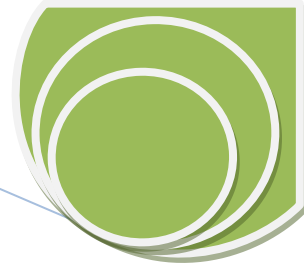


SHREC SHEET



No 6 FEES FOR INTERVENTION (FFI)

The Health and Safety (Fees) Regulations 2012 came into force 1st October 2012. The new law allows the Health and Safety Executive (HSE) to partly recover a decrease in their funding by charging organisations for the time and effort it takes them to identify and investigate breaches of health and safety law and for subsequent enforcement action. This cost recovery scheme is known as the “Fee for Intervention” scheme (FFI).

These fees are independent of any fines received from enforcement authorities.

The principles behind the scheme are that: -

- It is deemed reasonable that duty holders in ‘material breach’* of health and safety legislation should bear the costs incurred by the HSE in helping them to put things right.
- It will provide an incentive for businesses to operate within the law, levelling the playing field between those who comply and those who do not.
- FFI applies to most business enforced by the HSE. FFI does not currently apply to, e.g. fire legislation, food legislation and premises enforced by local authorities.
- FFI does not apply to e.g. employees or to self-employed people if they are **only** a risk to themselves.

In a statement, the HSE confirms that “*The Government has agreed that it is right that those who break the law should pay their fair share of the costs to put things right - and not the public purse*”.

*A ‘material breach’ (or contravention of the law) is where, in the opinion of the HSE inspector, there has been a breach of health and safety law which requires the HSE to make a formal written intervention, e.g. by way of Prohibition or Improvement Notices, visit report, e-mail or letter.

FFI is currently not planned for Northern Ireland.

The HSE assess material breaches under the following general headings: -

Health risks: e.g. activities that might lead to the exposure to harmful substances such as dust, fume and chemicals or where the workplace or activities may cause health effects from noise or vibration. Symptoms could be immediate or could show long term, e.g. asbestos, asthma, hand arm vibration, Legionnaires’ Disease, musculoskeletal disorders (MSDs), noise induced hearing loss.

Safety risks: where an accident occurs and may cause an immediate traumatic injury, e.g. contact with moving machinery, falls from height, contact with vehicles, burns from flammable liquids.

Welfare breaches: relate to controlling health risks, or are a basic right of people in a modern society.

Management of health and safety risks: failure to control the risks, e.g. no risk assessment, lack of training, or lack of access to competent advice.

Examples of a material breach include: -

- Work at height: e.g. where there is a failure to adequately plan or supervise work at height or to ensure that workers are competent to work at height, or use safe equipment or a failure to choose the right equipment or inspect/maintain work at height equipment.
- Asbestos: e.g. undertaking work on suspected asbestos containing materials with limited or no controls to prevent the release of asbestos fibres or failure to inform maintenance workers of the presence of asbestos.

SHREC Sheet		06
	Page 1 of 7	
Issue 1.01 – Dec 2012		Version No: 5.0

SHREC SHEET



- Hazardous substances: e.g. failure, where relevant, to:
 - Provide personal protective equipment.
 - Respiratory protective equipment.
 - Have effective extraction systems.
 - Thoroughly examine/test extraction systems at suitable intervals
 - Prevent dry-cutting or sawing of stone or concrete products producing hazardous levels of dust.
 - Prevent dry-sweeping in a woodworking shop or bakery leading to large quantities of dust in the air.
 - Provide adequate information, instruction and training to employees about the risks and precautions.
- Welfare: e.g. where there is a lack of readily accessible working toilets, suitable washing facilities or a lack of an adequate supply of drinking water.
- Musculoskeletal disorders (MSDs): e.g. failure to provide instructions/training on safe systems of handling relevant to the task, where there are significant risks.
- Machine guarding: e.g. failure to have adequate guarding or effective safety devices in place.

Further examples of material breaches are included in Appendix 1.

HSE approach

The HSE will be able to check for breaches during announced or unannounced visits or as part of an investigation/follow up of a complaint or reportable accident.

