

Title: Impact Assessment for the Proposed Replacement of the Health and Safety (Fees) Regulations 2010 IA No: Lead department or agency: Health and Safety Executive (HSE) Other departments or agencies:	Impact Assessment (IA)
	Date: 13/12/2011
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation

Summary: Intervention and Options **RPC Opinion:** Awaiting Scrutiny

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EACNB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
-£10m	-£320m	£39m	Yes
			IN

What is the problem under consideration? Why is government intervention necessary?
 Regulatory work relating to workplace health and safety is at present largely funded by the taxpayer via Government, rather than by those who create the need for such work by operating outside the law. Government intervention is necessary to rectify this. The proposal is to implement the policy announced on 21 March 2011 in "Good Health and Safety - Good for Everyone", to enable HSE to extend cost recovery to businesses found in material breach of the law (and to the assessment and inspection of notifications of onshore boreholes). The proposal requires replacement of the Health and Safety (Fees) Regulations 2010 but does not introduce any new health and safety requirements

What are the policy objectives and the intended effects?

- to continue to provide protection for workers and society from the effects of work activities, while shifting some of the cost burden from the taxpayer to those businesses that are found to be in material breach of the law; and those that operate onshore boreholes;
- to improve health and safety standards, by increasing the incentive to improve for those who do not comply with health and safety legislation;
- to provide a level playing field for dutyholders that comply with the law, making it less likely that they will be undercut by those who lower their costs by not doing so.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

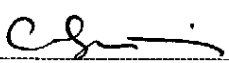
1 – Do nothing. Do not recover any additional costs.

2 – Recover the costs of health and safety interventions from businesses that are found to be in material breach of health and safety law. Option 2 is the preferred option as it enables HSE to recover costs from dutyholders who are found in material breach of health and safety law rather than tax payers. Cost recovery also provides a non-legislative incentive for dutyholders to comply. A very small part of this proposal is in scope of 'One-in, One-out' (OIOO), relating to disputes which are upheld in favour of the dutyholder. Policy options extending cost recovery to Local Authority-enforced premises and Biological agents were also considered in the consultation stage impact assessment, but have been removed. The rationale for this is presented in the evidence base.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 04/2015

Does implementation go beyond minimum EU requirements?	N/A					
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes	
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:			Non-traded:		

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY:  Date: 19/3/11

Summary: Analysis & Evidence

Policy Option 1

Description: Do nothing. Do not recover any new costs for work activities enforced by HSE.

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0		

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

The baseline is not that the status quo is maintained. In the 2010 Comprehensive Spending Review, HSE was asked to make savings of at least 35% over the four years starting in April 2011. Under the baseline, with no extension to cost recovery, there will be a lower level of intervention and enforcement. This would be expected to result in a decrease in health and safety standards.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks	Discount rate (%)	n/a
-------------------------------------	-------------------	-----

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: n/a	No	NA
Benefits: n/a		
Net: n/a		

Summary: Analysis & Evidence

Policy Option 2

Description: Recover the costs of health and safety interventions from businesses that are found to be in material breach of health and safety law for work activities enforced by HSE.

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -10

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	yr0		
High			
Best Estimate		1.2	1.1

Description and scale of key monetised costs by 'main affected groups'

Estimated costs of £31 million in year 1, £37 million in year 2 and £39 million per annum thereafter would be recovered from non-compliant businesses (and borehole operators). This is a transfer from businesses to HSE, net value zero. In addition, dutyholders would incur costs for familiarisation and disputes. Of these, £16k p.a. relate to disputes which are upheld, and are in scope of OIOO. HSE would incur setup costs of £740k and operational costs of £380k p.a. thereafter.

Other key non-monetised costs by 'main affected groups'

[NOTE ON OIOO: Although we have marked this proposal below as in scope of OIOO, this does not refer to the entire amount of £39 million p.a. that we estimate as the equivalent annual net cost to business. Of that amount, only £16 thousand p.a. (in brackets below) are in scope and count as an In.]

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

There will be a benefit to the taxpayer (via HSE) equal to the sum of the costs recovered from businesses, as described in the costs section.

Other key non-monetised benefits by 'main affected groups'

Non-monetised benefits include avoidance of the costs of work-related injuries and ill health which could otherwise occur due to a decrease in health and safety standards resulting from the savings which HSE has been asked to make in the 2010 Spending Review. These accrue to individuals, to businesses and to government. Further benefits would come from increasing dutyholders' incentives to improve health and safety. Businesses would also benefit from a more level playing field.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
--	--------------------------	-----

Assumptions are made with respect to inspector and business behaviour, familiarisation, the extent of challenge to invoices, bad debt, and the speed with which the new systems will bed in. These assumptions have been underpinned by analysis from a dry-run pilot and evidence from other government departments as well as from the consultation, as detailed in the evidence base. There remains some uncertainty in calculations, but there is not enough evidence to base a quantified range.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 39 (.016)	Benefits: -	Net: -39(-.016)	Yes	IN

Evidence Base (for summary sheets)

1. BACKGROUND	5
2. PROBLEM UNDER CONSIDERATION AND RATIONALE FOR INTERVENTION	5
3. POLICY OBJECTIVES AND INTENDED EFFECTS	5
4. ALTERNATIVES TO REGULATION	6
5. OPTIONS CONSIDERED	8
6. FINAL OPTIONS	10
7. CONSULTATION, DRY RUN AND DESK RESEARCH	11
8. COSTS	14
9. BENEFITS	23
10. RATIONALE AND EVIDENCE THAT JUSTIFY THE LEVEL OF ANALYSIS USED IN THE IA (PROPORTIONALITY APPROACH)	24
11. RISKS AND UNCERTAINTIES	24
12. SPECIFIC IMPACT TESTS	27
13. SUMMARY AND PREFERRED OPTION WITH DESCRIPTION OF IMPLEMENTATION PLAN.	29
ANNEX 1: POST IMPLEMENTATION REVIEW (PIR)	32
ANNEX 2 - CURRENT SITUATION	35
ANNEX 3 – HSE RATE-SETTING MODELS	36
ANNEX 4 – COST RECOVERY IN FOD SECTORS	38
ANNEX 5 – COST RECOVERY IN HID SECTORS	40
ANNEX 6 – COST RECOVERY BY CSEAD INSPECTORS	46

1. Background

- 1.1. HSE is the national independent regulator for health and safety law in Great Britain. 'Health and safety law' means the Health and Safety at Work etc Act 1974 (HSWA) and relevant statutory provisions made under the Act. This IA relates only to the regulation of health and safety law by HSE. It excludes health and safety law enforced by other regulators such as local authorities and the police; and other regulators in areas such as food safety, aviation, maritime and medical safety.
- 1.2. HSE is responsible for health and safety regulation in different types of premises, as defined in the Health and Safety (Enforcing Authority) Regulations 1998. Further guidance on the allocation of responsibilities is provided in HSE guidance¹. In the remainder of this IA, the term 'dutyholders' is used to refer to employers and self-employed people who have duties under HSWA and the relevant statutory provisions.

2. Problem under consideration and rationale for intervention

- 2.1. HSE currently recovers its costs from dutyholders in several high-hazard areas, but not for regulation in general. The current situation is described in more detail in Annex 2. Beyond these high-hazard sectors, health and safety regulation is currently funded by the general taxpayer. The Government believes that it is reasonable that dutyholders that are found to be in material breach of health and safety law – rather than the taxpayer – should bear the related costs incurred by the regulator in helping them put things right. This was announced on 21 March 2011 by the Minister for Employment in the DWP Report '*Good health and safety, Good for everyone*'².
- 2.2. Cost recovery for health and safety regulation is in line with HM Treasury guidelines in *Managing Public Money*³, and the 'polluter pays' principle⁴ used in environmental legislation, allowing higher hazard operations to take place while ensuring the beneficiary 'risk creators' are liable for attendant regulatory costs. HSE will not make a profit, but would recover its costs in carrying out its functions in relation to non-compliant dutyholders, and in relation to operators of onshore boreholes which present a major hazard risk and are subject to additional regulatory controls.
- 2.3. Although HSE proposes to achieve this extension of cost recovery by revoking and replacing the Health and Safety (Fees) Regulations 2010, this proposal does not introduce any new health and safety requirements for dutyholders. The extension to existing cost recovery regimes would take effect from 6 April 2012.
- 2.4. The costs recovered in this policy are out of scope for One In One Out (OIOO). The OIOO methodology states that fees and charges are out of scope, except where they result from an expansion or reduction in the level of regulatory activity. The option presented increases the regulatory burden to dutyholders who choose to challenge their invoice. Where that challenge is upheld, the cost to dutyholders is within scope of OIOO and is deemed an "In". However, this is a very small proportion of net cost to business. Cost calculations are presented in paragraphs 8.70-8.73 below.
- 2.5. The corresponding "Out" for this legislation will be taken from that calculated in the Impact Assessment for "Implementing the Common Sense, Common Safety Recommendation to Amend RIDDOR Regulation 3(2)", which was rated fit for purpose by the Regulatory Policy Committee on 1/11/2011.

¹ See: OC 124/11 *Health and Safety (Enforcing Authority) Regulations 1998: A-Z guide to allocation* - http://www.hse.gov.uk/foi/internalops/fod/oc/100-199/124_11.pdf

² Good Health and Safety, Good For Everyone. <http://dwp.gov.uk/docs/good-health-and-safety.pdf>

³ Chapter 6 http://www.hm-treasury.gov.uk/psr_managingpublicmoney_publication.htm

⁴ See principle 16 of the Rio Declaration on Environment and Development: <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

3. Policy objectives and intended effects

3.1. This proposal is part of a package of Government-driven deregulatory measures to change the culture of health and safety in Britain. This includes concentrating regulatory efforts on higher risk industries, and on tackling material breaches, while leaving those dutyholders which pose a lesser risk and which comply with the law free from unwarranted scrutiny, thus lifting some of the regulatory burden on them. This will mean a substantial reduction in the number of proactive health and safety inspections, whereby lower risk dutyholders would not receive a health and safety inspection unless triggered, for example, by the reporting of an incident or complaint. More detail on the measures in the package which are not considered in this IA can be found in '*Good health and safety, Good for everyone*'.

3.2. The proposal analysed here seeks the amendment of existing secondary legislation to enable HSE to recover its costs from dutyholders where a material breach of health and safety law has been identified, and where a requirement to rectify that breach is formally made in writing, together with the cost of any follow-up work. Compliant dutyholders will pay nothing, nor will those who are in technical breach of the law. This element of cost recovery is also referred to as fee for intervention (FFI). We also propose to recover the costs of assessment and inspection related to notifications for onshore boreholes, which have similarities to some HSE-regulated high hazard sectors where cost recovery already takes place.

3.3. The objectives of this proposal are to implement Government policy;

- To continue to provide protection for workers and society as a whole, while shifting some of the cost burden from the taxpayer to those dutyholders that are found to be in material breach of the law, and those that operate onshore boreholes;
- To improve health and safety standards, by increasing the incentive to improve to those who do not comply with health and safety legislation;
- To provide a level playing field for dutyholders which comply with the law, making it less likely that they will be undercut by those who lower their costs by not doing so.

4. Alternatives to regulation

4.1. As already stated, this proposal is not itself regulatory in that it would not introduce any new health and safety duties for dutyholders (although HSE cannot charge the proposed fees without the introduction of specific fees regulations). The proposal is in line with the Government's principles of regulation which require departments to consider alternative, non-regulatory or self-regulatory means of achieving the same outcome and Government guidance on alternatives to regulation⁵

4.2. This proposal also takes into account insights from behavioural theory which tells us that people are "influenced by the way choices are presented to them; care more about losses than gains; and care about fairness and reciprocity".⁶

4.3. Loss aversion would make cost recovery a particularly powerful incentive to improve, as even if the expected value of what would be recovered from any individual dutyholder is low (considering the low chance for a particular dutyholder of receiving an inspection or investigation), the aversion to suffering the immediate and continuing losses resulting from any intervention finding a material breach would provide an incentive to comply

⁵ See: <http://www.bis.gov.uk/policies/better-regulation/better-regulation-executive/reducing-regulation-made-simple/alternatives-to-regulation/choose-the-alternative>

⁶ See: <http://www.bis.gov.uk/policies/better-regulation/better-regulation-executive/reducing-regulation-made-simple/alternatives-to-regulation/behavioural-economics-why-should-policy-makers-be-interested>

with the law. Interviews with dutyholders provided some anecdotal evidence to support this assumption; when asked if there was anything they would do differently as a result of cost recovery, one response was:

“I will be making sure my Health and Safety manager keeps on-top of any changes to ensure I am fully compliant”

4.4. This proposal would also satisfy individuals’ preference for situations that are fair. Those that comply would not be affected by this proposal, other than by seeing that competitors, who may be gaining competitive advantage by not complying, are paying the costs of their interaction with HSE. The proposal can therefore be seen to meet ‘equity’ goals. With respect to cost recovery, consultation provided some evidence which supported this behavioural hypothesis, for example, responses such as:

“Businesses which neglect their health and safety duties are able to gain a competitive advantage over compliant companies, and it is therefore entirely appropriate that HSE should target its resources towards those who represent the greatest risk” – Trade Association

“In society at present, it's the victim, their families and the state that pays for poor safety. While not ideal, Fee for Intervention (FFI) will go a small way towards addressing that” - Trade Union

4.5. Evidence from the Dry Run (see section 7) reaffirms the hypothesis of individuals’ preference for situations that are fair. One company responded:

“charge ‘em all you like, because they’re a bodger and they’re undercutting me as it is.”

4.6. The main economic justification for Government imposing health and safety requirements on dutyholders is the existence of “externalities”. The costs of a health and safety failure (such as a workplace accident, or the development of a work-related illness) do not only fall on the employer. There are also significant costs on the employee and their family (notably the loss of income and the pain, grief and suffering caused by the accident or illness) and costs on the rest of society (including costs to the NHS for treating the individual and to government departments for processing benefits). In fact, HSE’s research has shown that the costs to employers are only a small proportion of the costs to society as a whole (see Table 1). A pure cost-benefit calculation on the part of the employer would, in many cases, lead to health and safety management choices that would not be optimally ‘efficient’ for society as a whole.

Table 1 The estimated burden from Health and Safety failure⁷

Health and safety failings	£bn (2009/2010 prices)
Costs to employers	3.1
Costs to individuals	7.6
Cost to Government	3.3
Total costs to society	14.0

4.7. In recent years, HSE has been exploring potential non-regulatory ways of encouraging compliance with health and safety requirements. One of the areas we have looked into in detail is the use of economic instruments and incentives. Research was commissioned into the feasibility of applying such instruments in the area of health and safety⁸, in which options such as linking insurance premiums to health and safety

⁷ www.hse.gov.uk/statistics/cost.htm

⁸ Research report (unpublished): Feasibility of using economic instruments to internalise the costs of health and safety.

management, subsidies, taxes and even the use of tradable permits were analysed according to agreed criteria.

