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The business people – an extension to your team

# **Fee for Intervention Statutory Instrument**

Forum of Private Business submission

**July 2012**

## Introduction

1. The Forum of Private Business (FPB) is a proactive, not-for-profit organisation providing comprehensive support, protection and reassurance to small businesses. We add value to businesses through the collective voice for members in local, central and European government, and the provision of tailored solutions that promote business success.
2. The FPB believes - like its members - that businesses who seek to deliberately ignore and flout health and safety rules should be brought to task. Our members - who take great financial and administrative pains to ensure they are compliant - fully support a clampdown on any less diligent competitors. However, our members are equally clear that they want the Health and Safety Executive to help them achieve - and maintain - compliance, not punish them when they fall short. The FPB has consistently argued against elements of the Fee for Intervention proposal. The major concerns are outlined below.

## Consistency of Inspection

3. Among FPB members there are general concerns about whether the Health & Safety Executive should be put in a cost recovery position *and* be responsible for ensuring consistency of local inspections. Some businesses felt that this could indirectly lead to a redefining of the 'material breach' concept whilst others felt that third parties (i.e. HSE contractors) should be involved. Either way, the delicate balance of trust between business and regulators could be further complicated by the subjective nature of what constitutes a "material breach". Whether or not an individual issue equates to such a breach comes down to the opinion of an individual inspector.
4. Given the subjective nature it is likely that marginal calls will be different between inspectors, creating in all likelihood a postcode lottery for businesses. The FPB questions whether the principle of cost recovery will have the unintended consequence of undermining the confidence of businesses in health and safety inspectors.
5. The FPB would like to see a greater understanding across government of the financial demands on business at present, in this case by consultants and the Health and Safety Executive. There needs to be an understanding shown by enforcement officers that businesses face a number of inspections from multiple agencies across all aspects of their business. It is not in a business' interest to have lax health and safety procedures, as the entire business can suffer.

## Certainty of Advice

6. Based on the government spending freeze in marketing, the FPB suspects there will be minimum budget to market a new Fee for Intervention scheme. For some businesses, the principle of cost recovery for material breaches will be new and many will not even be aware of it until an Inspection Officer informs them of a breach. Given this, it is vital that the procedure that follows the discovery of a material breach is clear, concise, transparent and fixed, to provide certainty.
7. One of the increasing costs to business upon which the Government can have a positive impact is clear advice. FPB members have seen a marked increase in the use and cost of external advice over the past two years. Unlike large companies, small firms do not have internal resources dedicated to complying with regulations, so either the business owner or a key senior manager is forced to devote a large amount of time to this task - an average of almost 40 hours each month - or they have to pay for an outside consultant, which can be extremely expensive.
8. What is needed to avoid costly outsourcing is simple, consistent advice. Of the recommendations in Lord Young's report on health and safety, businesses were most positive (86%) about consolidating health and safety regulations into a single set of accessible regulations. Certainty for business will allow many to deal with issues directly, rather than facing the cost of outsourcing their compliance duties. Small firms pay almost £6 billion per year to outside consultants - more than a third of their £16.8 billion annual red tape bill. On average each firm hands over £4,900 per year to companies - of this external health and safety support costs almost £986 million per year.

## Clarity of cost recovery procedure

9. The FPB has concerns over both the rate and payment procedure for Fee for Intervention. Businesses on our Health and Safety Panel were asked in May whether recovery costs should be scaled according to the size of business, the seriousness of the breach or based on a flat fee. Overall, 62% felt the size of business should be taken into account for. Over 90% felt that either the size of the business or the seriousness of the breach should have an impact on the size of the fee. Just 3% of businesses argued that businesses should pay the full cost of the operation.
10. The FPB believes fees should be scalable according to the size of business. Larger businesses require larger inspections and often more detailed analysis. Further, the enforcement process after inspection is a prescriptive one, and identical breaches at a micro or a large business require the same enforcement follow-up process proportionate to that size of business.
11. Fees charged will be more readily absorbed by larger businesses than smaller ones. This is a point noted in the Small Firms Test section of the Impact Assessment for this proposal. This states,

*'...cost recovery might affect smaller duty holders disproportionately. The amount recovered would be related to the amount of time it takes identify the material breach, plus the cost of any enforcement action. This would not be directly proportional to the size and capacity of the duty holder to pay. We would expect interventions in smaller premises to take less time, but the time taken would be related to the complexity of the breach, remedial and enforcement action rather than being exactly proportional to the size of business.'*

The FPB has recommended the HSE consider phasing costs to ensure that smaller firms are not hit disproportionately. This recommendation has been ignored to date.

12. The HSE consultative document detailed that an expectation to pay fees within 30 days, following which normal credit control action will be taken. The FPB was pleased that billing will be on a monthly basis, consisting of invoices related to ongoing cost recovery, rather than presenting a business with a final - and potentially much larger - bill at the end of the process.
13. Our concern relates to the inflexibility of arranging repayment terms. It is not the intention for HSE to inadvertently shut down a business but in a time where cost pressures are continuing to grow, a further cost to the business imposed by the HSE - in addition to the cost of rectifying any material breach/es - could tip some into failure. The FPB called on the HSE to ensure a service that would allow businesses to pay costs over a more sympathetic period of time - one that can be negotiated once the fee has been accepted by the business. In most cases this will not be necessary, but the capacity should still exist to help those businesses afford payment to the HSE.
14. In conclusion, HSE and local regulators are beginning to take many positive steps in their interactions with small businesses. The proposed statutory instrument threatens to undermine that relationship as it is improving, with businesses adopting a more defensive stance in fear of the fining powers of the HSE. It also sets a dangerous precedent for other regulators to charge.

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\*All figures used in this submission are taken from Forum of Private Business research reports.