

Fee for Intervention

The date 1 October 2012 heralded a major change in how the HSE recovers its costs.

What is FFI?

The scheme, Fee for Intervention (FFI), came into force under The Health and Safety (Fees) Regulations 2012, with those who break health and safety laws being liable for recovery of HSE's related costs, including inspection, investigation and taking enforcement action. Through their work, HSE's inspectors inspect work activities and investigate incidents and complaints. If, when visiting your business, they see material breaches of the law, you will have to pay a fee. The fee is based on the amount of time that the inspector has had to spend identifying the breach, helping you to put it right, investigating and taking enforcement action.

The good news, however, is that the many businesses that comply with their legal obligations will continue to pay nothing!!

Why is FFI being introduced?

HSE and the government believe it is right that businesses that break health and safety laws should pay for HSE's time in putting matters right, investigating and taking enforcement action. Before FFI was introduced, this was paid for from the public purse.

FFI will also encourage businesses to comply in the first place or put matters right quickly when they don't. It will also discourage businesses who think that they can undercut their competitors by not complying with the law and putting people at risk.

Will FFI apply to me?

FFI only applies to work carried out by HSE's inspectors so if your business is inspected for health and safety by another regulator, such as local authority environmental health officers, it will not apply.

FFI will apply to all businesses and organisations inspected by HSE, except for:

- self-employed people who don't put people at risk by their work;
- those who are already paying fees to HSE for the work through other arrangements; and
- those who deliberately work with certain biological agents

What is a material breach?

A material breach is where you have broken a health and safety law and the inspector judges this is serious enough for them to notify you in writing. This will either be a notification of contravention, an improvement or prohibition notice, or a prosecution.

Before deciding to notify you in writing, the inspector must apply the principles of HSE's Enforcement Policy Statement (www.hse.gov.uk/pubns/hse41.pdf) and Enforcement Management Model (www.hse.gov.uk/enforce/emm.pdf) to ensure their decision on the level of enforcement action is proportionate to the circumstances they see.

Examples of material breaches include:

- not providing guards or effective safety devices to prevent access to dangerous parts of machinery; or
- materials containing asbestos in a poor or damaged condition resulting in the potential to release asbestos fibres.

The inspector's written notification will make it clear which contraventions are material breaches where a fee is payable.

How much might it cost me?

The inspector will record the time they have spent identifying the material breach, helping you to put it right, investigating and taking enforcement action.

This will include time spent:

- carrying out visits (including all the time on site during which the material breach was identified);
- writing notifications of contravention, improvement or prohibition notices, and reports;
- taking statements; and getting specialist support for complex issues.

The Fee for Intervention hourly rate for 2012/13 is £124.

It is estimated that the average charge will be £750 where there is no resulting prosecution, and at least £1500 where a prosecution follows, with obviously further costs for the court action and possible fines.

Where can I get further information?

HSE's *Guidance on the application of fee for intervention* HSE47 gives more detailed information about how FFI will work, what a material breach is, how inspectors make decisions about what action they will take when a business is breaking the law, and how queries and disputes are handled. This is available at www.hse.gov.uk/fee-for-intervention/index.htm. The guidance is also available to purchase in print from www.hse.gov.uk/pubns/hse47.htm.

Additional Information

It has become apparent that, if more than 1 Inspector visits your premises, due to particular expertise or specialism, you will be charged for the time of both Inspectors.

This is very sneaky and something to be aware of if you receive a visit!

Never forget that you cannot refuse entry to an Inspector – they have a right to enter any premises at any reasonable time.

The definition of a Competent Person

I am often asked:

- How do I establish the competency of the H&S officer/representative within a company?
- Can you advise what would be needed to class as a competent representative?
- Is there a relevant certification that would need to be obtained to be seen as competent? If this requires courses, etc. who provides these and what costs should we expect to pay?
- What are the consequences for the company if the person is not trained to an appropriate level, and who would be liable if there was an incident?
- In your opinion is it better to handle these requirements internally and arrange to train someone, or is outsourcing this part of the business something that would be acceptable. If we outsource, are we ultimately outsourcing the liability?

My answer to these, with the exception of the bottom question, would be that competence is an issue that is inextricably linked to the risks within the organisation. It would be expected that the nominated competent adviser would have the training, knowledge, experience and understanding proportionate to the risks that they advise upon. A key element of competence is the ability to recognise the limits of one's ability and be able to ask for help when necessary. There is no specific qualification to meet the legal standard of competence and it can be argued that experience is more important than paper qualifications. However, there are a range of courses available.

