
**Decision Session –
Cabinet Member for Communities and
Neighbourhoods.**

**20th September
2011**

Report of the Assistant Director of Housing & Public Protection

Consultation on cost recovery for regulating Health and Safety

Summary

1. To inform the Cabinet Member of the Health and Safety Executive's consultation about proposals to allow the HSE and local authorities to recover the cost of their regulatory work. To seek approval of a response to the consultation on the proposed changes.

Background

2. Health and Safety interventions are undertaken by the Health and Safety Executive (HSE) and local authorities (LA), depending on the premises and the type of activities carried out. Some examples of interventions include inspections, investigating accidents or responding to complaints.
3. Where businesses are found to have shortfalls in their health and safety arrangements, the HSE/LA work with the business to secure improvements. This can include giving verbal advice, writing letters, serving legal notices or taking formal enforcement action.
4. At the present time, businesses are not charged where an intervention is carried out by the HSE/LA, regardless of the findings. However, a business can incur costs if they are prosecuted and found guilty of an offence.
5. On 21 March 2011 the Minister for Employment, the Rt Hon Chris Grayling MP, announced the Government's policy to reform the health and safety system in Britain in the Department for Work and Pensions statement "Good Health and Safety, Good for Everyone" (<http://www.dwp.gov.uk/policy/health-and-safety/>).

6. Part of this policy is the proposal to allow the HSE to recover the cost of its regulatory work, on the basis that “it is reasonable that duty holders that are found to be in serious material breach in standards [of health and safety]– rather than the taxpayer – should bear the related costs incurred by the regulator in helping them put things right. A cost recovery principle will provide a deterrent to those who would otherwise fail to meet their obligations and provide a level playing field for those who do”.
7. To put in place the legal framework that will allow the HSE to recover costs, there is a proposal to amend the Health and Safety (Fees) Regulations. If introduced, these regulations will place a duty on the HSE to recover their costs.
8. The consultation does not deal with the question of whether the HSE should charge where material breaches of health and safety law are found, as this principle has already been agreed by the Government. Instead, the consultation deals with how cost recovery will be implemented.
9. Under the proposals, costs will be recovered from the start of the intervention where a material breach was identified, through to the point where the material breach has been rectified. ‘Material breach’ is defined in the consultation document as a breach of health and safety law that requires an officer to make a formal intervention (eg. write a letter, serve an improvement notice).
10. Currently, the proposals only consider cost recovery for those activities carried out by the HSE and not the activities of LAs. As part of the consultation, the HSE is asking LAs to indicate whether they would wish to be part of the charging regime. The HSE have indicated that if there was sufficient interest/support, then the proposals could be amended to include cost recovery for LAs.
11. If cost recovery is introduced for LAs, it will be a statutory duty and local authorities will have no discretion on whether to charge or not.

Potential Impact of Cost Recovery

12. It is important to recognise that the HSE and LA have different approaches to the regulation of health and safety.
13. Due to their position in local communities, LA officers will tend to work with businesses to help them understand and comply with legal requirements. They will only resort to more formal means, such as

serving improvement notices, where the business does not make adequate progress or improvements.

14. In contrast, the HSE are more likely to take a formal approach in the first instance.
15. Where the HSE discover a material breach of legislation, they are proposing to charge in the region of £133 per hour. If LAs were required to implement cost recovery, the consultation indicates that LAs would be able to set their own charges.
16. An assessment has been made of inspections recently carried out by the councils health and safety team. This showed that in most cases, material breaches were identified, so the inspections would be chargeable. The average time spent on each inspection was 4 hours. Using the HSEs hourly figure, this means that businesses would receive an average bill of over £500 following an inspection.
17. This charge is a significant amount of money, especially for smaller companies. Charging businesses in this way is also at odds with the council's priorities, in particular the priority to Create Jobs and Grow the Economy. Charging companies for our regulatory work could have a detrimental effect, which in turn could impact on employment opportunities.
18. Advice from the Local Better Regulation Office also re-enforces the importance of regulators supporting prosperity and the Hampton Report (2005) identified that regulators should provide authoritative, accessible advice easily and cheaply. Introducing cost recovery would be at odds with this.

Consultation

19. This is a national consultation that is on the HSE web site.
20. Locally, the Federation of Small Businesses and the York and North Yorkshire Chamber of Commerce have been consulted. Both organisations oppose the proposed charges, especially in these difficult economic times.

Options

21. The two options are:

- a) To respond to the HSE consultation and not support the proposal to make cost recovery for LAs mandatory.
- b) To respond to the HSE consultation and support the proposal to make cost recovery for LAs mandatory.

Analysis

- 22. Adopting option a) will allow the health and safety team to continue in their role of supporting and helping willing businesses to comply with health and safety requirements.
- 23. Adopting option b) would place an additional burden on businesses during hard economic times and could lead to a detrimental impact on employment levels across the city. Although cost recovery would help fund the health and safety service, the impact on the prosperity of the city could be more significant.

Council Priorities

- 24. The work of the health and safety unit impacts on the council priorities to 'Create jobs and grow the economy' and to 'Protect vulnerable people'

Implications

Financial:

- 25. If the recommendations of this report are accepted, then there are no financial implications.
- 26. The HSE is also currently consulting on how health and safety should be regulated in the future. Due to this potential uncertainty, it is not possible to accurately predict what income might be generated if cost recovery was introduced for LAs.

Human Resources (HR):

- 27. There are no human resource implications associated with this report.

Equalities Implications:

28. There are no equalities implications associated with this report.

Legal:

29. There are no legal implications associated with this report.

Crime and Disorder:

30. There are no crime and disorder implications associated with this report.

Information Technology (IT):

31. There are no IT implications associated with this report.

Property:

32. There are no property implications associated with this report.

Other:

33. There are no other implications to consider.

Risk Management

34. There are no significant risks associated with this report.

Recommendations

- a. That the Cabinet Member for Communities and Neighbourhoods approves option 21a).

Reason: To allow the council's health and safety team to continue to provide free support to help local businesses meet health and safety requirements.

Contact Details

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Report
Approved

Date 05/08/201
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Wards Affected: List wards or tick box to indicate all

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For further information please contact the author of the report

Background Papers:

Department for Work and Pensions statement "Good Health and Safety, Good for Everyone" (<http://www.dwp.gov.uk/policy/health-and-safety/>)

HSE proposal for extending cost recovery –
(<http://www.hse.gov.uk/consult/condocs/cd235.htm>)

Annexes

City of York Council response to consultation questionnaire.