4.8. Economic instruments and incentives would seek to internalise some of the existing externalities, by increasing the costs to employers of breaching their legal obligations. By doing this, the expected cost of breaking the law would increase, providing incentives for better health and safety standards.

4.9. The research found that a key barrier to implementing the economic instruments was the high cost of obtaining the necessary information, especially in small businesses. Analysis showed that in order to assess whether a dutyholder was compliant with health and safety requirements, the obvious method of simply scrutinising their safety record or the claims against them would not be enough: some health and safety breaches do not necessarily result in incidents, while, on the other hand, some incidents are not the result of breaches. There is also an issue with the long latency of some work-related illnesses, which means that they will not appear in a firm's current records.

4.10. The only completely reliable way of assessing whether a dutyholder is compliant would be an audit of its health and safety management systems, which would be too expensive to implement for the economic instruments analysed.

4.11. The option analysed in this IA takes into account the conclusions of the research and proposes a narrower and more realistic system. Rather than increasing the costs of not complying with health and safety law for all dutyholders, it seeks to recover the cost of an intervention where the dutyholder is in material breach of the law. The difficulty of judging whether a firm is compliant is not an issue with this option, as that is exactly what an intervention by HSE regulators will conclude, based on long-established decision-making criteria.

5. Options considered

5.1. Ministerial consideration was given to enabling health and safety regulators to recover costs from all dutyholders, whether compliant or not. However, this was rejected on the grounds that it was neither realistic nor fair, as it would have imposed some of the costs of regulatory action on low-risk dutyholders who were complying with all material requirements.

5.2. HSE consulted on seven options which were deemed to be viable. These are set out below. They cover all work activities for which HSE and local authorities are the enforcing authority. The exceptions are those high hazard HSE-enforced activities that are currently covered by regimes whereby a significant part of HSE's regulatory costs are already recovered (see Annex 2 for more details of these regimes).

5.2.1. Option 1 - Do not recover any new costs for work activities enforced by HSE and Local Authorities. The general taxpayer via Government would continue to pay the costs of health and safety regulators carrying out their functions in a post Spending Review environment.

5.2.2. Option 2 – Recover the costs of health and safety interventions from dutyholders that are found to be in material breach of health and safety law for work activities enforced by HSE and Local Authorities.

5.2.3. Option 3 – Recover the costs of health and safety interventions from dutyholders that are found to be in material breach of health and safety law for work activities enforced by HSE and Local Authorities, exempting microbusinesses (those employing fewer than 10 full-time equivalent staff) and new start-ups from any new cost recovery.

5.2.4. Option 4 – Recover the costs of health and safety interventions from dutyholders that are found to be in material breach of health and safety law for work activities enforced by HSE and Local Authorities, except for onshore boreholes, where an alternative cost recovery mechanism based on assessment and inspection of notifications is proposed; and exempting work with higher hazard biological agents, pending legislative reform in this area due to be implemented in October 2012.

5.2.5. Option 5 – Recover the costs of health and safety interventions from dutyholders that are found to be in material breach of health and safety law for work activities enforced by HSE and Local Authorities, except for onshore boreholes, where an alternative mechanism based on processing notifications is proposed, and exempting work with higher hazard biological agents, (pending legislative reform in this area due to be implemented in October 2012), and exempting microbusinesses and new start-ups from any new cost recovery.

5.2.6. Option 6 - Recover the costs of health and safety interventions from dutyholders that are found to be in material breach of health and safety law for work activities enforced by HSE (but not those enforced by Local Authorities), except for onshore boreholes, where an alternative cost recovery mechanism based on assessment and inspection of notifications is proposed; and exempting work with higher hazard biological agents, pending legislative reform in this area due to be implemented in October 2012

5.2.7. Option 7 - Recover the costs of health and safety interventions from dutyholders that are found to be in material breach of health and safety law for work activities enforced by HSE (but not those enforced by Local Authorities), except for onshore boreholes, where an alternative mechanism based on processing notifications is proposed, and exempting work with higher hazard biological agents, (pending legislative reform in this area due to be implemented in October 2012), and exempting microbusinesses from any cost recovery.

5.3. Prior to consultation (as presented in the consultation stage IA) option 6 was the preferred option. Option 6 was preferred as it did not impose a FFI cost recovery duty on Local Authorities with respect to their regulation of health and safety. It did not exempt micro-businesses and new start-ups and allowed HSE to make suitable exceptions / exemptions for onshore boreholes and Biological agents.

5.4. Providing a duty under these Fees Regulations linked to the costs of health and safety regulation would oblige the affected regulators to recover those costs. No discretion as to whether such a fee should be charged could be conferred on those regulators. Therefore, as part of the public consultation, HSE gathered the views of Local Authorities in England, Scotland and Wales as to whether Local Authorities should be under such a duty. The responses from Local Authorities during the public consultation and direct consultation discussions with Local Authorities at political, strategic and practitioner level have confirmed that the FFI proposal should not extend to Local Authorities. This is because predominantly Local Authorities considered that the benefits of setting up FFI cost recovery schemes did not outweigh the costs of doing so; that FFI would disturb the balance between their various roles in supporting dutyholders; and that they would not be in a position to implement FFI cost recovery satisfactorily by 6 April 2012. This latter point was true also for those Local Authority interests who supported in principle being included in the scheme. A summary of the consultation responses is available at <http://www.hse.gov.uk/consult/condocs/outcome-on-consultation-235.pdf>

- 5.5. The 2011 Budget introduced a moratorium exempting micro-businesses and new start-ups from new domestic regulation for three years from 1 April 2011. In respect of these fees Regulations, the Government has decided that the exemption should apply to self-employed people who only put themselves at risk; but that costs should be recovered from the self-employed who put their employees or others (such as members of the public) at risk, as well as other micro-businesses/new start-ups in material breach. The rationale for not excluding micro-businesses was that all businesses have the health and safety duty to provide protection for all workers, irrespective of the organisation they work for. In addition, the fact that a dutyholder is small does not necessarily imply that its activities pose less risk to its employees or the public. An exemption for such businesses would not allow the health and safety benefits that accrue as part of cost recovery to apply to workers and society for these businesses.
- 5.6. There are approximately 3.1 million self-employed people with no employees according to Great Britain employment figures for 2010. HSE Analysis⁹ suggests that there may be as many as 1 million of these whose work does not pose a risk to anyone else. Analysis does not extend to how many of these carry out work which is enforced by HSE, however, the exemption would apply to any inspection, investigation or enforcement activity that takes place in this latter category.
- 5.7. Given the potential for the release of hydrocarbons which may result in a major hazard accident at Onshore Boreholes, operators are required to notify HSE before borehole construction, intervention or abandonment operations commence. Cost recovery will apply for such notifications. This is discussed in further detail in section 8
- 5.8. The consultation stage IA proposed that work with higher hazard biological agents in laboratories should not be subject to cost recovery, since the introduction of a single regulatory framework (SRF) in the next two years, would introduce a major hazard cost recovery regime. It did not make sense to introduce fee for intervention cost recovery only for it shortly to change. Going forward it was decided to dis-apply cost recovery to category 1 and 2 facilities as well. Details of this are in Annex 5.
- 5.9. The SRF or its alternative legislative streamlining, will be analysed in a separate IA, for which there will be a consultation process, and which will include analysis of cost recovery for the new framework. HSE therefore proposes that in April 2012 cost recovery is not introduced for the regulation of activities involving work with biological agents and Genetically Modified Organisms (GMO) in facilities using containment measures.
- 5.10. The fee currently paid to HSE for a licence to undertake asbestos work under the Control of Asbestos Regulations includes an element for inspection and an element for assessment of the application. Under the current system, it would not be possible to clearly differentiate the inspection covered by the licence fee from subsequent inspections which would be subject to FFI cost recovery. Since, as a matter of law and policy, HSE needs to avoid double charging, this proposal will dis-apply cost-recovery to the licensable work of licensed asbestos contractors until changes are made to the current system. However, FFI will still apply to non-licensable asbestos work.

6. Final options

- 6.1. The preferred option is as option 7 from the consultation stage IA, but excluding regulatory work for activities involving biological agents and genetically modified organisms (GMOs) in all facilities using containment measures, licensable asbestos work by licensed asbestos contractors, and amending as a consequence of the Government's decision that self-employed dutyholders should be exempt from paying a

⁹ Research report (unpublished): 'Solo self-employed posing no risk to others'

fee where their activities do not pose a risk to their employees or others. Thus, the options analysed in this IA are:

6.1.1. *Option 1 – Do nothing. Do not recover any new costs for work activities enforced by HSE. The general taxpayer via Government would continue to pay the costs of HSE (which are not already cost recovered) carrying out its regulatory functions in a post Spending Review environment.*

6.1.2. *Option 2 – Recover the costs of health and safety interventions from dutyholders that are found to be in material breach of health and safety law for work activities enforced by HSE. There would be exemptions for:*

- *Self-employed duty holders who only put themselves at risk.*
- *Licensable asbestos work by licensed asbestos contractors under the Control of Asbestos Regulations, and;*
- *Activities involving biological agents and genetically modified organisms in facilities using containment measures,*

And setting up a separate regime for cost recovery for assessment and inspection in relation to notifications of onshore boreholes.

7. Consultation, dry run and desk research

7.1. This IA takes account of the information gathered from the public consultation, the HSE dry run pilot of the proposed mechanisms for cost recovery and desk top research.

Public consultation

7.2. HSE published a consultation document¹⁰ with a supporting consultation-stage IA, inviting interested parties to comment on how the schemes will operate and how the costs will be recovered. It is already Government's agreed policy to extend cost recovery. Therefore, the consultation focused on how cost recovery would work and not on whether it should be done. The consultation ran for a 12-week period, ending on 14 October 2011, in accordance with the Code of Practice on Consultation¹¹.

7.3. The online consultation document was downloaded 11,391 times and the consultation stage IA was downloaded 3,128 times.

7.4. HSE received a total of 296 responses, 247 via the consultation questionnaire and 49 narrative responses. The latter have not been included in numeric analysis as it would mean having to interpret responders' opinion to fit into the questionnaire format which could bias the response in a way not intended by the responder. Responses were received from a range of stakeholders including Industry, Local Government, trade associations, academics, trade unions, consultants and non-departmental public bodies. Of the 296 responses received the greatest percentage of responses was from "Industry" (25%) and Local Government (23%).

7.5. Whether consultees were in favour or against FFI in principle, they had a consistent set of concerns that they want HSE to address in the implementation. These were that the scheme:

- Incentivises HSE to distort its priorities in favour of maximising receipts;
- Might harm the constructive relationship between HSE and business;
- Inadequately defines material breach and relies too much on inspector's opinion;

¹⁰ Consultation document: <http://consultations.hse.gov.uk/gf2.ti/f/15138/393957.1/pdf/-/CD235.pdf>

¹¹ <http://www.bis.gov.uk/files/file47158.pdf>

- Should be triggered by the service of an enforcement notice rather than a letter;
- Might have an adverse impact on struggling businesses, particularly SMEs;
- Does not have an adequate disputes process;
- Should not mandate Local Authorities to recover costs

7.6. The consultation asked some IA specific questions on familiarisation costs, the assumptions made, whether there were costs and benefits we had not considered and if there were risks and uncertainties that we had not considered. There was a high level of “non-response” to each of these questions (generally over a third). Where respondents were asked if they “agreed” or “disagreed” with the estimates / assumptions made there was roughly an even split between each with no alternative information provided.

7.7. Of total responses, 32% stated that there were additional costs or benefits not detailed in the IA. These respondents identified two costs that had not been identified:

7.8. The cost to HSE in terms of the damage done to the relationship that HSE has with the dutyholders it regulates and;

7.9. The cost to the integrity of HSE if fee for intervention was perceived to distort HSE’s priorities away from improving health and safety standards in favour of maximising income generation.

7.10. These costs have been considered in this final stage IA. (see section 11)

7.11. Only one benefit was identified which was that the introduction of fee for intervention could act as an incentive for non-compliant dutyholders to encourage improvements in health and safety standards. This was covered in the IA; however, we have provided more supporting evidence for this final stage IA.

7.12. Of total responses, 38% stated that there were additional risks or uncertainties. These respondents identified the risk that some dutyholders may cease to operate or be unable to deliver the service expected of them due to the additional financial pressure that fee for intervention could introduce. This issue is addressed in section 11.

Dry Run (Pilot)

7.13. In preparation for the implementation of proposals to extend cost recovery across HSE, a ‘dry run’ took place in two HSE regions (East and South East, and Yorkshire and North East) from 3 October to 9 December 2011. We collated and analysed the dry run data on an ongoing basis, enabling swift final analysis when the dry run finished.

7.14. A total of 87 inspectors and specialist inspectors from HSE were involved from offices in Chelmsford, Norwich, Bedford, Basingstoke and Newcastle.

7.15. The primary aim of the dry run was to better understand the proposed mechanisms for delivering cost recovery. In addition, the dry run was used to provide analysis to address the uncertainties and gaps identified in the consultation-stage IA.

7.16. The dry run process did not include actually recovering the costs incurred from dutyholders. However, these costs were calculated as an indication of the cost recovery levels that would arise as a result of the material breaches found during the period analysed. The costs were also referred to in interviews with dutyholders.

7.17. The work undertaken during dry run was broadly representative of that undertaken across the year.

7.18. Analysis from the dry run included:

- 7.18.1. **Inspector interviews:** a sample of inspectors from all bands who were involved in the dry run were interviewed. The interviews were focused on their understanding and application of the inspection guidance and cost recovery mechanisms and how they would implement the fees in practice. The interviews were also used to narrow estimates of time taken for inspector training and familiarising themselves with cost recovery.
- 7.18.2. **Inspector focus groups:** in addition to the interviews, focus groups were held at different stages throughout the dry run process. There were used to discuss in further detail the inspectors' decision making processes and provide an insight to any behaviour change that may arise as a result of cost recovery.
- 7.18.3. **Dutyholder interviews:** interviews were held with firms that had been involved in the dry run. They covered firms who had been found in material breach and those that had not. The interviews were used to gauge the reaction of firms to cost recovery and identify any changes in their behaviour that might arise as a result. The interview was used to provide the firm with the sum they would have been charged if cost recovery was in force and record their reaction to this.
- 7.18.4. **Inspector surveys:** Inspectors were asked to fill out a mainly quantitative survey to see whether it would be possible to quantify the views given in the focus groups and interviews.
- 7.18.5. **Completion of a Regulatory Decision Making Form:** HSE's longstanding published process for ensuring consistent and proportionate regulatory decision making is known as the Enforcement Management Model (EMM). Inspectors under the dry run completed an EMM form as standard when they did a visit. This form contains information about the visit, the inspector's regulatory decisions, and the dutyholder, as well as the breach found (if there was one). These were checked by line managers and the cost recovery implementation team, to see whether processes and procedures are being adhered to - as well as to check the consistency of enforcement decision making. These forms were used to select dutyholders for interview.
- 7.18.6. **Work recording:** Inspectors recorded their work as they would when cost recovery is implemented. This allows systems to be tested as to their adequacy for cost recovery.

