

Rt Hon. the Lord Goodlad
Chairman
Secondary Legislation Scrutiny Committee
House of Lords
London
SW1A OPW

5 July 2012

Dear Lord Goodlad

HEALTH & SAFETY EXECUTIVE (HSE) – FEE FOR INTERVENTION

I understand that the HSE's Fee for Intervention legislation is scheduled to be considered by your Committee next week.

The Chemical Business Association (CBA), representing companies in the UK chemical supply chain supports the principle that those in clear breach of regulations should pay the fair and proportionate costs associated with that breach. We have, nevertheless, opposed these proposals since their inception. We believe they are disproportionate and are more to do with revenue generation than the impartial regulation of business. They also run counter to the Government's expressed policy of reducing the regulatory burden on business.

For these reasons, which are outlined in more detail in this letter, we would urge you and the members of your Committee to reject the HSE's proposals.

Revenue Generation

The underlying philosophy of Fee for Intervention was first outlined in a speech by the Chair of HSE, Judith Hackitt. She said, "Ministers have also encouraged us to look at ways in which we can replace Government funding with income from other sources and we are currently in the process of developing proposals in this area. It is not clear at this stage the extent of recovery that we will be able to implement or how much this will offset the 35 per cent reduction."

Fee for Intervention was clearly designed to generate revenue in order to balance the planned reduction in the HSE's budget. It was never intended to fulfil a regulatory need.

Regulatory Policy Committee

Fee for Intervention was one of the topics which CBA raised with Ministers and the Chair of the Regulatory Policy Committee (RPC). The Business and Enterprise Minister, Mark Prisk, replying to this aspect of CBA's concerns, wrote, "There is a need to ensure that this (new fees and charges) does not unnecessarily impose disproportionate burdens on business. ... I have asked my officials to undertake further work to understand the scale of the impacts."

The RPC itself has recommended (2011 Report, paragraph 3.32) that the question of new fees and charges should be brought within the scope of 'One-in, One out' and therefore become subject to the RPC's review.

Impact Assessments

Because Fee for Intervention takes the form of an amendment to existing secondary legislation, it appears to be outside the provisions requiring formal scrutiny by the RPC. The HSE has nevertheless made two informal gestures towards transparency, neither of which is satisfactory from CBA's perspective.

It has published the interim results of the ongoing 'dry run' of its proposals. According to HSE, this research was conducted by one seconded social researcher. Unsurprisingly, the report is entirely favourable. This 'dry run' represents inadequate scrutiny of proposals containing a significant cost impact for business.

HSE did publish a form of Impact Assessment alongside its original consultation document. As this Assessment is extant, we believe it should be reviewed by the RPC. By submitting to this process, HSE would help to dispel the contention that the underlying motivation of Fee for Intervention is revenue generation.

Relationships

From the outset, business organisations have expressed concern that Fee for Intervention would fundamentally alter and potentially damage the relationship between business and HSE. The pressure on HSE Inspectors would be to generate an annual revenue target, rather than regulate business impartially.

The interim report of the 'dry run' makes it clear that HSE Inspectors themselves have echoed this concern. The HSE's official response is that it will issue guidelines to clarify the role of Inspectors. Anyone who has ever worked in an organisation with annual revenue targets will recognise this approach as wholly unrealistic. It is worth recalling that the budget shortfall faced by the HSE is 35%.

Disproportionate and Expensive

We understand that that HSE's intention is to charge a significant fee when a 'material breach' is identified as well as a substantial hourly rate for dealing with appeals. These fees will be charged to all businesses, regardless of size - meaning that smaller firms will be subsidising larger businesses with more complex problems.

The appeal panel adjudicating on disputes only has one 'independent member' who faces being consistently out voted by the majority HSE members. This system is not the fully independent panel proposed by CBA. It will prove expensive, lack transparency, and be structurally imbalanced. The process amounts to little more than a blank cheque payable by business to HSE. The scale and complexity of today's regulatory framework means HSE will be able to visit virtually any business it regulates and find something that could amount to a 'material breach' and therefore invoke its proposed charging regime.

Material Breach

Fee for Intervention only becomes effective once a 'material breach' is identified by a HSE Inspector. 'Material breach', however, has only been defined by HSE in very general terms. The test therefore remains subjective. This is likely to introduce inconsistency and a lack of certainty for business.

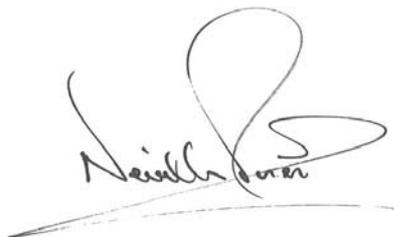
CBA has argued that 'material breach' should only arise in circumstances that also require the issue of a statutory notice (Improvement or Prohibition). This removes uncertainty in respect of other forms of intervention and provides HSE Inspectors with a clear charging threshold that they already understand. This approach may not, however, generate the required level of revenue for HSE.

About CBA

CBA's membership consists mainly of chemical distributors and providers of logistic services to the chemical supply chain. Each year, CBA'S distributor members handle more than 2.2 million tonnes of chemicals with a market value of almost three billion euros; its logistics services providers handle over 6 million tonnes of chemicals. Most of CBA's members are SMEs, though its membership also includes major pan-European and global distributors. CBA members are the key industry interface with thousands of downstream chemical users.

We would be pleased to meet with you to amplify any of these points. If you have any immediate queries or would like further information, please let me know.

Yours sincerely



Dr Neville Prior
Chairman, CBA