the breach is remedied, as well as any investigation or enforcement action up to the point where the HSE's intervention has been concluded, or prosecution proceedings begin.

A "material breach" is defined as a contravention of health and safety law that requires an inspector to issue a written notice to the duty-holder. This may be notification of a contravention, an Improvement or Prohibition Notice, or a prosecution, and must include the law that the inspector's opinion relates to; the reasons for their opinion; and notification that a fee is payable to the HSE.

Businesses in compliance with their legal obligations will not have to pay a penny, according to the regulator, which hopes that FFI will act as a further incentive for duty-holders to operate within the law and help level the playing field between compliant and non-compliant employers.

HSE chief executive Geoffrey Podger said: "The most basic safety mistakes in the workplace can devastate lives and result in real costs to industry. It is right that those who fail to meet their legal obligations should pay HSE's costs rather than the public purse having to do so."

Legal experts have questioned aspects of the FFI scheme, during the lead-up to its statutory introduction. David Young, head of the health and safety team at Eversheds, said the different health and safety prosecution regimes in England and Scotland – where, in the latter, HSE legal costs are not retrievable through the courts – could have an impact on investigations of businesses north of the border. He said: "This may cause concern to those companies with interests north of the border, which could find themselves in the position of being investigated but not prosecuted on the basis that fees can be recovered up to the point of commencement of prosecution, but not after."

Young also reiterated concerns that the scheme may create added tensions between inspectors and businesses, especially given the charges that could be involved. He explained: "From my experience, most recent cases include average HSE inspector rates of around £66 per hour, so this will be a significant increase, particularly as it will be payable without a prosecution. For any business to effectively double its charge-out rate to absorb minor sundry items would be impossible, yet that is the very real case that UK business face from 1 October. I imagine that relationships between businesses and some inspectors will become uneasy for a while until the practical application of FFI is clearer."

Following a draft publication issued in the summer, the HSE has now published a full downloadable guide to the FFI scheme on its website at: <http://www.hse.gov.uk/pubns/hse47.pdf>

Details on what the Executive identifies as the most basic safety mistakes in the workplace can also be viewed at: <http://www.hse.gov.uk/fee-for-intervention/basic-safety-mistakes/index.htm>