Desk research

7.19. Desk top research was also conducted. This included reference group analysis of other cost recovery schemes, contacting public sector organisations which had cost recovery systems already in place (including the NHS, Department of Health, Food Standards Agency and HMRC), researching other department IAs and researching academic literature on bad debt and optimism bias. The Topics researched were:

- Proportion of bad debt
- Cost of challenges to invoices, queries and disputes
- Familiarisation
- Set-up costs
- Running costs
- Bedding-in
- Changes in compliance

- Optimism bias

Shadow run

7.20.A 'shadow run' is planned to start in January 2012. This will involve all HSE staff who will play a role in cost recovery, giving them an opportunity to become familiar with the arrangements before cost recovery is implemented. The shadow run will provide a further opportunity to test process and implement mitigation measures to address issues that have arisen from the consultation or the dry run.

8. Costs

8.1. Costs and benefits have been quantified and monetised where possible. There is inherently some level of uncertainty about the future impacts of any policy or system. Therefore it is necessary for a number of assumptions to be made. These are detailed in the sections below and in the annexes. The risks and uncertainties are addressed in section 11.

General assumptions:

8.2. Costs and benefits are assessed over 10 years as there is no reason to depart from the general advice in the Better Regulation Executive's IA toolkit to use this time frame.

8.3. The discount rate used is 3.5%, in line with the HM Treasury Green Book¹² guidance.

8.4. Salary data, price base and Present Value year is April 2011 – March 2012.

8.5. The numbers for cost recoverable days are estimates of what will happen in the years starting April 2012, and the cost recovery rate is the one that would be used in that period.

8.6. In the first two years of implementation, it is expected that there will be an element of legacy work which was started before cost recovery came into force, which is not cost recoverable. Furthermore, despite preparation for cost recovery, including process analysis via the dry run and shadow run, it is inevitable that there will be an element of bedding-in before the estimated level of costs are recovered.

8.7. Analysis was conducted on the introduction of previous cost recovery schemes in HSE and other departments; we also calculated the quantity of legacy work that will arise in each directorate from April 2012. Based on this analysis, it is assumed that in year 1 legacy and bedding-in issues will mean that total costs recovered will be 20% lower than the total estimated. In year 2, it is expected that all bedding-in issues will have been addressed but the costs will be depressed by 3% due to legacy work. By year 3 it is expected that the impact of legacy work will be negligible.

8.8. To estimate the level of costs recovered it is also necessary to make an assumption as to the rate of unpaid invoices, after debt-collection effort. Although there is no directly comparable cost recovery system in place, rates of bad debt in HMRC (VAT collection), Food Standards Agency meat hygiene and Local Authority parking tickets were used to gauge a suitable level. The most suitable comparison for bad debt with cost recovery would be the bad debt figures from HMRC VAT corporate collection. The levels of bad debt varied depending on sector, with the highest sector rate being in construction. The average rate of bad debt (debt older than 180 days) was 1% but this varied across business sectors. Given the make up of who HSE will be recovering costs from (i.e. dutyholders who are already non-compliant) it is reasonable to expect a rate somewhat higher than this, and so we have prudently assumed a 10% level of bad debt which was the level put to consultation.

¹² http://www.hm-treasury.gov.uk/data_greenbook_index.htm

- 8.9. Based on data for Field Operations Directorate (HSE's largest operational Directorate), the average cost of an inspection that leads to issuing a prohibition or improvement notice is approximately £1,400. See Annex 4.
- 8.10. The actual cost of specialist services whether provided by the Health and Safety Laboratory (HSL), an agency of HSE, or an external contractor, will be charged directly to individuals as a separate line on the cost recovery invoice sent to the dutyholder.
- 8.11. Figures presented in this IA are generally rounded to two significant figures; however, calculations are based on non-rounded numbers. Given this, some figures presented may not add up to the totals presented.

Option 1 – Do nothing

- 8.12. The baseline against which we compare all the other options is not that the status quo is maintained. In the 2010 Comprehensive Spending Review, HSE was asked to make savings of at least 35% over the four years starting in April 2011. Without any costs being recovered, even if front-line areas are given priority over others, it is very likely that these savings would translate into a lower level of intervention and, enforcement. This would be expected to result in a decrease in health and safety standards throughout Great Britain, with the ensuing costs to society.
- 8.13. *Option 2 – Recover the costs of health and safety interventions from dutyholders that are found to be in material breach of health and safety law for work activities enforced by HSE. There would be exemptions for:*

- *Self-employed duty holders who only put themselves at risk*
- *Licensable asbestos work by licensed asbestos contractors under the Control of Asbestos Regulations, and;*
- *Activities involving biological agents and genetically modified organisms in facilities using containment measures,*

And setting up a separate regime for cost recovery for assessment and inspection in relation to notifications of onshore boreholes.

- 8.14. In this option, there are two types of cost recovery (fee for intervention [FFI], and onshore boreholes). The arrangements for onshore boreholes are considered in paragraphs 8.50 to 8.53.

Fee For Intervention (FFI)

- 8.15. The FFI proposal would involve HSE recovering the costs of its regulatory activity from dutyholders where a material breach has been diagnosed, and where a requirement to rectify that breach is formally made in writing. These costs would include those of the inspection or investigation at which the breach was discovered. Also included would be any ancillary costs required for a regulatory decision to be reached and communicated, up to the point when the material breach is rectified and HSE's regulatory activity in relation to the material breach is concluded. Where a prosecution ensues costs would be recovered up to the point that an 'Information' is laid at Court in England and Wales, or in Scotland where a report is submitted to the Procurator Fiscal for a decision as to whether a prosecution should be brought. The costs of the prosecution after the point of laying Information in England and Wales will be recovered through the Courts as is currently the case. Under Scottish law, prosecution costs may not be recovered. This IA therefore excludes the costs of prosecution. Compliant dutyholders will pay nothing, nor will those who are in technical (but not material) breach of the law.

- 8.16. Costs would not be recovered for HSE's regulation of activities involving self-employed duty holders who only put themselves at risk, licensable asbestos work under the Control of Asbestos Regulations and biological agents and GMOs in facilities using containment measures. Each of these has been discussed further in section 5.
- 8.17. The FFI proposal is that three of HSE's operational Directorates will be involved in recovering costs where the above conditions apply. The first and largest is Field Operations Directorate (FOD) which deals, in the main, with general manufacturing, agriculture, construction and services. The second is Hazardous Installations Directorate (HID) which deals with the offshore oil and gas, onshore chemicals and petrochemicals, explosives, mines sectors and pipelines containing dangerous substances and facilities that work with biological agents and GMOs using containment measures. The third and smallest is Corporate Science, Engineering and Analysis Directorate (CSEAD) which provides specialist inspectors dealing with radiation, noise and vibration, occupational hygiene, electrical and process safety, medical and human factors. Inspectors in these Directorates, supported by specialist colleagues in a range of engineering and technical disciplines, make the regulatory decisions that would trigger cost recovery. Specialist advice, forensic examination and incident/accident re-constructions for the purpose of regulation are also provided by the Health and Safety Laboratory (HSL) which is an agency of HSE. Non HSE/HSL specialist advice is sometimes required and costs £150 thousand per annum.
- 8.18. Inspectors intervene with dutyholders for inspection purposes because they are higher risk, or where there are serious concerns about their health and safety performance or to investigate a reportable incident or complaint, following published criteria (see 8.21)
- 8.19. Inspectors have a range of enforcement options available to them when they intervene with dutyholders. They can take any of the following actions where they come across non-compliance with the law:
- Verbal/technical advice;
 - A formal letter requiring remedial action related to non-compliance;
 - An improvement notice, which is a legal instrument specifying a failure to comply with the law and setting a timescale for putting it right;
 - A prohibition notice, which is a legal instrument requiring an activity which presents a serious risk to be stopped or not commenced;
 - Initiating prosecution in the courts. This is punitive action.
- 8.20. Cost recovery would be triggered by all but the first and last (from the point of laying the Information at court in England and Wales, or in Scotland where a report is submitted to the Procurator Fiscal for a decision as to whether a prosecution should be brought).
- 8.21. In deciding on which course of action is appropriate, Inspectors are guided by HSE's longstanding published Enforcement Policy Statement and Enforcement Management Model¹³. The key feature of these arrangements is to relate the severity of action taken by the Inspector to the gravity of the non-compliance in terms of the risk and what the law requires, so that a proportionate, consistent approach to enforcement is taken. Furthermore, the arrangements are supported by management oversight to ensure consistency of application.

¹³ The Enforcement Management Model (see: <http://www.hse.gov.uk/enforce/emm.pdf>) is a framework which helps inspectors make enforcement decisions in line with HSE's Enforcement Policy Statement (EPS). The EPS sets out the principles inspectors should apply when determining what enforcement action to take in response to breaches of health and safety legislation. Fundamental to this is the principle that enforcement action should be proportional to the health and safety risks and the seriousness of the breach.

8.22. Costs would be recovered based on the amount of time taken for the intervention, using an average hourly rate that will be the same across HSE for all staff (including specialists) involved in cost recoverable work. This hourly rate will be calculated using a rate-setting model, the details of which can be found in Annex 3.

8.23. The hourly rate will be adjusted year on year, based on actual costs. For this analysis, we have used a rate based on 2012/13 budget figures. The HSE rate used here is £124 per hour (corresponding to a daily rate of £918, based on 7.4 hours a day). This is lower than the £133 estimated for the consultation-stage IA, reflecting the inclusion of the 2012/13 figures now available.

8.24. Where specialist assistance is required for enforcement purposes from the Health and Safety Laboratory or other external providers, the actual costs of the services provided will be recovered from the individual dutyholder, and this cost has not been included in the hourly cost recovery rate. Where there are such costs, these will form part of the invoice that HSE sends to dutyholders.

Field Operations Directorate (FOD) enforced sectors

8.25. Starting in April 2012, we estimate that there will be approximately 57,000 frontline days spent per annum on inspection, investigation and enforcement excluding prosecution time. Of these, it is estimated that a material breach where costs would be recovered would be found in approximately 70% of investigation days, and 60% of inspection days. All enforcement days are cost recoverable.

8.26. Applying these percentages, and the HSE hourly rate, to detailed estimates of the number of different types of inspections, investigations and enforcement work results in an estimate of costs of approximately £36 million yearly that may be recovered from non-compliant dutyholders. Adding to these the estimated £4 million per annum of HSL, cost-recoverable, reactive support provided to FOD, the total costs that may be recovered from non-compliant dutyholders would be approximately £40 million (before making any allowance for bad debt, bedding-in or legacy work).

8.27. A description of the methodology used to calculate the figures and estimates used in this section can be found in Annex 4.

8.28. Including the assumption for legacy work, bad debt, and bedding in effects, the estimate of non-discounted costs actually recovered from non-compliant dutyholders would be £29 million in the first year.

8.29. Including the assumptions for bad debt and legacy work, we estimate non-discounted costs actually recovered from non-compliant dutyholders for year two to be £35 million and subsequent years to be £36 million per annum.

8.30. The 10-year present value for cost recovery in FOD would be £290 million. This would all represent a transfer of costs currently borne by HSE, and funded by the taxpayer, to non-compliant dutyholders.

Hazardous Installations Directorate (HID) enforced sectors

8.31. The approach followed to estimate what costs would be recovered from HID-enforced sectors is different to that used for FOD because a number of cost recovery regimes already exist in those sectors. For each sector, we analysed the number of days expected to be spent on intervention activity in the 2012/13 plans across the sectors to be recovered through FFI (Mines, Explosives, Diving, Pipelines and onshore chemical and petrochemical activities not currently subject to cost recovery). We then determined how many of those days were not currently cost recovered under existing permissioning

regimes, and how many were related to activities the cost of which would be potentially recoverable.

8.32. The profile of each sector in terms of compliance is quite different, so in discussion with sector experts we obtained estimates for the percentage of days that would find a material breach, based on their knowledge of the sector, including analysis of available data.

8.33. We have estimated that starting in April 2012, there would be approximately 2,000 days subject to cost recovery across HID.

8.34. Applying the HSE cost recovery rate previously described, the annual non-discounted costs to be recovered would be £1.9 million (before making any allowance for bad debt, bedding-in or legacy work).

8.35. A description of the methodology used to calculate the figures and estimates used in this section can be found in Annex 5.

8.36. The following table presents a summary of the estimates of the non-discounted costs that would be recovered by each of the HID sectors (before making any allowance for bad debt, bedding-in or legacy work).

Sector	Estimated costs recovered per year (£k)
Chemical manufacturing and storage	£1,300
Mines	£ 200
Explosives	£150
Diving	£120
Pipelines	£42
Onshore boreholes	£4.6
Total	£1,900

8.37. Additionally, the cost of HSL reactive support and support from other suppliers to HID would be an estimated £450 thousand per year, all of which would be linked to the particular interventions that gave rise to it and recovered.

8.38. Including the assumption for legacy work, bad debt, and bedding in effects, the estimate of non-discounted costs actually recovered from non-compliant dutyholders would be £1.7 million in the first year.

8.39. Including the assumption for bad debt and legacy work, we estimate non-discounted costs actually recovered from non-compliant dutyholders for year two to be £2.0 million and subsequent years to be £2.1 million per annum.

8.40. The 10-year present value for cost recovery in HID would be £17 million. This would all represent a transfer of costs currently borne by HSE, and funded by the taxpayer, to non-compliant dutyholders.

Corporate Science, Engineering and Analysis Directorate (CSEAD)

8.41. CSEAD has a number of centrally brigaded specialist teams dealing with radiation, noise and vibration, occupational hygiene, electrical and process safety, medical and human factors. Some of their time is spent on developing standards and guidance, which is not subject to cost recovery. A proportion of their time is spent with dutyholders

carrying out regulatory work and supporting frontline regulatory teams. This activity would be cost recoverable if material breaches were found.

8.42. To estimate the costs recoverable from the activities of CSEAD specialist inspectors, we followed an approach much like the one used for HID, described in the previous section. Those specialist teams doing regulatory work for which costs could be recovered are listed in the table below with estimates of the costs that would be recovered starting from April 2012 (before making any allowance for bad debt, bedding-in or legacy work).