Thus, the HSE could visit any workplace (irrespective of size), where they are responsible for enforcing, e.g.: -

- Factories.
- Farms.
- Building sites.
- Schools and colleges.
- Gas, electricity and water systems.
- Hospitals and nursing homes.
- Dentists, Doctors.
- Central and local government premises.

Under FFI the HSE are more likely to target the higher risk industries, e.g. construction and engineering and those with a history of poor performance.

During inspections, HSE inspectors are obliged to follow standard principles set out in a document entitled 'Enforcement Management Model' (EMM), before taking further legal action about any risks associated with the contravention.

The Model requires the following stages to be considered: -

Stage 1: What is the actual risk?

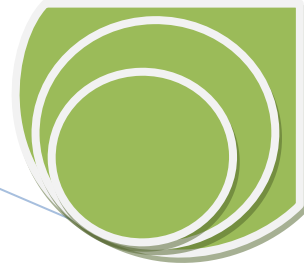
Stage 2: What standard of compliance does the law require and what level of risk is left when the law is complied with?

Stage 3: Identify the risk gap, i.e. how far is the **actual** standard of compliance from the **expected** standard of compliance?

Stage 4: Identify duty holder factors, i.e. what is the employer's current and previous approach and performance towards health and safety?

SHREC Sheet		06
	Page 2 of 7	
Issue 1.01 – Dec 2012		Version No: 5.0

SHREC SHEET



Stage 5: Identify the public interest factors, i.e. does the indicated enforcement action meet certain public interest factors?

This process enables the inspector to decide if general advice or a verbal warning is given or if more serious, a written notification, improvement or prohibition notice or prosecution. Further information on these stages is described in Appendix 2 and Appendix 3.

HSE fees

Where a material breach is found the HSE will charge an intervention **fee of £124 (excl. Vat) per hour** for 2012/13.

The total costs charged will depend upon the amount of time and level of activity the HSE will need to devote to the intervention which, in turn, will depend upon the circumstances relating to what is being investigated and/or the standards being observed by the business at the time of the intervention.

HSE guidance on FFI states *“The fee is payable for the costs that HSE reasonably incurs during regulatory work in relation to a material breach. This includes all work that is needed to identify a material breach and all work to ensure that the breach is remedied. It also includes any investigation or enforcement action, up to the point where HSE’s intervention, in relation to the material breach, has been concluded or a prosecution is started or a report submitted to the Procurator Fiscal in Scotland. One such example is when the decision has been made to close an investigation and a prosecution is not proposed”*.

If an inspector finds a material breach at any time during a visit, then FFI costs will apply for the whole time the inspector spends at the premises/site and then for any subsequent work, e.g. return visits, writing notices, checking if notices have been complied with follow up telephone calls, etc. Travel time is not included in these costs.

The potential averaged FFI costs to a duty holder could range from £750 to cover the costs of an inspection that results in a letter, an email or text, to tens of thousands of pounds where the HSE have been required to undertake a lengthy investigation.

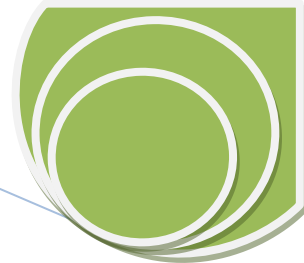
The HSE will invoice duty holders every 2 months as the fees are incurred and will expect the invoices to be paid within 30 days of the date of the invoice.

Costs that can be recovered by the HSE under FFI include: -

- Writing letters and reports.
- Preparing and serving improvement or prohibition notices.
- Follow-up work to ensure compliance, e.g. site visits, telephone calls, email correspondence, reviewing documentation provided.
- Taking statements.
- Specialist assistance from the Health and Safety Laboratory (HSL) or other third party, e.g. commercial, technical and scientific consultancies. **Costs will be charged at the rates agreed with the third parties.**
- Gathering information/evidence.
- Assessing the findings and the documentation of inspection, investigation and enforcement conclusions.
- Recording conclusions and inspection, investigation and enforcement information.
- Reviewing investigations to ensure progress and appropriate lines of enquiry are followed.
- Research related to the material breach that is needed to carry out the above tasks.

