

To: Merits of Statutory Instruments
Committee

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Ref: NFU/MERITFFI-DRAFT

Subject:

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NFU submission to the Merits of Statutory Instruments Committee: The Health and Safety (Fees) Regulations 2012

1. The NFU represents more than 55,000 farming members in England and Wales. In addition we have some 40,000 countryside members with an interest in farming and the country. The NFU welcomes the opportunity to make a submission to the Merits of Statutory Instruments Committee
2. The Health and Safety (Fees) Regulations 2012 were Made on 25th June 2012 and Laid before Parliament on 28th June 2012. They come into force on 1st October 2012. We are concerned by the introduction of fees for intervention (regulations 23 to 25) payable in respect of contraventions of statutory provisions for which the Health and Safety Executive (HSE) is the enforcing authority.

Background

3. In March 2011 the government announced a package of measures to reform the health and safety regime in Britain, which included provisions to allow HSE to recover costs. The rationale was that “it is reasonable that duty holders that are found to be in serious material breach in standards – rather than the tax payer – should bear the related costs incurred by the regulator in helping them put things right.”
4. HSE published its proposals for extending cost recovery in the late summer of 2011 for consultation. The main element was that if a material breach of health and safety law is found and a requirement to rectify the breach is formally made in writing (e.g. by way of improvement and prohibition notices, electronic mail or letter), HSE would recover all the costs of that intervention. Following the consultation, the Fee for Intervention (FFI) scheme was proposed, with an estimated hourly rate for FFI of £124. The scheme was due to be implemented on 6th April 2012, but was subsequently delayed, and will now be introduced on 1st October.

NFU concerns with the new regulations

5. Whilst we are supportive of the principal that offenders should pay for the costs of investigations, we believe that the FFI scheme is seriously flawed. In particular we would like to bring the following issues to the committee’s attention:

- a. HSE says fees will only be recovered in the case of a material breach, but this is not specified in the regulations. There is nothing in the regulations to prevent the HSE changing their approach on this (i.e. any breach, not just material). Furthermore, although HSE has made some attempts to define what it means by material breach, it remains unclear, and there is a high risk that it will be interpreted differently by different inspectors.
 - b. The regulations do not specify how the level of fees will be calculated, and instead this is left to the HSE. This leaves uncertainty for businesses. The current hourly rate of £124 seems disproportionately high, and is excessive when compared to other farm inspections, but without statutory basis it is difficult to challenge the HSE's calculations.
 - c. There is a disincentive to appeal when a material breach has been notified and a fee levied. The appeals process will also be subject to FFI, and so could lead to significantly greater costs for a farmer.
 - d. The exclusion of Local Authorities (LAs) and the businesses they inspect from the scheme creates an uneven playing field. For instance, a defective forklift truck in a warehouse maybe issued with a Prohibition Notice by a LA, but the business would not be charged; whereas a nearby farmer found to have a defective rough terrain forklift would, on being issued a Prohibition Notice by the HSE, subsequently be charged a FFI.
 - e. The consultation process was inadequate. The NFU responded to the original consultation at the end of 2011, yet has had no official correspondence from the HSE informing us of the outcome of the process. The NFU has only been made aware of the FFI scheme through several safety meetings where it came up in discussion. The lack of publicity of this scheme meant that we had to react quickly in preparation for the original April 1st commencement date, involving considerable cost to ensure our members were aware of the scheme. We were then informed of the postponement of the scheme only three weeks before the date it was due to start. We were extremely disappointed that the very real concerns we raised about the scheme, and outlined above, seem to have been ignored completely.
6. Estimated guideline figures seen by the NFU show that costs could be in the region of £620 for an inspection and possibly double for service of a notice. This could be even higher where the HSE needs the opinion of a specialist third party consultant. Many of our members are small, often family run businesses. If an accident occurs, this financial burden will only add to the great emotional and economic strain that the family is under.
 7. Despite this significant financial burden on businesses, we do not believe it will lead to improvements in the health and safety performance on farms. The HSE proposals come at a time when the industry is working hard to improve its safety record. For instance, the Farm Safety Partnership is going from strength to strength, with 25 partner organisations now signed up and working together to secure improvements. The NFU believes the FFI could result in more time and money spent disputing bills, and deterring farmers from reporting accidents, rather than encouraging the industry to work proactively to improve safety.