Team	Estimated costs recovered per year (£k)
Human Factors and Ergonomics	£330
Noise and Vibration	£180
Radiation	£17
Electrical and Process Safety	£68
Occupational hygienists	£110
Corporate Medical Unit	£43
Total	£750

8.43. Applying the HSE cost recovery rate previously described, the annual non-discounted costs to be recovered would be approximately £750 thousand (before making any allowance for bad debt, bedding-in or legacy work).

8.44. A description of the methodology used to calculate the figures and estimates used in this section can be found in Annex 6.

8.45. The cost of HSL reactive support to CSEAD would be an estimated £100 thousand per year, all of which would be recovered and linked to the particular interventions that gave rise to it.

8.46. In addition to HSL support, the cost of external reactive support from other service providers to HSE is approximately £150 thousand per annum. This would be cost recovered and linked to the particular interventions that gave rise to it.

8.47. Including the assumption for legacy work, bad debt bedding in effects and reactive support, the estimate of non-discounted costs actually recovered from non-compliant dutyholders would be £720 thousand in the first year.

8.48. Including the assumption for bad debt and legacy work, we estimate non-discounted costs actually recovered from non-compliant dutyholders for year two to be £870 thousand and subsequent years to be £900 thousand per annum.

8.49. The 10-year present value for cost recovery in CSEAD would be £7.3 million. This would all represent a transfer of costs currently borne by HSE, and funded by the taxpayer, to non-compliant dutyholders.

Onshore Boreholes

8.50. Given the potential for the release of hydrocarbons which may result in a major hazard accident at Onshore Boreholes, operators are required to notify HSE before borehole construction, intervention or abandonment operations commence. HSE assesses these notifications to ensure adequacy of borehole integrity and safe operation. This regime is analogous to the permissioning regimes described in Annex 2. Option 2 proposes that HSE recovers all its costs from dutyholders for assessing these notifications. Assessment includes time spent on the following activities: desktop assessment work,

on-site verification inspection work, meetings (wherever they take place), telephone conversations and report writing.

8.51. There will be some FFI work that inspections at onshore boreholes diagnose. This is estimated at approximately five days work per annum. These days have been included in the costs recovered by HID above.

8.52. Including the assumption for legacy work, bad debt, and bedding-in effects, the undiscounted estimate of costs actually recovered from dutyholders would be £97 thousand in year 1 and £ 120 thousand in year 2 and year 3. The money recovered increases over the remaining years in the analysis period (as the amount of cost recoverable work increases).

8.53. The ten-year present value would therefore be £1 million (after applying assumptions for, bedding-in and legacy work).

Additional costs to dutyholders

8.54. The previous sections all deal with transfer of the costs for regulation from the taxpayer to non-compliant dutyholders. This section considers potential costs to dutyholders in addition to those transfers.

8.55. The inspector would spend some time explaining to the dutyholder (if a material breach is found) that the costs of the intervention will be recovered from them. The time to do this was estimated during the dry run, in which it was found that the mean and median length of time (excluding outliers) that an inspector took to explain cost recovery to a dutyholder was fifteen minutes and that dutyholders spent a further 5 minutes looking at the materials the inspector gave them. This means an additional twenty minutes in total for dutyholders who are found in breach.

8.56. HSE visit approximately 32,000 dutyholders per year (from internal HSE data), of which, around 21,000 may be found to be in breach. If those in breach then spend 20 minutes familiarising themselves with the legislation, and assuming the cost of an hour's time is £30¹⁴, this would cost approximately £10 per dutyholder and £210 thousand per annum.

8.57. However, the £210 thousand is not included in total dutyholder costs for the following reason; it is expected that as a result of cost recovery, overall, the average length of an inspection is likely to reduce. This is because it is expected that both the inspector and the dutyholder know that any time spent on the intervention will result in HSE's costs being recovered. As such there will not be an overall addition cost to dutyholders. This assumption is supported by qualitative analysis from the dry run, where one dutyholder commented:

"I would want to see an increase in the pace of an inspection – no wandering around and explaining the process. And if there is some action to be taken, they're going to have to hurry up about that too"

8.58. Some non-compliant dutyholders might spend some time familiarising themselves with the new scheme, even if they do not receive an inspection or investigation. They might then take action to become compliant. Any measures required to do so will be related to health and safety requirements already in existence, independent of this proposal. They would have costs to the firm, as well as health and safety benefits (which accrue both to the dutyholder and the rest of society).

¹⁴ Calculated using the Annual Survey of Hours and Earnings 2010 (Office for National Statistics) – salary of code 1, "Managers and senior officials"¹⁴ and up-rating by 30% to account for non-wage costs (in accordance with the Green Book).

- 8.59. In addition to this, however, there is a possibility that some broadly compliant dutyholders would also feel the need to familiarise themselves with the new cost recovery proposals. While technically there is no need for them to do so, they might be uncertain about whether their own actions are sufficient to characterise them as compliant. This could potentially lead to some of these compliant dutyholders taking unnecessary measures regarding health and safety, to ensure they are compliant. In order to mitigate effects such as this, HSE has taken steps to provide clarification to dutyholders about the minimum measures they need to make to meet compliance requirements, with the publication of tools such as Health and Safety Made Simple¹⁵. Guidance on these fees Regulations will be made available at least 12 weeks before FFI comes into force.
- 8.60. The extent of these costs is not known and, given that HSE is not expecting to engage in a wide-ranging campaign communicating the scheme, dutyholder awareness of (and therefore, reaction to) it will largely depend on media coverage of the overall cost recovery process. Analysis by HSE's press office shows that during the course of October 2011, there were approximately 75 articles printed in magazines or newspapers which mentioned cost recovery. Before this there had been in the region of 50 articles printed. This was deemed by the HSE press office as relatively low news coverage. Between October and April, it is expected that there will be no more than five corporate announcements that might trigger discussion around, and therefore increase the profile of cost recovery.
- 8.61. It is assumed that it would take a dutyholder 5 minutes to get up to speed with cost recovery. This is based on the "time spent on page" for the HSE cost recovery consultation web page. Almost 13,000 people visited the front page of the web site, however, numbers of hits to linked pages with supporting documents were substantially lower. This implies that people generally got what they needed to find out from the first page. Publications on other web sites and printed articles contained similar information to that on the website and it is reasonable to assume that these would take the same length of time to read.
- 8.62. Approximately 10% of dutyholders who were inspected during the dry run told inspectors that they had done some level of familiarisation. This estimate allows for behavioural bias, for example, dutyholders are expected to display some social desirability bias where they will answer in the way they felt the inspectors would approve. To account for this, inconsistent responses were removed from the sample. Concerns were raised about the ability to generalise the 10% figure to the population due to small sample size (101 responses), targeted and inconsistent data. However, in the lack of better evidence, the quantitative data has been triangulated with expert opinion and it is deemed suitable to use 10%. Excluding self-employed business, there are approximately 2 million enterprises in the UK¹⁶, if 10% of these spent 5 minutes familiarising themselves with cost recovery, their familiarisation cost would be a one-off cost of approximately £500 thousand.
- 8.63. Although cost recovery would be implemented in April 2012, the majority of familiarisation cost is assumed to happen in year 0. It is expected that the majority of media coverage is currently happening or coincided with the consultation period earlier this year. Furthermore, the 10% estimate we use is based on feedback for current (not future) dutyholder familiarisation levels.

¹⁵ See: <http://www.hse.gov.uk/simple-health-safety/>

¹⁶ See ONS: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-227577>

- 8.64. We considered whether Local Authority-enforced dutyholders should be removed from familiarisation calculations, however, it was decided that they should be kept in as dutyholders are likely to be unaware of whether they are HSE or Local Authority enforced.
- 8.65. We also considered whether low risk industry should be removed from the calculations; however, there was no evidence to justify this. Furthermore, it is expected that low risk businesses that have had an accident in the last few years would be highly likely to familiarise themselves with the cost recovery proposals.
- 8.66. It is estimated that there will be 270 thousand new start-up businesses each year. This is an average of the new businesses between 2004 and 2009 published by ONS¹⁷. If 10% of these also familiarise themselves with cost recovery, there will be an annual familiarisation (non-discounted) cost of £68 thousand. This will have a 10 year present value of £560 thousand. Total familiarisation (transition and annual) for the 10 year period will therefore be in the region of £1 million.
- 8.67. Dutyholders found to be in material breach of health and safety law will receive an invoice for the costs of the intervention. We have considered whether dealing with this invoice would constitute an additional cost to dutyholders. We have assumed that the administrative burden of paying the invoice is likely to constitute an insignificant cost, given that dutyholders will already be paying other invoices from suppliers and a small number of invoices for a limited period, would make little difference.
- 8.68. Some dutyholders may choose to challenge the invoice (for example, on the basis of whether there was a relevant material breach or the number of hours the invoice is for). However, most dutyholders interviewed as part of the dry run process said that they would not query costs or dispute the invoice. HSE proposes to put in place a specific mechanism to deal with queries and disputes, and we estimate the process would not require more than 2 hours on the part of any individual dutyholder. Assuming the cost of an hour's time is £30, this would be approximately £60 per dutyholder. Based on current levels of appeals against HSE enforcement Notices to the Employment tribunal, and feedback from the dry run, HSE estimates that there will be approximately 4,200 disputes per annum (15% of invoices). The current level of appeals against Improvement notices and prohibition notices, without cost recovery, is less than 1%. The cost of time for dutyholders to dispute will be in the region of £250 thousand per annum.
- 8.69. Of the 4,200 disputes, it is estimated that approximately 5% (210) may be upheld and invoice costs returned to dutyholders in the first instance. Of the remaining disputes, it is estimated that approximately 850 will be escalated to a second dispute level. This would take no more than an additional hour; approximately £30 per dutyholder and therefore £25 thousand per annum in total. Approximately 40 of these would be upheld and the invoiced costs returned. The reduction in non-discounted costs recovered as a result of 250 upheld disputes would be in the region of £350 thousand per annum and have a present value of £2.9 million over the 10 year period.
- 8.70. Disputes (level one and level two) create an additional burden to the dutyholder involved; where a dispute is upheld, the additional burden to the dutyholder falls within scope of OIOO. It is estimated that approximately 210 level one and 40 level two disputes may be upheld. It is estimated that dutyholders will have spent approximately 2 hours dealing with a level one dispute and a further hour if escalated to a level two dispute. In total, it is expected that dutyholders will spend in the region of 550 hours on disputes that are subsequently upheld.

¹⁷ <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-199624> (Table 1.1 and 1.3)

- 8.71. Including the assumption for legacy work and bedding-in, the estimated non-discounted costs to compliant dutyholders is £13 thousand in the first year, £16 thousand in the second year and £17 thousand per annum thereafter.
- 8.72. The 10-year present value would be £130 thousand and the equivalent annual cost would be £16 thousand. This cost represents a very small proportion (0.04%) of the overall net cost to business.
- 8.73. The corresponding “Out” for this legislation comes from “Implementing the Common Sense, Common Safety Recommendation to Amend RIDDOR Regulation 3(2)”, for which the equivalent annual net cost to business was estimated in the Impact Assessment at -£240,000.
- 8.74. HSE will recover the costs of handling disputes that are not upheld using the hourly rate of £124 multiplied by the time taken to address and respond to the dispute. The average level one dispute would cost approximately £60 and the average level two dispute would cost approximately £120. In total, HSE would expect to recover approximately £350 thousand per annum (before discounting) from disputes.
- 8.75. The total non-discounted cost to dutyholders of disputes involving duty holder time for preparation and HSE time and familiarisation for new dutyholders would be in the region of £700 thousand per annum. The 10 year Present Value of this is £5.8 million.

Costs to HSE: Transition (one off costs)

- 8.76. Implementing the cost recovery system would have a cost to HSE. Most of these costs would occur in year 0, and include training of inspectors, internal communication efforts, process and system development and testing, changes in computer systems and setting up a large-scale invoicing system, among others.
- 8.77. The hourly economic cost of HSE has been taken from HSE’s “Ready Reckoner” which identifies the economic cost per hour / day / year of each HSE grade. These costs include accommodation and other corporate support.
- 8.78. Development and delivery of an inspector training package will cost approximately £18 thousand, based on the planned 17 one-day training events. Costs for developing the Corporate Operational Information system¹⁸ (COIN) training are included in the annual provider charge which is accounted for under HSE annual costs.
- 8.79. Each inspector will attend a briefing session and COIN training. In addition to formal training, inspectors will spend 5 or so hours getting up to speed via reading guidance, making use of web communities and having discussions with their line managers and peers. Total costs of inspector time will be in the region of £570 thousand.
- 8.80. HSE will set up a central team to deal with the operational aspects of cost recovery such as invoices, queries and disputes. This team will be made up of staff from across grade bands and their time will be an opportunity cost to HSE (as they will reduce the work they are currently doing for HSE elsewhere). The one off cost for setting the team up, setting up invoicing, query and disputes systems and ensuring the team is equipped is estimated to cost about £150 thousand.
- 8.81. Total transition costs for HSE are therefore estimated to be £740 thousand. These costs are a one off cost and will take place in year 0 (2011/12), before cost recovery comes into effect in year 1.

¹⁸ COIN is HSE’s internal work recording system

Costs to HSE: Annual (recurring)

8.82. After implementation, there will be ongoing costs to HSE of running the cost recovery process, for example, issuing invoices, responding to queries, dealing with disputes and ongoing quality assurance measures. This will all be managed via the central cost recovery team.

8.83. The annual running costs for this team are estimated at £380 thousand per annum. Again, the staffing element of this is an opportunity cost, some of this time would be recovered (that spent on disputes that are not upheld).

8.84. The 10-year present value of this is £3.1 million.

9. Benefits

9.1. As explained under Option 1, the 'do nothing' option - against which cost recovery is compared - involves a reduction of 35% in HSE funding over the four years starting in April 2011, which would be expected to result in a lower level of intervention and enforcement and a decrease in health and safety standards throughout Great Britain, with ensuing costs to society. These include costs to individuals and their dependents (notably loss of income and the pain, grief and suffering from work-related injuries and ill health), to employers (in sick pay etc) and to the government (mainly NHS costs, benefits paid and taxes lost). Therefore the main benefits from cost recovery (option 2) would be the avoidance of these costs.

9.2. Research¹⁹ has found that the complexity of the occupational health and safety system, of which HSE is an important part, means that the system's behaviour is influenced by many interrelated causes in a highly non-linear way. It is therefore not possible with current data to categorically identify and quantify causal links between the resource devoted to HSE activities and health and safety outcomes. This complexity makes impact evaluation challenging (and resource intensive) even at individual intervention level. However, we know that the UK health and safety system performs well compared to the rest of Europe (in terms of fatal and non-fatal injuries and diseases/health conditions), and also that it has made considerable progress over time.