SHREC Sheet		06
	Page 3 of 7	
Issue 1.01 – Dec 2012		Version No: 5.0

SHREC SHEET



There is an HSE appeals/dispute process that clients can follow. FFI costs will not apply during the appeal stages unless a client loses the appeal; then full FFI costs for time spent by the inspectors will be incurred.

It is recommended that clients record exact times inspectors are on the premises/site and also the times of telephone calls made with the inspectors.

Steps to minimise FFI

Clients are reminded that it is imperative for them to comply with their legal obligations under health and safety law. To help stay compliant, clients should:

- Deal with the matters contained in SHREC Ltd's inspection report.
- Comply with their health and safety management system and all advice given by SHREC Ltd's helpline/health and safety consultants.
- Create and regularly review risk assessments and safe systems of work. Particular attention should be given to reviewing their health and safety management system following an accident or near miss, in light of any new information, a change in circumstance, e.g. new employees with less experience, or the introduction of new plant/machinery that may change the level of risk.

Even the smallest positive change in an employers' or employees' actions or behaviour could reduce (if not eliminate) the potential for an accident occurring. Thus, avoiding the loss of working time/productivity and reducing the potential for Enforcement Authority action (at worst leading to a criminal prosecution or FFI costs) or civil claim, which could have a damaging effect on a business's trading reputation.

Appendix 1: Further examples of material breaches

RISKS	EXAMPLES OF BREACHES
HEALTH RISKS	
asthma (potentially caused by eg wood dust, adhesives, resins, flour, isocyanates, metal working fluids)	Failure to eg :- <ul style="list-style-type: none"> • Examine and/ or maintain extraction systems at suitable intervals • Have systems in place to avoid the generation of oil mist from metal working fluids. • Provide suitable or sufficient information, instruction and training to employees who are likely to be exposed. • Provide personal protective equipment (PPE). • Provide health surveillance.
confined spaces	failure to eg :- <ul style="list-style-type: none"> • Train staff in confined space work. • Understand the risks or precautionary measures. • Have in place adequate safe systems of work. • Provide procedures or equipment for rescue in emergencies. • Provide suitable air monitoring, where required.
hand-arm vibration	failure to eg :- <ul style="list-style-type: none"> • Control vibration emitted from equipment which exceeds or is likely to exceed, the legal action values where it is reasonably practicable to eliminate or reduce the exposure. • Inform workers of the risk from vibration and how to reduce it.
legionnaires disease	failure to eg :- <ul style="list-style-type: none"> • Implement a management system to control Legionella. • Undertake a risk assessment for Legionella. • Treat, disinfect, clean water systems. • Monitor systems such as checking for scale in the water system. • Appoint a person to manage legionella
Noise	Failure to, e.g.: - <ul style="list-style-type: none"> • Reduce exposure to high noise levels by, e.g. providing silencers on air powered machinery, enclosing noisy machines, limiting the time spent in noisy areas. • Provide suitable personal hearing protection to employees or providing adequate health surveillance, where required.