In these days of litigation, litigation, litigation, however, the ultimate test of competence will be a matter for the courts. While many organisations publish minimum requirements these are not set out in law and would be decided on a case-by-case basis. It is vitally important to remember that health and safety competence applies across the workforce and not just to a safety specialist

With regard to the last question, I believe that in the majority of instances that Health and Safety is better handled within an organisation. An odd answer you may think considering my chosen job status, but let me clarify:

Where I work with an organisation on an on-going basis, I think it vitally important to work as part of the team, rather than an 'outsider'. If requested, I will also look within that time to help to progress the nominated Health and Safety representative to become competent. Once an acceptable level of competency has been reached, I will then continue to be available in an advisory capacity.

I can also provide training solutions to assist on the way to competency. I can provide short courses on a bespoke basis, or provide a solution for nationally recognised courses through an arrangement with a training colleague. This includes IOSH Managing Safely and NEBOSH General Certificate.

Using Competent Contractors

Most companies will look to use contractors when maintenance or repair works are due in their premises. However, this can raise questions with regards to Health and Safety awareness, and also liability if the contractor has, or causes, an accident.

How can you ensure you are covering your legal responsibilities?

What should you do?

Any person completing works for an employer needs to be competent. This does not differ when using a contractor, even if they are a small company or 1 man band.

In an ideal world the following should be requested prior to works taking place:

- A copy of their own health & safety policy.
- Insurance liability details
- A method statement for the work to be done safely.
- Risk assessments for the work.
- Copies of any certificates or licenses for plant operation their employees may have.

If the contractor has less than 5 employees, then some of the above may not be available. In this instance, the minimum you will need is Insurance details and a Method Statement with appropriate Risk Assessments attached.

What happens if you do not have this information?

As an employer, you are responsible for persons working on your premises. This therefore includes contractors, although they also have responsibility for their own actions too.

Therefore, you must be stringent in requesting the above, even if they have worked for you for a long time. Ask yourself, 'what would happen if.....?'

In addition, it is essential you keep control of who is on your premises. Therefore, insist contractors sign in and out daily by completing your visitor's handbook.

Best practice would be to have a list of all those who work as contractors, with brief details of the work they undertake. Then send them all a document outlining your "Control of Contractors" before they are due on site. Request that this is signed and returned to you and ensure your record of Insurance details is updated on an annual basis.

This document should outline site rules, including emergency procedures, set the condition of liaison and communication between parties and determine the works/inspections that will be completed. With large companies, the majority of this information is provided freely and willingly. However, with a small company, this is not always the case, and in the event of an emergency the need to repair may be such that immediate action is required. Insist that this is completed and returned to you, as otherwise you may be vulnerable.

How can you judge that you have made the best effort to validate the competency of those coming to site? Also, what action should we be taking to ensure that we can provide best defence should something go wrong?

The key is basing your requirements on risk. Some maintenance or repair work, such as that required on a roof, can be notoriously risky, and needs careful planning. Some works can also be urgent, but by implementing the above, you may be able to have some contingency plans in place when this is the case. If you follow the above steps, you will have gone a long way to cover your responsibilities.

What do your staff know about Health and Safety?

The results of a recent survey have been published, with over 1500 employees questioned on a number of subjects relating to the health, safety and fire procedures at their workplace.

What did it find out?

Regarding the level of awareness of general procedures, around 75% of respondents were 'unaware' of health and safety procedures. Only 6% answered 'very knowledgeable' (replies were either 'very knowledgeable', 'moderately knowledgeable' or 'unaware').

Do you have a Safety Manager?

Many of answers were along the lines of 'we might do, but if so, we don't know who they are!!' Less than 33% confirmed that they were aware of the existence of such a person in their organisation.

Fire Safety

Unsurprisingly, most were equally clueless about fire safety procedures. This time only 20% confirmed that they knew them well.

What can be learned?

Although it is tempting to dismiss the findings, it is worth asking yourself:

'What response would my staff give if asked the same questions?'

'Do they know what to do in the event of a fire?'

'Have they read, understood and signed our Risk Assessments?'

How can you ensure compliance?

Complete a Health and Safety Induction with all staff then they start their employment. Include the above points and make sure they sign to say they have been given the training.

Remind existing staff

If you think that staff may have forgotten what they have been told, re-induct them or give them the information again. All you need to do is go over the basics.

Don't leave it there!

Keep training as a regular topic. Give fire safety training every year or so. Record all training. Remember to keep the extent of any training linked to the level of risk within your business. Keep it short and simple if you work in an office, but if you are in a large warehouse, that might not be sufficient!