9.3. Another potential benefit would be the average reduction in time spent at each intervention by HSE regulators. The prospect that costs would be recovered may mean regulators work in a more efficient way, spending only as much time as strictly needed on a particular intervention. This would allow more investigations to be carried out, potentially improving health and safety standards.

9.4. In addition, we expect that cost recovery will act as an incentive to employers to comply with current health and safety requirements. The possibility of having to pay the costs of an intervention that finds a material breach in their premises would provide an incentive to any dutyholder who might otherwise not comply with the law.

9.5. Option 2 would create a level playing field, addressing the concerns of adequate performers and compliant dutyholders that non-compliant competitors are obtaining an unfair competitive advantage.

10. Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

10.1. Since the consultation stage IA, further analysis has been done to reduce the uncertainty in the estimates and assumptions made. We have taken steps to estimate and monetise, where possible, costs that were previously not quantified.

¹⁹ Research report (unpublished): "Linking HSE Activities to Health and Safety Outcomes: A Feasibility Study".

10.2. We have triangulated consultation responses, dry run data analysis, inspector discussion groups, inspector interviews and dutyholder interviews to reinforce our assumptions and address the greatest uncertainty with respect to inspector and dutyholder behaviour. Analysis has been thorough and extensive, involving analysts from several disciplines as well as operational delivery experts. Insight from this analysis has been used to inform implementation plans as well as cost calculations for the IA.

10.3. There still remains some inherent uncertainty in our calculations and these areas are outlined in section 11. The uncertainty predominantly concerns inspector and dutyholder behaviour. The analysis conducted prior to writing this IA mainly focused on behavioural issues, and further scrutiny would require an in-depth research project that would be unlikely to provide further significant insight. It would also require the ability to evaluate cost recovery in practice and will therefore form part of the post implementation review (Annex 1).

11. Risks and uncertainties

11.1. A number of uncertainties and how they would be addressed were raised in the consultation stage IA. At this stage in the process, some uncertainties remain where it was not deemed proportionate to do further analysis. The following section outlines these uncertainties and provides non-monetised evidence or analysis where appropriate.

Optimism Bias

11.2. Optimism bias, as described in the HM Treasury Green Book, is the demonstrated systematic tendency for appraisers to be over-optimistic about key project parameters. This bias can specifically relate to the under delivery of estimated benefits. HSE has mitigated this risk by using the dry run and shadow run to test process delivery. The Green Book suggests that analysis should be undertaken on potential benefits' shortfalls and increases in operating costs. Over the ten year appraisal period, the operational costs for HSE are estimated to be £3.1 million in present value terms. As long as costs recovered over the same period exceed this, then, from a purely operational point of view, cost recovery is justified.

Inspector behaviour

11.3. The assumption underlying the IA is that inspectors will continue to behave as they have in the past, in terms of the enforcement decisions they make faced with a given situation. However, it is possible that the knowledge that costs will now be recovered from dutyholders found to be in material breach may affect the decisions inspectors make. Having noted this potential issue, HSE has included actions in its implementation plan to mitigate this. Special attention will be paid to performance management and assurance programmes to ensure decision making is in line with guidance on these fees Regulations and the Enforcement Management Model and the principles of the Enforcement Policy Statement.

11.4. A specific area where the possibility of change in inspector behaviour has been raised is the length of interventions. Knowing that if a material breach is found the costs of any time spent will be recovered from the dutyholder, who is likely to scrutinise the invoice carefully, inspectors might be motivated to identify any breaches quickly and spend less time (than they do currently) advising. Such a change would affect the amount of the average invoice, but we would expect the same overall time to be spent interacting with dutyholders (and hence the same overall amount of costs recovered), as the reduction in average intervention time would be compensated for by freeing up inspectors to undertake other investigations.

Dutyholder behaviour

11.5. We expect that dutyholders' behaviour may also change, as a result of them being aware of the possibility of having to pay HSE's costs if a material breach is found. The potential increase in health and safety standards links into the third policy objective, levelling the playing field, making it less likely that non-compliant dutyholders will undercut their competitors. Depending on how effective an incentive to improved compliance cost recovery proves to be, this could affect our estimates of how much would be recovered. The stronger the incentive, the more health and safety standards would improve, but at the same time the fewer material breaches would be found in inspections and investigations, and the fewer costs would be recovered. Analysis of firms who were inspected as part of the dry run showed an element of commitment to increase compliance. When asked about changes they might make as a result of cost recovery, the following quotation reflects the type of comments that were made:

"[I would] be making sure my H&S manager keeps on-top of any changes to ensure I am fully compliant."

11.6. Furthermore, inspectors are saying that they are "using the Cost Recovery issue as a 'carrot' now so that they can avoid a 'stick' later":

"You tell them that if you come back and find a breach, it'll be chargeable."

11.7. This suggests that inspectors are aware that being charged may increase the likelihood of dutyholders complying with the law.

11.8. Each year a proportion of inspection takes place at "new firms" (i.e. dutyholders who have not been previously visited). Our initial assumption was that, from the second year there will be a proportion of dutyholders who have already experienced cost recovery and it would be expected that they will not need the inspector to detail the process to them. However, in the dry run 1 in 10 duty holders stated they had some previous knowledge of cost recovery before the inspector visited and this had no significant relationship with how long it took the inspector to explain cost recovery to them. This would suggest that the amount of time speaking to inspectors about cost recovery will not decrease as dutyholders come to understand or experience cost recovery.

Passing costs onto consumers

11.9. Any cost to dutyholders (from either health and safety improvements or cost recovery) could potentially be passed on to consumers through higher prices, the extent of which would depend on the price elasticity of demand (PED) in each sector. As the PED for industries that are inspected is unknown and likely to vary substantially between sectors, it is not proportionate to try and estimate the extent to which costs will be passed on. Evidence from Dutyholder interviews (during the dry run) didn't give a clear steer on this point; dutyholders who were found in breach, told interviewers that:

"I cannot pass these costs on to customers, so it will hit profits, a necessary business expense"

"I would just have to pay it, and I can't afford it, so I'd have to pass it on to customers."

Injury reporting

11.10. The Lofstedt²⁰ review highlighted that cost recovery risks dutyholders under reporting injuries.

²⁰ See: <http://www.dwp.gov.uk/docs/lofstedt-report.pdf>

“The introduction of ‘fee for intervention’ by HSE124 (i.e. the proposal that those who are found not to be compliant with the law during an inspection should be charged for the work that HSE does following the issuing of a notice or other requirement for action to rectify the fault) could potentially further deter businesses from reporting, and HSE should monitor this as part of any review of the fee for intervention policy.”

11.11. This concern was also reflected in the consultation and in dutyholder interviews. One dutyholder said:

“I don’t think it’s fair that I get penalised for complying with requirements, whereas if they have an accident next door, and don’t report it, they don’t get charged”

11.12. Dry run analysis highlighted that under reporting could be an issue, however, it did not estimate the extent of the issue. Dutyholders comments were about “other” companies under reporting and there was no instance when a dutyholder said they themselves would under report in the future. This may mean a change to the number of incidents available to HSE to investigate, and a reduction in the quality of data for HSE analysis. Changes to injury reporting will be considered as part of the PIR.

HSE Integrity

11.13. During consultation, concerns were raised over the costs associated with loss of HSE integrity. HSE made a commitment in the consultation document that FFI would not change its regulatory decision-making, from setting organisation-wide priorities down to individual inspector behaviour. However, some consultees felt that, over time, HSE will come to rely on FFI receipts and this will inevitably start to drive what we do.

11.14. To mitigate any costs associated with this, HSE will continue to be transparent about plans so that stakeholders can see that HSE remain driven by health and safety outcomes. HSE’s strategy will continue to be backed by an annual business plan, soon to become a three-year plan, which sets out the sectors that HSE will proactively inspect based on evidence of risk and performance. Furthermore, these plans are now underpinned by sector strategies which set out the rationale for HSE’s interventions. Those discrete sectors with well defined representative bodies are well sighted on these strategies e.g. waste and recycling, explosives and quarries.

Public perception of HSE

11.15. Responses to consultation and dutyholder interviews allowed us to gain better insight into the effects of cost recovery on the perception of HSE. During consultation, general opinion was that HSE’s reputation may suffer. However, when dutyholders were interviewed, even after hearing how much they would have been charged, their opinions about HSE were, so far, unchanged:

“You still have an important job to do and you do it well”

“HSE are the experts, and you’d rather pay for HSE than for a consultant, and you wouldn’t think worse of them because they decided to charge for an expert service”

11.16. This suggests that cost recovery may not have a negative impact on employer perceptions of HSE.

Sunk costs

11.17. This final stage IA has been written part way through year 0, and, as a result of this, some of the transition costs have already happened. However, we consider all costs that take place in year zero when discussing the potential cost of the proposal. Costs that are potentially sunk include staff and stationery costs to HSE and familiarisation costs during transition year for dutyholders.

11.18. With respect to HSE, sunk costs are likely to be small as staff could continue where they are already working or be moved into other areas in HSE and stationary can be sold on or redirected to another area in HSE.

Sensitivity Analysis

11.19. The cost calculations have been based on a historical record of what we deem to be cost recoverable hours. It is likely that FFI reported hours in the future will not be equal to what has happened previously due to some of the impacts mentioned in this section such as dutyholder behaviour and inspector behaviour. While this issue can be qualitatively described, it is not possible to estimate the impact of these further than we have done thus far. There is no robust evidence to base high/low estimates on; therefore, any ranges that would be produced would be on the bases of percentage differences without and evidence to justify them. Therefore, we have used best estimates to generate the cost recovery levels rather than providing ranges.

11.20. Ranges were provided for the central cost recovery team with respect to staffing as the level of staff time would differ depending on the volume of queries and disputes. However, calculations based on upper or lower estimates had negligible impact on overall cost figures and providing a range would not add value to the analysis. Therefore, we took the decision to base calculations on the best estimates.

12. Specific impact tests

Statutory Equality Duties Impact Test

12.1. There is no evidence that any particular group will be disproportionately adversely affected by this policy change. Full details are provided in the Equality Impact Assessment.

Competition Assessment

12.2. We do not believe that this proposal will have any impact on competition, as defined by the Office of Fair Trading (OFT) in its guidance.

12.3. We have considered the four key questions identified by the OFT in its guidance, namely whether in any affected market the proposals would:

- Directly limit the number or range of suppliers
- Indirectly limit the number or range of suppliers
- Limit the ability of suppliers to compete
- Reduce suppliers' incentives to compete vigorously.

12.4. We found that none of these effects would occur as a result of the proposal. However, we would expect the proposals to result in an increase in the competitiveness of compliant dutyholders with respect to non-compliant ones.

12.5. Dutyholders found in material breach and subject to cost recovery that trade internationally may find themselves less competitive on the international market if other countries do not run similar schemes.

Small Firms Impact Test

12.6. The proposal includes an exemption to FFI cost recovery for self-employed people who only put themselves at risk. However, FFI applies for all other dutyholders and the FFI hourly rate is the same for all dutyholders irrespective of their size.

- 12.7. In accordance with BIS small firms' impact test, prior to consultation, HSE discussed forthcoming proposals with over 50 stakeholders which included specific representatives of SME's. The consultation stage IA considered options for exempting micro-businesses.
- 12.8. HSE continues to engage with SME representatives (eg CBI, Federation for Small Business and the Small Business Trade Association Forum).
- 12.9. For dutyholders not found to be in breach, the only cost of this proposal is familiarisation. This is estimated to take 5 minutes of a dutyholders time and it is expected that only 10% of all dutyholders will do this. Hence, the burden of this policy to those not found to be in breach of health and safety legislation is small, irrespective of their size.
- 12.10. According to HSE records, micro-businesses, on average, make up over 50% of dutyholders that HSE visit. There is no evidence to suggest whether they are more or less likely to be compliant than other sized dutyholders, however, of those visited, it is only the dutyholders who are in material breach that are subject to FFI.
- 12.11. If a dutyholder is in material breach, the amount recovered would be related to the amount of time it takes to identify the material breach, plus the cost of any follow up action and regulatory activity. This would not be directly proportional to the size and capacity of the dutyholder to pay. We would expect interventions in smaller premises to take less time, but the length of time taken would ultimately be related to the complexity of the breach, remedial and enforcement action rather than being exactly proportional to the size of business.
- 12.12. During consultation, one potential issue raised was whether cost recovery would adversely affect small businesses who were already struggling. This concern was echoed by inspectors during the dry run discussion groups. However, dutyholders who were interviewed as part of the dry run gave no evidence for or against the probability of going bankrupt. When asked how firms would deal with the cost, the general reaction was to either pass the cost on to consumers or for the business to accept lower profit margin.
- 12.13. It is important to note, that the fact that a dutyholder is small does not imply that its activities pose less risk to its employees or the general public and therefore evidence does not support reducing requirements for small firms. This is consistent with the findings from the Lofstedt report:

"Many SMEs operate in sectors that have high risk of injuries and fatalities, such as construction. Previous research has also found that small firms tend to be more prone to accidents than larger businesses. The evidence therefore does not support reducing regulatory requirements for smaller firms, and attention should be focused on improving guidance and support."²¹

Greenhouse Gas Emissions

- 12.14. There would be no impact on greenhouse gas emissions.

Wider Environmental Impacts

- 12.15. There would be no wider environmental impacts as a result of the policy change.

Health and Well Being

- 12.16. There may be health and safety benefits of the policy change as described above, but it is not possible to quantify these.

²¹ For full report see: <http://www.dwp.gov.uk/docs/lofstedt-report.pdf>

Sustainable Development Impact Test

12.17. There would be no impact on sustainable development resulting from this policy change.

Human Rights

12.18. There would be no impact on human rights as a result of this policy change.

Justice Impact Test

12.19. There would be no impact on the justice system as a result of this policy change.

Rural Proofing

12.20. There would be no adverse impact on rural areas as a result of this policy change

13. Summary and preferred option with description of implementation plan.

13.1. In conclusion, after consultation and Dry Run testing, the preferred option has been refined and is:

13.1.1. *Option 2 – Recover the costs of health and safety interventions from dutyholders that are found to be in material breach of health and safety law for work activities enforced by HSE. There would be exemptions for:*

- *Self-employed duty holders who only put themselves at risk.*
- *Licensable asbestos work by licensed asbestos contractors under the Control of Asbestos Regulations, and;*
- *Activities involving biological agents and genetically modified organisms in facilities using containment measures,*

And setting up a separate regime for cost recovery for assessment and inspection in relation to notifications of onshore boreholes.