SHREC Sheet		06
	Page 4 of 7	
Issue 1.01 – Dec 2012		Version No: 5.0

SHREC SHEET



SAFETY RISKS		
Lifting equipment	Failure to, e.g.: -	<ul style="list-style-type: none"> Use suitable lifting equipment which leads to its failure or overturning. Maintain equipment. Prevent lifting equipment from being used after having been notified of a serious defect as identified by a competent person during a thorough examination
Flammable liquids	Failure to, e.g.: -	<ul style="list-style-type: none"> Store drums of flammable solvent in a workshop without lids leading to fire or explosion. Protect against using flammable liquids in the vicinity of sources of ignition.
Gas	Failure to, e.g.: - Failure for a landlord to, e.g.: -	<ul style="list-style-type: none"> Carry out any gas work without being Gas Safe Registered Ensure domestic gas appliances have been maintained in a safe condition where there is evidence of risk such as confirmed carbon monoxide poisoning. Ensure gas appliances and flues have been checked for safety within the last 12 months.
Liquefied petroleum gas (LPG)	Failure to, e.g.: -	<ul style="list-style-type: none"> Protect LPG tanks against impact from vehicles. Prevent the storage of combustible materials around LPG tanks. Install buried metallic LPG pipe-work without corrosion protection. lack of periodic inspection. Provide adequate separation distances between LPG cylinder storage areas and occupied buildings
Pressure systems	Failure to, e.g.: -	<ul style="list-style-type: none"> Maintain or thoroughly examine an air receiver. Mark equipment with any safe operating limit. Provide a written scheme of examination for a steam boiler. Have systems serviced by trained persons.
Traffic management	Failure to, e.g.: -	<ul style="list-style-type: none"> Define traffic routes, where required. Prevent obstructions of roadways, poor lighting, uneven surfaces. Separate pedestrians from vehicles where this is reasonably practicable. Provide safe vehicles or trained/competent drivers such as, fork-lift truck drivers.
Machinery	Failure to, e.g.: -	<ul style="list-style-type: none"> Prevent the use of machinery with a broken or missing guard, e.g. of flywheels or tools of a power press. Prevent access to the in-running nip of rollers on a machine exposing operators and maintenance staff to a risk of crushing and de-skinning because simple nip guards are not in place. Provide guards or effective safety devices on the rotating chuck and drill bit of a pillar or radial arm drill. Provide adequate guarding of the powered roller of a conveyor system fitted with a heavy, tight belt that could draw in and crush an employee's arm. Provide an adequate safe system for checking that guarding is in place when needed (e.g. pre-use check). Prevent the defeating of guard interlocks designed to ensure that the machine cannot be operated without the guard properly in place.
Construction	Failure to, e.g.: -	<ul style="list-style-type: none"> Organise the safe movement of pedestrians and vehicles on site. Keep a construction site in good order, such as safe access to and from a place of work or safe storage of materials. Undertake demolition or dismantling in safe manner. Prevent danger from the collapse of an excavation. Ensure workers are trained and competent to control the risks to them and others, e.g. crane drivers, site managers, mobile plant operators, scaffolders. Ensure stability of structures on site, including temporary structures. Control or adequately control disturbance of asbestos containing materials during construction/demolition work.
WELFARE		
	Failure to provide, e.g. : -	<ul style="list-style-type: none"> Readily accessible working toilets, suitable washing facilities (such as no hot and cold running water). Adequate supply of drinking water. Suitable rest facilities to eat meals, where meals are regularly eaten at work and where food is likely to become contaminated.
MANAGEMENT OF H&S RISKS		
	Failure to, e.g. : -	<ul style="list-style-type: none"> Provide effective arrangements for managing health and safety (including emergency arrangements) where significant risks are present
SHREC Sheet		06
	Page 5 of 7	
Issue 1.01 – Dec 2012		Version No: 5.0

SHREC SHEET



	<ul style="list-style-type: none"> Consider the safety implications of new processes. Effectively manage contractors on site. Provide assessment of risks regarding vulnerable people, such as young people or expectant mothers, where significant risks to them are present. Have access to competent in-house or external health and safety advice where significant risks are not adequately controlled. Provide comprehensible information or training to employees on significant risks and precautions where such information or training is a key control measure. Identify and implement safe traffic management systems suitable for a particular site. Identify noise sources and solutions for relevant noisy machinery.
--	---

Appendix 2: Enforcement Management Model' (EMM) – process followed by HSE inspectors

