

## HSE plans to recover costs

**One of the greatest contributions of the HSE to date has been the willingness of its Inspectors to provide good advice, formally or informally, orally or in writing, and to avoid the need for formal action, where the Inspector has taken the view that work activity is taking place in a manner which breaches health and safety regulations.**

However, if recent proposals are approved, you are more likely to find yourself with an expensive bill than a friendly bit of advice, and an Inspector motivated to take formal action.

The 14th October 2011 marked the end of a 3 month consultation period in which the HSE invited views on controversial plans to introduce 'charges' for the Inspections of firms who are found to be in breach of health and safety rules and regulations. At an hourly rate of £133, these charges are likely to become very significant for industry.

The charging regime is intended to be triggered where the Inspector forms the view that a 'material' breach of regulations has been discovered. A material breach is defined as a failure to adhere to health and safety law which requires formal action (letter, notice etc.). Whilst therefore it appears not to be a replacement for situations which warrant only a gentle word of advice, it certainly could motivate Inspectors to elect to take formal action to justify his decision to render a bill.

**Whilst the general nature of the proposals was clear from the consultation document, only scant detail was provided on important practical matters such as:**

- How the time spent by the HSE on site, and their 'follow up' activities, will be recorded so as to ensure that firms will be invoiced accurately, and what training inspectors are to be provided with to achieve this;
- How the differences in individual inspectors' speed, experience and competencies will be taken into account;
- How travel costs will be calculated fairly so as not to disadvantage those who are operating on the edge of a HSE region;
- When the cost recovery process for each individual breach will end; and
- Whether Officers will have financial targets.

The striking concern for firms who experience frequent visits by the HSE will be the potential impartiality of Inspectors operating under a system which arguably prioritises fault finding to kick start of the cost recovery process, instead of providing firms with helpful advice or an informal opportunity to improve. It will no doubt deter well-meaning firms proactively seeking advice from the HSE for fear of alerting them to possible breaches of regulations.

The proposed appeal process fails to inspire confidence as it is intended to be handled by senior HSE employees; the system clearly cries out for an independent adjudicator. Also of concern is the lack of information in the consultation document regarding the handling of charges incurred in issuing an enforcement notice which is subsequently overturned by the Courts. We suspect that in line with other HSE charging regimes it is intended that regardless of the outcome of an appeal, the HSE will remain able to bill for their time up to the point of submission of a Notice of Appeal, even if the Court subsequently concludes the Notice was wrongly issued.

Disappointingly, there is little comfort provided in the consultation document regarding the provision of funds and appropriate training for Inspectors to prepare them for the new regime, and when the scheme is tested through disputes, companies will be frustrated to find that all time spent in dealing with disputes is also chargeable.

It is clear that if implemented these proposals are going to prove costly to industry, both directly through the imposition of charges and indirectly through increased enforcement action and the damage to reputation that causes. The HSE will now evaluate the responses to the consultation exercise and final proposals will be presented to the Minister of State for Employment for laying before Parliament.