Summary for Cost Recovery Option 2 (Rounded, £k)

Transition cost	Year 0
HSE (set up)	740
Dutyholders (familiarisation)	500

Recurring cost	Year 1	10 YR PV
HSE (operations)	380	3,100
Dutyholders (new dutyholder familiarisation and disputes)	700	5,800

Cost recovered (Transfer from non-compliant dutyholders and Borehole operators)	Year 1	Year 2	Year 3+	10 yr present value
FOD	29,000	35,000	36,000	290,000
HID	1,700	2,000	2,100	17,000
CSEAD	720	870	900	7,300
Boreholes	97	120	120 ²²	1,100

²² This figure represents cost recovered for year three only. Cost recovered for year 4-5 are estimated to be £130k, for years 6-9, £150k and for year 10 £160k. The 10 year present value accounts for this.

HSE Returns (from disputes)	-350	-350	-350	-2,900
-----------------------------	------	------	------	--------

Total costs recovered	31,000	37,000	39,000	310,000
------------------------------	---------------	---------------	---------------	----------------

NPV	-£ 10,000
------------	------------------

One In One Out	Year 1	Year 2	Year 3+	10 yr present value
Cost of dispute to compliant dutyholders	13	16	17	130

13.2. The costs and benefits presented only represent the monetised cost of option 2. The NPV produced is negative as it does not include the unquantified benefits to health and safety that cost recovery will create. If it was possible to account for these the NPV would be positive. Furthermore, the main impact of this policy is the transfer of costs from the taxpayer to non-compliant dutyholders (and dutyholder working with onshore boreholes) as they internalise the externality they create. See paragraph 4.6 for a discussion on externalities. As the benefit associated with internalising the externality cannot be measured, the NPV of the transfer is zero. If it was possible to quantify the benefits, it is most likely that the NPV would be positive.

13.3. The costs recovered presented in this IA are lower than the estimates in the consultation stage IA. The costs presented in the consultation stage IA were identified as maximums and the “risk and uncertainties” qualitatively assessed were deemed to have a downward pressure on the estimates. We have now been able to (to some extent) quantify the impact of the uncertainties identified, specifically behaviour changes in inspectors and dutyholders.

13.4. Secondly, the number of cost recoverable days has been revisited and refined. The figures now allow for a level of legacy work to take place in years 1 and 2.

13.5. Finally, the cost recovery rate has also been refined and has reduced from £133 per hour presented in the consultation stage IA to £124 presented here.

Implementation plan

13.6. It is planned that the scheme will be effective from 6th April 2012. The implementation plan has been developed to meet the following objectives:

- Engaged staff, with required skills, knowledge and behaviours
- Fit for purpose processes and procedures
- Fit for purpose guidance and tools, including guidance published 12 weeks before the Regulations come into force.
- Consistency in application of cost recovery
- Transparency and proportionality in application of cost recovery
 - Integration of cost recovery implementation within HSE'S Directorates' individual change programmes

13.7. To ensure implementation goes smoothly we have ensured that the lessons and changes identified during consultation and the dry run are fed into the preparation for the shadow run. The shadow run will support all operational HSE staff to become familiar with the new processes and procedures and enable them to embed them

with in existing processes and practices, before final implementation on 6 April, when costs will be actually be recovered from duty holders.

- 13.8. This will be done using a combination of methods, including: day long regional briefings developed for the purpose from the dry run material and will incorporate experiential learning via case studies for syndicate groups to; bespoke guidance related to cost recovery; support through the line management chain; and the application of HSE's existing performance management and quality assurance processes which will be expanded to focus on the implementation of cost recovery to meet the objectives above.
- 13.9. These quality assurance processes include discussion groups, examination of recording activity and peer reviews of enforcement decision making. It is expected that these methods will be sufficient to prepare staff for the change, however during the shadow run some staff may be identified who require further support and this will be provided.
- 13.10. The performance management and quality assurance processes will continue into the full implementation phase and will be supported by ongoing monitoring to enable changes to behaviour or practice to be identified and managed. An internal audit and overall review will take place within 12-18 months of implementation. Any actions identified from these management mechanisms to improve guidance, systems, processes and procedures will be taken.
- 13.11. HSE intends to publish guidance for duty holders on these changes by way of a simple 3 page guide to FFI, supported by a more detailed easily accessible guide on the regulations, as well as a simple guide to HSE's enforcement decision making process as it relates to FFI. This latter document will include examples of health and safety failures that are likely to be material breaches. HSE is already consulting with industry representatives of businesses of all sizes (including CBI and Federation of Small Businesses) on this guidance and the final version will take account of industry views. All duty holder guidance will be published 12 weeks before the Regulations come into force. The guidance will provide a telephone contact service for those who may want more information.
- 13.12. When full implementation begins, inspectors will explain FFI to dutyholders who are found in material breach and will provide the three page simple guide. This guide will provide links to the more detail guidance and a telephone help service.

Annex 1: Post Implementation Review (PIR)

Justification

1. Evaluation is a crucial part of the policy cycle and offers both strategic and practical benefits. Evaluation is recommended where a formal IA is required and which is subject to Post-Implementation Review; The Magenta book²³ outlines a proportionate approach to evaluation.
2. The National Audit Office²⁴ (NAO) and the Public Accounts Committee (PAC) may examine the policy intervention being evaluated as part of their enquiries and would expect to see evidence that it was planned and implemented with due regard for value for money. Where the NAO undertakes a value for money study it will publish a report, which is likely to be the subject of a hearing of the PAC. The NAO's interest may include examining whether the intervention was subject to appropriate evaluation.

Background

3. The BIS/BRE Sunsetting Guidance²⁵ confirms that because these proposed fees regulations are outside of the scope of 'One-in One-out', the Sunsetting Guidance does not apply. However, in line with broader Government policy on sunsetting, and taking account of the consultation responses and good practice, HSE will carry out ongoing monitoring and evaluation of the policy change from implementation onwards to learn from staff and duty holder feedback and enable continuous improvement of the processes. HSE will also carry out a PIR of the FFI scheme in 3 years, rather than 5 years.
4. HSE has a wider change programme underway in its operational Directorates that take account of the Spending Review 2010, the March 2011 Ministerial Statement 'Good health and safety, good for everyone', the Red tape Challenge, and the Lofstedt Report 'Reclaiming health and safety for all'. There are also forthcoming changes to Regulations such as the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995. An overall evaluation of these changes will be undertaken. The work entailed in delivering this PIR will be included in the wider evaluation of the HSE change programme, however, this PIR is limited to the cost recovery elements of the evaluation of the HSE change programme.
5. In addition to this, the hourly rates for FFI and onshore boreholes cost recovery will be reviewed each year.

Aims

6. The aims of the PIR are:
 - To determine to what extent the policy meets the objectives set.
 - To test the assumptions made in the Impact Assessment
 - To test additional evaluative measures.
 - To test whether the cost recovery process is working as expected
7. The policy objectives are:
 - To continue to provide protection for workers and society from the effects of work activities, while shifting some of the cost burden from the taxpayer to those businesses that are found to be in material breach of the law; and those that operate onshore boreholes;
 - To improve health and safety standards, by increasing the incentive to improve for those who do not comply with health and safety legislation;

²³ Magenta book: http://62.164.176.164/d/magenta_book_combined.pdf

See also: <http://www.bis.gov.uk/policies/better-regulation/policy/scrutinising-new-regulations/preparing-impact-assessments>

²⁴ www.nao.org.uk

²⁵ <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/s/11-682-sunsetting-regulations-guidance.pdf>

- To provide a level playing field for duty holders that comply with the law, making it less likely that they will be undercut by those who lower their costs by not doing so.

Rates and types of injuries, dangerous occurrences and ill health

8. This will be monitored by HSE statisticians. Although there will be changes to the RIDDOR reporting requirements, which coincide with the start of cost recovery, RIDDOR reporting is still a good measure of changes. This can be compared with Labour Force Survey data to give a good indication of the rate of injuries and ill health. Attributing change in incident rates to FFI will be problematic, particularly in the light of other changes described. There may be some scope for assessing the reasons for changes through interviews with duty holders but this is likely to be indicative rather than definitive.

No additional burden (other than those outlined in the IA) placed on compliant duty holders;

9. This is difficult to assess, as a negative is difficult to prove. However, monitoring of communications from duty holders with HSE is one possible route, along with telephone interviews with dutyholders (subject to survey control procedures).

Incentives to dutyholders to comply and level playing field;

10. Appropriate means will be used to measure changes in compliance, including telephone interviews with dutyholders (subject to survey control procedures).

Amount of money recovered:

11. This will be monitored on a regular basis, depending on the frequency of invoicing, and will provide the information needed for this PIR.

Number of disputes

12. This will be monitored on an ongoing basis, including by region, office and inspector by the central FFI Cost Recovery Team.

Average length of time of interventions

13. This information is available in COIN (HSE internal work recording system). It can be used at an individual, regional, Directorate and organisational level. It will be used for management review and analysis purposes on a quarterly basis, and for the final evaluation for this PIR, when it will be compared with the IA assumptions.

Percentage of legacy work

14. This information can be extracted from COIN and will be looked at in the context of management review. This can be extracted at an individual, regional, Directorate or organisational level, and will be done by line managers as well as part of the evaluation of this PIR and the HSE change programmes.

Consistency of the application of the Enforcement Management Model (EMM)

15. The existing regulatory decision making peer reviews programme will continue to ensure consistent application of the EMM in inspection, investigation and enforcement. These involve reviewing regulatory decisions made and comparing them against the expectations set out in EMM for the circumstances considered, sharing good practice and feeding back any changes needed to the regulatory decision making process.. The feedback from these will be used to test whether the EMM is being consistently applied.

Bad debt

16. The level of bad debt will be monitored through the usual financial management structures and will provide the information needed for this PIR.

Consistency of COIN recording

17. This will be monitored through:

- Inspector interviews
- Line management review of ongoing work
- Analysis of patterns of recording across individuals, regions, Directorates and the organisation as part of the wider HSE quality assurance processes

Patterns of costs recovered (individual, region, Directorate, organisation wide)

18. COIN analysis will allow patterns of monies recovered to be identified across HSE. This will give early indications of where issues may be arising such as incorrect recording of activity, or decision making which is not in line with HSE policies.

Type of media coverage of HSE

19. Communications Directorate carries out a survey that reviews the public perception of HSE. This can be monitored before and after the introduction of cost recovery. Additionally, Communications Directorate runs a measure of the balance of positive and negative stories about HSE in the national press. This can also be monitored, and both can feed into this PIR to test some of the uncertainties described in this IA.

Changes to patterns of inspection, investigation and enforcement

20. HSE's work recording systems will be monitored to assess whether there have been changes in patterns of inspection, investigation and enforcement that might be attributable to cost recovery, though the comments made earlier about the difficulty of differentiating those changes linked to FFI or linked to other significant changes apply.

Changes to patterns of reporting (RIDDOR notifications database) vs Labour Force Survey (LFS)).

21. Although there will be changes in the reporting requirements under RIDDOR, patterns of reporting can still be monitored. For example, if there is a significant and continuing reduction in the number of minor injuries reported, this will need to be monitored – particularly if there is no associated reduction in the numbers of similar patterns in the LFS. This will be monitored by HSE statisticians. The comments made earlier about the difficulty of differentiating those changes linked to FFI or linked to other significant changes apply.

22. As part of the evaluation of the HSE Change Programme, it is likely that some in-depth interviews with inspectors and duty holders will take place. Research questions relating to the quantitative measures outlined above will be included in these question sets as they are developed. The HSE change programme evaluation is currently being developed and it is likely that the measures set out in this PIR will be further developed.

Annex 2 - Current situation

1. HSE is the national independent regulator for work-related health, safety and welfare in Great Britain. HSE is responsible for enforcing health and safety legislation, together with over 380 Local Authorities and others. Local Authorities generally enforce in what may be perceived as lower risk sectors such as retail, leisure and entertainment and HSE enforce in traditionally higher risk sectors such as factories and construction etc.
2. HSE's remit is broad and covers everything from nuclear, oil and gas, chemicals and petrochemicals, construction, manufacturing, agriculture and public services. Its operational directorates and agencies are structured around broad business sectors. The Office for Nuclear Regulation (ONR) regulates nuclear installations. The Hazardous Installations Directorate (HID) regulates sectors where there are significant risks to workers and/or the public from large scale explosions, fires or releases of toxic substances. HID deals with offshore oil and gas, onshore chemicals and petrochemicals, explosives, mines sectors and pipelines carrying dangerous substances and facilities that work with biological agents and GMOs using containment measures. Field Operations Directorate (FOD) regulates primarily the manufacturing, construction, agriculture and public service sectors. FOD's work is concentrated on what are known as conventional health and safety risks e.g. falls from height, workplace transport, dangerous dust and fumes and machinery. ONR and HID's work is concentrated on the control of major hazards in their sectors. In addition, there is a Corporate Science Engineering and Analysis Directorate (CSEAD) which has within it a team of specialists in disciplines such as radiation, occupational hygiene and noise and vibration who undertake a relatively small number of inspections in support of ONR, HID or FOD.
3. All HSE Directorates use a range of intervention techniques to influence standards and compliance. These include workplace inspections and investigations, working with trade associations and professional bodies, producing guidance, and working with the EU to ensure equipment and substances are supplied in a safe condition and with appropriate information for users.
4. ONR and HID operate specific regulatory regimes whereby dutyholders have to demonstrate to HSE that they are managing risks effectively. Often this is done through the submission of safety cases to HSE which set out the hazards, risks, control systems and mitigation methods. HSE assesses these cases and, in some cases, the start-up or continued operation of the plant is dependent on this assessment. Consequently, they are sometimes described as permissioning regimes. Because of the high level of risk, the need for public reassurance and the more detailed regulatory requirements, HSE has significant ongoing intervention programmes in these areas.
5. Generally, in these permissioning regimes, the costs of all HSE's regulatory effort is recovered irrespective of whether a material breach has been identified. ONR recovers virtually all of its costs from those it licences to operate nuclear installations.
6. However, not all HID's sites are subject to full permissioning regimes and therefore full cost recovery. HID currently recovers about 60% of its costs. The HID situation, and the application of fee for intervention in the sectors it regulates, are described in more detail in annex 5.
7. Currently, the only cost recovery that takes place in FOD are the costs from prosecutions in England and Wales, which are awarded at the discretion of the court.