Stage 1 What is the actual risk?	What harm could arise? Inspector considers how badly someone could be hurt or their health damaged and would any injury/ill health be serious, significant or minor?
	How likely is it that the event leading to the injury or ill health will happen? Is it highly unlikely (remote), possible or highly likely (probable)?
	How likely is it that the event leading to the injury or ill health will happen? Is it highly unlikely (remote), possible or highly likely (probable)?
Stage 2 What standard of compliance does the law require, e.g. HSW Act 1074, Regulations, industry standards?	Inspectors consider what risk is left after the law has been complied with, e.g. it is permitted to use ladders for low risk short duration work. In other cases ladders will not be acceptable.
Stage 3 Identify the risk gap, i.e. how far is the actual standard of compliance from the expected standard of compliance?	Inspector compares the actual risk with the legal standards, defines the 'risk gap' and applies a level of intervention, which could be: - <ul style="list-style-type: none"> Nominal (likely to result in verbal warning). Moderate (likely to result in a letter or an email). Substantial (likely to result in an enforcement notice). Extreme enforcement notices are the initial expected enforcement action and prosecution will be considered.
Stage 4 Identify duty holder factors, i.e. what is the employer's current and previous approach and performance towards health and safety?	The inspector will consider: - <ul style="list-style-type: none"> Duty holder's history of enforcement action. Similar incidents. Deliberately avoiding compliance for commercial gain. Previous enforcement inspections. Duty holder's general compliance. The necessary competence and capability to provide confidence that the risks will be properly dealt with.
Stage 5: Identify the public interest factors, i.e. does the indicated enforcement action meet certain public interest factors?	The inspector will consider: - <ul style="list-style-type: none"> Will the enforcement action proposed be in the wider public interest? Will vulnerable people such as the young, old or inexperienced be better protected by the proposed enforcement action? Will the action promote sustained compliance? Will it set an example and act as a warning or deterrent to others? Will the minimum legal standard be achieved? Will the action benefit those who may be affected by the risk?

Appendix 3: Example where FFI applies following EMM

Case: An HSE inspector observes someone standing on raised forks (set at a height of 2.5m) of a forklift truck to fetch a product from racking. The inspector's decision process is likely to be as follows: -

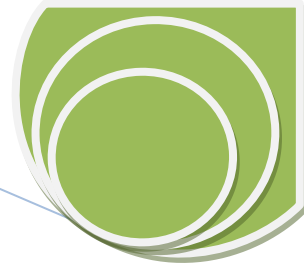
Stage 1: What is the actual risk?

Any fall from 2.5m height is likely to cause death or serious injury. The likelihood would likely be defined under EMM as 'possible' (as a minimum)

Stage 2: What standard of compliance does the law require and what level of risk is left when the law is complied with?

SHREC Sheet		06
	Page 6 of 7	
Issue 1.01 – Dec 2012		Version No: 5.0

SHREC SHEET



The Work at Height Regulations define a standard requiring suitable equipment to be selected and used for work at height, to prevent a fall occurring, e.g. use of a mobile elevating work platform (MEWP). A forklift is a MEWP and can be used for working at height but only with a purpose-built work platform fitted securely to the forks of the forklift truck.

Stage 3: **Identify the risk gap, i.e. how far is the *actual* standard of compliance from the *expected* standard of compliance?**

If a suitable platform had been fitted to the forklift truck there would have been a nil or negligible risk of fall resulting in death or serious injury. The 'Risk Gap' is classed as 'Extreme' which means that the inspector would likely issue an improvement notice as the initial enforcement action but would also consider prosecution at this stage.

Stage 4: **Identify duty holder factors, i.e. what is the employer's current and previous approach and performance towards health and safety?**

The inspector would consider the history of work at height issues at this site, any injuries incurred, if economic advantages were achieved by acting the way it did and the company's general H&S approach. Depending on the inspector's findings, the inspector would also need to consider whether the company had the ability to manage the risk due to lack of knowledge and competence to work at height.

Stage 5: **Identify the public interest factors, i.e. does the indicated enforcement action meet certain public interest factors?**

If the inspector thought it likely that the company was going to finish the job and conduct further tasks by the same procedure, the inspector would have concluded that there was a wider public interest as it meets public expectations of well-known high risk activities.

Outcome

The above stages/factors suggest that an improvement notice would likely to have been issued, as a minimum, as it would achieve a longer term improvement and legal standards would be met. In this case the inspector would have charged FFI costs from the start of the visit, when the breach was observed, through to when the intervention was concluded. This would include time on site, investigation, writing letters/communication, revisits and issue of the improvement notice.

SHREC Sheet		06
	Page 7 of 7	
Issue 1.01 – Dec 2012		Version No: 5.0