Annex 3 – HSE rate-setting models

Fee For Intervention Hourly Rate

1. In the proposed option, costs under fee for intervention (FFI) would be recovered based on the amount of time taken for the intervention, using an hourly rate that will be the same across HSE for all staff directly involved in FFI cost recoverable work. HSE has produced a rate setting model which calculates the expected hourly rate based upon revised financial and operational activity assumptions for 2012/13.
2. This rate-setting model for dutyholders found to be in material breach of health and safety law is based on an estimation of how many inspection, investigation and enforcement days are spent in contact with dutyholders, including office-based work relating directly to those interventions, for 2012/2013 and beyond in areas where cost recovery is not currently taking place. This estimation takes into account, and adjusts for, the changes in inspection policy set out in “*Good Health and Safety, Good for Everyone*”, which would see around 11,000 fewer proactive inspections per year than in 2010/11, as well as a shift from proactive inspections to reactive work in response to incidents or complaints.²⁶ The annual number of frontline days, across HSE, potentially recoverable if a material contravention were found is forecast to be 66,380.
3. This rate-setting model calculates the cost of this inspection, investigation and enforcement time (to the point of laying of Information in England and Wales, or in Scotland on submission to the Procurator Fiscal for a prosecution decision, in cases where a prosecution takes place) across the HSE directorates delivering FFI activity.
4. The first step in this process is analysis of HSE’s internal work recording system to calculate the percentage of time that directorates which will be delivering FFI, expended on these activities in work year 2010/11.
5. The next step was to identify the full costs of the directorates who will be delivering FFI. Those costs include payroll, travel and subsistence, training, and overhead costs such as accommodation, office services, telecoms, corporate services, IT etc. It does not include external research and support, HSL planned research and support, or costs related to activities such as stakeholder engagement and provision of advice and education. It also excludes HSL, and externally contracted, reactive support, which will be charged directly to individual dutyholders.
6. The rate setting model applies the percentage of directorate time expended on FFI activities to the full directorate costs to provide the relevant cost of FFI activity for each respective directorate. Based on this approach yearly potentially recoverable costs from April 2012 were estimated to be approximately £61.0m
7. By dividing the total potential recoverable costs by the expected FFI frontline days (66,380 days as explained in paragraph 2), an hourly rate was calculated. This hourly rate is £124 (corresponding to a daily rate of £918, based on a 7.4 hours day).

Onshore Borehole Hourly Rate

8. In the proposed option the cost of all HSE’s work assessing a dutyholders Onshore Boreholes notification is cost recoverable at a defined rate. This work includes, for example, time spent on planning the assessment, recording findings and communicating with the dutyholder to obtain further information.

²⁶ This shift in inspection policy was implemented in April 2011, and so is part of the baseline for all the options that will be analysed.

9. The specific teams who deliver this particular activity were identified. HSE's work recording data was interrogated to identify, for the specific teams concerned, the percentage of time dedicated to Onshore Boreholes related activity (this activity includes Onshore Boreholes common good related work such as: developing and maintaining guidance to dutyholders, internal guidance to inspectors, consulting and discussing issues with dutyholders and industry specific research and development). Applying the percentage to the full cost of the specific teams concerned and associated overheads provides the cost of Onshore Boreholes work which totals £127k.
10. The full costs include payroll, travel and subsistence, training and overhead costs such as accommodation, office services, telecoms, corporate services and IT are included in the rate.
11. Operational Management provided a forecast of 767 hours Onshore Boreholes activity for 2012/13. Dividing £127k by 767 hours provides an hourly rate of £166 per hour.

Annex 4 – Cost recovery in FOD sectors

1. After adjusting for the changes in inspection strategy outlined in ‘*Good Health and Safety, Good for Everyone*’, the estimate is that, starting April 2012, there will be approximately 57,000 frontline days per year.
2. While all activity associated with inspections, investigations and enforcement was used to calculate the hourly cost-recovery rate, costs occurring after the Information has been laid at Court in England and Wales, or in Scotland on submission to the Procurator Fiscal for a decision as to whether to prosecute, are excluded from this IA. This is because they are already recovered in England and Wales through the courts and cannot under Scottish law be recovered. Data analysis suggests that 80% of enforcement days would therefore be subject to cost recovery. Out of the 57,000 frontline days estimated above, approximately 3,000 are estimated to be devoted to work related to prosecutions, leaving a remainder of 54,000 frontline days which could be potentially recovered if a breach was found.
3. To understand in what proportion of those frontline days a breach would be found, FOD undertook a sampling exercise in which they examined 600 records and judged whether they would have triggered cost-recovery. This required careful examination of any letters sent to determine whether a material breach had been found. Those letters not relating to a material breach were excluded.
4. For days spent on investigations into incidents or complaints, it was found that of those that had not led to the issue of a prohibition or improvement notice, 50% were related to an investigation which found a material breach. If we also include investigations that lead to the issue of a notice, this means that approximately 70% of investigation days would be related to investigations finding material breaches.
5. Of proactive inspections, it was found that 60% of inspection days would be spent on inspections that would find a material breach (whether these led to improvement or prohibition notices or not).
6. It should be noted that this number is based on a sample taken from a year where there would have been a different mix of sectors in those proactive inspections than will be in the years starting in April 2011 (as set out in *Good Health and Safety, Good for Everyone*). Analysis determined that the new mix of sectors is unlikely to significantly affect our assumption for material breach rates.
7. Furthermore, the analysis from the dry run (pilot) of cost recovery, which ran from the 3rd of October 2011 until the 9th of December 2011, also detailed the proportion of inspection days that resulted in a material breach being found. The combination of the sample exercise and the results from the dry run led to the assumptions used in this IA.
8. Applying these rates to detailed estimates on the number of different types of interventions results in an estimate of costs of approximately £36 million to be recovered from dutyholders annually.
9. It should be noted that these estimates are averages and some invoices are likely to be for less, while others are likely to be for substantially more costs than shown here. This is because inspection, investigation and enforcement range from the relatively straightforward to extremely complicated, requiring specialist support.
10. The [recoverable] cost of HSL reactive support to FOD is estimated to be approximately £4 million per annum. There is uncertainty about how much of this sum can be directly attributable to interventions and specific dutyholders for the purposes of regulation, and would thus be recoverable. This would be recovered directly from dutyholders which the

interventions are related to. HSL costs will be recovered through the monthly invoices HSE send.

11. Including the assumption for legacy work, bad debt, and bedding in effects, the estimate of costs actually recovered from non-compliant dutyholders would be £29 million in the first year.
12. Including the assumption for bad debt, bedding-in and legacy work, we estimate nominal costs actually recovered from non-compliant dutyholders for year two to be £35 million and subsequent years to be £36 million.
13. The 10-year present value for cost recovery in FOD would be £290 million. This would all represent a transfer of costs currently borne by HSE, and funded by the taxpayer, to non-compliant dutyholders.
14. Inspections leading to the issue of a prohibition or improvement notice will generate an average of 1.5 days of work, which would result in an average invoice of approximately £1,400. Inspections finding a material breach, but not leading to the issue of a prohibition or improvement notice would require an average of 0.75 days of work, resulting in an average invoice of approximately £690. An estimate for the average invoice for an investigation that found a material breach is 4 days. However, the latter includes only days in contact with the dutyholder, not office-based work resulting directly from the investigation. Total time to be recovered would also include relevant office time. In total, an investigation that lasted 4 days would result in an invoice of approximately £3,700.

Annex 5 – Cost recovery in HID sectors

1. The approach followed to estimate what costs would be recovered from HID-enforced sectors is different to that used for FOD because a number of cost recovery regimes already exist in those sectors. For each sector, we analysed the number of days expected to be spent on intervention activity in the 2012/13 plans across the sectors to be recovered through FFI (Mines, Explosives, Diving, Pipelines and sub/lower tier COMAH). We then determined how many of those days were not currently cost recovered under existing permissioning regimes, and how many were related to activities the cost of which would be potentially recoverable.
2. The profile of each sector in terms of compliance is quite different, so in discussion with HSE sector experts (all of which had inspection experience in those sectors) we obtained estimates for the percentage of days that would find a breach, based on their knowledge of the sector, including analysis of available data.

Chemical industries

3. HID Chemical Industries Division's regulatory responsibilities cover a wide spectrum of economic activities, including onshore major hazard chemical manufacture, distribution, and storage and downstream oil refining.
4. The regulatory system for the highest hazard sites in this area is based on a European Directive ('Seveso Directive') which takes a proportionate, hazard-based approach through a two-tier system of controls based on the quantity of dangerous substances present. This reflects the premise that generally increased hazards equals increased risk although there are exceptions to this, for example, complex processes using lesser quantities of dangerous substances may present a greater risk than a site storing a single dangerous substance. Seveso is principally implemented in Great Britain through the Control of Major Accident Hazards Regulations 1999 'COMAH'. The two tiers of controls are generally referred to as Top-Tier and Lower -Tier COMAH sites. Onshore chemicals sites that do not meet the criteria described in COMAH are referred to in this document as 'non-COMAH' sites.
5. Currently, HID recovers its costs from COMAH Top Tier (TT) sites for all its intervention effort. Cost recovery for most COMAH work at Top Tier sites was implemented with Regulations. Cost recovery was extended in 2008 to the generality of non-COMAH health and safety legislation (Relevant Statutory Provisions, or RSPs) on the basis that poor 'conventional' health and safety performance at the highest hazard sites was strongly indicative of poor major hazard performance. For example, poor management systems for the control of workplace transport risks might indicate poor management systems for the control of chemical processes.
6. At Lower Tier (LT) sites, in line with the policy position taken at the outset of COMAH implementation, HID recovers its costs only in respect of major hazards (MH) interventions; it does not recover costs for work associated with RSPs. This IA considers the introduction of fee for intervention cost recovery at non-COMAH sites, and to what is not currently recovered for interventions in Lower-Tier COMAH sites. It is important to note that HSE has not historically recorded activity data to the same level of detail as that recorded for COMAH work at LT and non-COMAH sites for RSP work.
7. There are approximately 660 sites classified as Lower-Tier COMAH. There are a further 6095 sites in this area that are not subject to COMAH.
8. Based on analysis of the available records and on HSE sector specialists' estimates, in the CI sector we would expect:

9. Approximately 1721 days per year of inspection or investigation in sub / lower tier COMAH sites. Of these, approximately 85% would be related to interventions finding a material breach. The costs of some 1463 days would be recovered.
10. 10 days per year of enforcement in sub / lower tier COMAH sites. Of these, 8 are interventions finding material breaches.
11. In total, therefore, we would expect to recover costs for 1471 days per year in the chemical industries sector. This would correspond to £1.3 million recovered per year (before assumptions for bad debt, bedding-in and legacy work).

Mines

12. HSE's Mines Unit regulates underground mines, the mines rescue service and cableways. This includes coal and non-coal mines, tourist mines, and mines used for storage and waste disposal.
13. The mining sector in Great Britain currently comprises: 18 working coal mines, 78 non-coal mines, (including mines producing other minerals, storage and tourist mines) employing some 6000 people. In addition, there are about 50 other premises. The largest coal mine operator is UK Coal, who own and operate the three biggest coal mines.
14. The 'high hazard' activities in the mines industry are related to:
 15. 10 large mines producing coal and other minerals, all of which have multiple high hazards
 16. 30 other premises with mass transport systems which have high public hazard potential. 3 of these are tourist mines and the remainder are rail mounted cableways (cliff lifts etc)
 17. Some 30 other producing mines with varying degrees of high hazard, more than half of which are micro-businesses.
18. These high hazard activities represent about 95% of the industry's employee base and account for some 85% of inspector time on interventions.
19. The other activities in the sector represent more than 50% of the premises but only 5% of the industry's employee base and to which 15% of inspector time is devoted/ these premises include tourist mines, mines rescue stations, pumping mines, storage mines, discontinued (mothballed) mines and methane extraction sites.
20. Based on HSE sector specialists' estimates, in the mines sector we would expect:
 21. 430 inspection days per annum, 20% of which would be related to inspections finding a breach. We would therefore recover the costs of approximately 86 inspection days.
 22. 203 investigation days per annum. 60% of these would be related to investigations finding a breach. The costs of approximately 122 inspection days would be recovered.
 23. Some 15 days per annum of enforcement activity related to notices. All of these would be recovered.
24. In total, therefore, we would expect to recover costs for about 223 days per year in the mines sector. This would correspond to £200 thousand recovered per year (before assumptions for bad debt, bedding-in and legacy work).
25. It should be noted that this is a sector characterised by high degree of concentration, and we estimate that 80% of HSE costs would be recovered from the top 11 companies in the sector.

Explosives

26. HSE's Explosives Unit regulates health and safety in the manufacture, large-scale storage and transportation of explosives, as well as large-scale ammonium nitrate storage. The common thread is the similarity of the main hazards (fire, explosion and fragment impact) and the control measures and legislation which apply as well as the added – and increasing – element of preventing unauthorised access to explosives whilst avoiding conflict between safety and security.
27. The sector comprises a very diverse group of dutyholders who manufacture or store explosives – from small fireworks companies to multi-site multi-national operators, and includes the MoD. There are some 150 dutyholders operating around 240 HSE licensed sites in the civilian sector, whilst MoD has around 50 licensed sites of significant size. Around 40 of the HSE-licensed sites are subject to COMAH regulations and charges. The sites for which cost recovery is analysed here fall outside the COMAH regime.
28. Based on HSE sector specialists' estimates, in the explosives sector we would expect:
29. 218 inspection days per annum, approximately a third of which would be related to inspections finding a breach. We would therefore recover the costs of some 73 inspection days.
30. 70 investigation days per annum. About half of those would be related to investigations finding a breach, allowing the costs of 35 days to be recovered.
31. Some 54 days per annum of enforcement activity. All of these would be recovered.
32. In total, therefore, we would expect to recover costs for about 162 days per year in the mines sector. This would correspond to £150 thousand recovered per year (before assumptions for bad debt, bedding-in and legacy work).

Diving

33. Diving at work covers a wide range of activities from deep saturation diving in support of the offshore oil and gas industry to recreational instruction by an individual professional instructor. The "diving industry" can be considered as a number of sectors where people need to go underwater to work. With the exception of the recreational sector, diving is primarily a method of getting to a work site that is underwater. Most diving at work takes place in the following sectors:
- Offshore (where costs are already recovered by HSE)
 - Inland/Inshore
 - Scientific/Archaeological
 - Media
 - Recreational
 - Police
 - Military
34. The total population at risk from diving is estimated at around 55,000. This includes approximately 7,000 "professional" divers holding current diving medicals, approximately 8,000 members of the armed forces (includes "recreational at work" diving as part of adventurous training) and in excess of 40,000 members of the public receiving some form of paid instruction every year. HSE's database shows a total of around 450 notified diving contractors of which 10 are Offshore companies and remainder predominantly Inland/Inshore.
35. Based on HSE sector specialists' estimates, in the diving sector we would expect (excluding off-shore diving) 882 inspection days next year, approximately 15% of which would be related to inspections or investigations finding a breach.

36. In total, therefore, we would expect to recover costs for about 133 days per year in the mines sector. This would correspond to £120 thousand recovered per year (before assumptions for bad debt, bedding-in and legacy work).

Pipelines

37. Pipelines and pipeline networks, which transport both non-hazardous and hazardous materials, including, gas, are regulated by HSE. The Pipelines Safety Regulations 1996 (PSR) apply to a wide range of these pipelines. However, where defined dangerous fluids are transported (e.g. high pressure natural gas) the pipeline is defined as a Major Accident Hazard Pipeline (MAHP), and is subject to notification to HSE and additional scrutiny. Furthermore, where a pipeline transports natural gas, they are also covered by the Gas Safety (Management) Regulations 1996 (GSMR).

38. The majority of the work in this sector is already cost recovered (see Annex 1 for details). The only areas not currently subject to cost recovery, and thus analysed in this IA, are:

39. Pipelines connecting an offshore installation to an onshore installation, except that the key parts of the pipelines (risers and connectors) are already covered by other cost recovery regimes

40. Pipelines carrying ethylene (of which there are approximately 1000 kilometres in GB).

41. Most activity in this area is at a pre-build stage and focused on agreeing standards. It would therefore not lead to finding a material breach.

42. Based on HSE sector specialists' estimates, in the pipeline sector we would expect 2300 inspection days next year, approximately 2% of which would be related to finding a material breach.

43. In total, therefore, we would expect to recover costs for about 46 days per year in the pipelines sector. This would correspond to £42 thousand recovered per year (before assumptions for bad debt, bedding-in and legacy work).

Onshore Boreholes

44. Given the potential for the release of hydrocarbons which may result in a major hazard accident at Onshore Boreholes, operators are required to notify HSE before borehole construction, intervention or abandonment operations commence. HSE assesses these notifications to ensure adequacy of borehole integrity and safe operation. This regime is analogous to the permissioning regimes described in Annex 2; therefore, Option 2 proposes that HSE recovers all its costs from dutyholders for assessing these notifications. Assessment includes time spent on the following activities: desktop assessment work, on-site verification inspection work, meetings (wherever they take place), telephone conversations and report writing.

45. There will be occasions when an inspector doing notification assessment work will find a material breach that is subject to cost recovery under fee for intervention. Arrangements are being put into the Fees Regulations 2012 to avoid 'double cost recovery' when a material breach is detected while carrying out functions associated with boreholes' notifications.

46. For the year 2012/13 it is estimated that there will be a total of 104 cost recoverable days. Of these days approximately 5 will be cost recoverable under fee for intervention and 99 will be from activities associated with borehole notification assessment.

47. The cost of the 5 days attributable to fee for intervention will be cost recovered at the fee for intervention rate of £124 per hour (See Annex 3 for details of how the hourly rate is

calculated). The rate to be applied to borehole notification assessment work will be the onshore borehole rate of £166 per hour (See Annex 3 for details of how the hourly rate is calculated). The total 99 days in year 1 would result in the recovery of £120 thousand per annum (before assumptions for bad debt, bedding-in and legacy work).

48. Although the future activity levels for onshore borehole work are extremely difficult to anticipate due to uncertainties around the industrialisation of coal-bed methane extraction and shale gas production, it is thought there will be an increase in borehole activity during our analysis period. This would result in an increase of the number of cost recoverable days spent on borehole notification assessment work. The number of cost recoverable days with respect to material breaches covered by fee for intervention is not expected to change as 5 days is the maximum considered to be valid for the range of 100 – 130 days of annual inspector engagement. To allow for the potential increases, sector experts have estimated the anticipated increase in cost recoverable days as set out below:

Year	Estimated Annual Total of Inspector Days spent on assessment of notifications	Confidence in prediction (High/ Med/ Low)
2012-13	99	Med
2015-16	109	Med
2017-18	119	Very low
2022 -23	129	Very low

49. It is important to note that the confidence in the prediction beyond 2016 is very low.

Biological Agents

50. HSE regulates contained use work with human pathogens and genetically modified organisms (GMOs). Furthermore, since 2008, HSE undertakes inspection and enforcement of work with specified animal pathogens on behalf of Defra and the Devolved Administrations.

51. Biological Agents work does not fall into one sector; it will include dutyholders in the university, health and veterinary care and biotechnology sectors. It is dominated by public funded bodies (e.g. Government Agency laboratories, NHS Trusts, research council funded research institutions), and universities. There is a significant number of private companies, particularly in the pharmaceutical and biotechnology sector, but their risk profile is low.

52. Work with biological agents is divided into four containment levels:

53. Containment Level 1: Laboratories working with genetically modified organisms, which pose no or negligible risk to human or animal health or of harm to the environment. Consequently, there is little proactive engagement from HSE.

54. Containment Level 2: Laboratories working with low risk GMOs and human and animal pathogens (e.g. common cold virus). HSE proactively inspects a sample of these sites as well as investigate mandatory incident reports.

55. Containment Level 3: Laboratories working with micro-organisms that are the causative agents of serious diseases but for which there is effective prophylaxis or treatment (e.g. the causative agents of TB, hepatitis, and bluetongue). This represents a large part of the

sector, and includes NHS diagnostic laboratories, reference laboratories and university research laboratories. The high hazard profile means that much of HSE's inspection effort is targeted to this part of the sector. The majority of containment level 3 laboratories are inspected once every 3 – 5 years on the basis of a generic intervention plan.

56. Containment Level 4: Laboratories working with micro-organisms that pose the greatest risk to human or animal health and cause diseases for which there is typically no effective prophylaxis or treatment (e.g. the causative agents of Ebola fever and foot-and-mouth disease). HSE has individual intervention plans for these laboratories and they are inspected every year.
57. Preparatory work is underway for the introduction of a single regulatory framework (SRF) to consolidate and streamline the current complex legislation that applies to work with human and animal pathogens and GMOs at facilities using containment measures. The SRF will include analysis of cost recovery for the new framework. HSE therefore proposes that in April 2012 cost recovery is not introduced for the regulation of activities involving work with biological agents and GMOs in facilities using containment measures. This is to avoid having one new cost recovery regime applying, only for it to be replaced shortly by another, which we expect would create some confusion and be burdensome for firms in the industry.
58. Consultees were broadly content with this, but after the consultation document and IA were issued the likelihood of introducing the SRF in October 2012 receded. The situation now is that either the SRF or legislative streamlining stopping short of the full SRF will be introduced within around two years.
59. After further analysis the Control of Substances hazardous to Health Regulations which relate to human health (COSHH), Genetically Modified Organisms (GMO) it is recommended that we dis-apply cost recovery to containment level 1 and 2 facilities as well. Biological agents work is regulated under this mix of legislation including COSHH, GMO (Contained Use) Regulations (in part made under the European Communities Act) and the Specified Animal Pathogens Order (entirely made under the Animal Health Act) for risks to human health, animal health and harm to the environment respectively. However, these Fees Regulations would only allow us to recover costs for the first of these. So, work at a given site could well be subject to three sets of primary legislation, only one of which is subject to cost recovery.

HSL support work for HID

60. Additional to these estimates, the cost of HSL reactive support to HID is estimated to be £450 thousand per year, all of which would be recovered and linked to the particular interventions that gave rise to it. As in FOD, there is uncertainty about how much of this sum can be directly attributable to interventions for the purposes of regulation, and would thus be recoverable.

Annex 6 – Cost recovery by CSEAD Inspectors

1. The CSEAD teams that would get involved in activities the cost of which could potentially be recovered are the Radiation; Noise and Vibration; Electrical and Process Safety; Human Factors and Ergonomics; and Medical Inspection teams as well as the Occupational Hygienists.
2. To obtain estimates for each CSEAD team, we analysed the number of days expected to be spent on investigations, inspections and enforcement in the past and assumed the picture would be similar in the future. We then determined how many were related to activities the cost of which would be potentially recoverable.
3. The profile of each team and their activities are different, so in discussion with management and individuals with experience on the field, we obtained estimates for the percentage of days that would find a material breach, based on their knowledge of the sector, including analysis of available data.

Human factors and ergonomics team (HFE)

4. Human Factors, Ergonomics and Work Psychology concerns the interactions between individuals, the jobs they do, the organisations they work for and the environment in which they work.
5. Human Factors, Ergonomics and Psychology (HFE) professionals include both Specialist Inspectors and Scientists. They provide advice and expertise for investigations and enforcement, by assessing safety reports and cases, acting as expert witnesses, working with stakeholders and partners, producing guidance and other supporting material, and developing and trial assessment tools.
6. Based on HSE specialist's estimates, we would expect that the HFE team would engage in approximately 450 days per annum of work directly related to inspections, investigations and enforcement. A high percentage of these are in the construction sector. Of those 450 days, approximately 360 would be related to an intervention in which a material breach is found, and would therefore be recoverable. This would result in £330 thousand being recovered annually (before assumptions for bad debt, bedding-in and legacy work).

Radiation team

7. HSE's Radiation team is a national team made up of radiation specialist inspectors and their support staff. They carry out inspections, investigations and, where necessary, enforcement in all workplaces except those licensed under the Nuclear Installations Act. They also provide specialist advice to other HSE inspectors, dutyholders and the public on technical and regulatory matters concerning both ionising and non-ionising radiation.
8. Based on HSE specialists' estimates, the Radiation team would expect to engage in approximately 70 inspection and investigation days per annum, 25% of which would be related to inspections or investigations where a material breach is found, and would therefore be recovered.
9. In total, we would expect to recover costs for 18 days per year for the Radiation team. This would result in a yearly cost recovery of £17 thousand (before assumptions for bad debt, bedding-in and legacy work).

Occupational hygiene team

10. Occupational Hygienists deal with chemical, physical and biological risks that may affect the health of workers. Most of the work they do is intelligence-gathering and provision of advice. They include warranted inspectors, who engage in inspection, investigation and enforcement that would be cost recoverable.

11. Based on specialists' estimates, approximately 180 days per year are spent on investigation, inspection and enforcement. 65% of those days would be related to interventions finding a material breach, and would therefore be recovered.
12. In total, we would expect to recover costs for 118 days per year for the Occupational Hygienist teams. This would result in a yearly cost recovery of £110 thousand (before assumptions for bad debt, bedding-in and legacy work).

Noise and vibration team

13. The Noise and Vibration team provides specialist support to other parts of HSE, including FOD and HID, in controlling risks from noise, hand-arm vibration and whole-body vibration at work.
14. Based on specialists' estimates, the Noise and Vibration team would be expected to undertake:
 15. 117 inspection days a year, 75% of which would be related to inspections finding a material breach, and the costs of which would be recovered.
 16. 58 investigation days, 75% of which would be related to investigations finding a material breach, and the costs of which would be recovered.
 17. 74 enforcement days, 90% of which would be related to material breaches, and the costs of which would be recovered.
18. In total, we would expect to recover costs for 199 days per year for the Noise and Vibration team. This would result in a yearly cost recovery of £180 (before assumptions for bad debt, bedding-in and legacy work).


Electrical and process safety team

19. Specialist Electrical inspectors and Process Safety specialists provide specialist support to other parts of HSE regarding the application of electrical equipment over a wide range of industrial environments and the protection of individuals from fires, explosions and accidental chemical releases arising from the handling of hazardous materials and dangerous substances in the workplace or from a work activity.
20. It is estimated that in the future, including the period from April 2012, they will undertake approximately 148 days a year of such work. Specialists' estimates are that about 50% of those days would be related to interventions finding a breach.
21. In total, we would expect to recover costs for 74 days per year for the Electrical and Process Safety teams. This would result in a yearly cost recovery of £68 thousand (before assumptions for bad debt, bedding-in and legacy work).

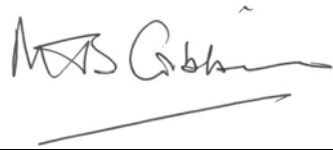
Corporate Medical Unit (CMU)

22. HSE's corporate medical resource is made up of physicians, biomedical scientists and medical inspectors. Medical Inspectors provide specialist support to other parts of HSE on all aspects of occupational health.
23. Based on specialists' estimates, medical inspectors would expect to spend approximately 79 days a year on investigation, inspection and enforcement, 60% of which would be related to interventions finding a material breach and the costs of which would be recovered.
24. In total we would expect to recover costs for approximately 47 days per year for CMU inspections. This would result in a yearly cost recovery of £43 thousand (before assumptions for bad debt, bedding-in and legacy work).

25. Medical Inspectors would also expect to spend approximately 10 days a year on reactive investigation, inspection and enforcement for pesticides. It is unlikely that these will lead to a material breach and therefore these would not result in any cost recovery.

 Regulatory Policy Committee	OPINION	
Impact Assessment (IA)	Impact Assessment for the Proposed Replacement of the Health and Safety (Fees) Regulations 2010	
Lead Department/Agency	Health and Safety Executive	
Stage	Final	
Origin	Domestic	
Date submitted to RPC	20/01/2012	
RPC Opinion date and reference	03/02/2012	RPC11-HSE-0970(2)
Overall Assessment	AMBER	
<p>The IA is fit for purpose. The department have made good use of the consultation process to gather the evidence which underpins their analysis. However, the IA should provide more information explaining clearly the cases that would be considered as “material breach”.</p>		
<p>Identification of costs and benefits, and the impacts on small firms, public and third sector organisations, individuals and community groups and reflection of these in the choice of options</p>		
<p><i>Options.</i> The department has refined one of the seven options considered during the consultation and proposes this as the preferred option. The IA would benefit from providing a clearer comparison of the impacts of all options considered (particularly in terms of their economic impact) to justify the selection of the preferred option.</p>		
<p><i>Material breach.</i> The IA says the costs of health and safety interventions will be recovered from businesses that are found to be “in material breach of health and safety law”. During consultation stakeholders raised a concern that the definition of material breach was not clear. The IA should discuss how this concern has been dealt with, and how it affects the costs and benefits of the proposal. The RPC notes that a separate HSE document on the outcome of consultation provides a clear explanation of “the material breach”. The IA should either include this information or provide a clear reference to the document.</p>		
<p><i>Consultation.</i> The department have made good use of the consultation period to gather evidence relying both on feedback from stakeholders and evidence gathered during a ‘dry run’ of the new system.</p>		
<p>Have the necessary burden reductions required by One-in, One-out been identified and are they robust?</p>		
<p>As the measure relates to changes to fee levels, where the level of regulatory activity has not changed, the main proposal is out of scope of the One-in, One-out. However, the additional cost to businesses (£16,000) related to successful appeals are in scope. Therefore, the IA claims the proposal is a regulatory measure (“an IN”) with a Equivalent Annual Net Cost to Business (EANCB) of £0.016m. This is consistent with the One-in, One-out Methodology and provides a reasonable assessment of EANCB.</p>		

Signed

A handwritten signature in black ink, appearing to read "Michael Gibbons". The signature is written in a cursive style with a long horizontal stroke at the end. There is a small mark above the letter 'i' in "Gibbons".

Michael Gibbons, Chairman