

## Guidance on the Fee for Intervention

The Health and Safety Executive came into effect in October 2012. It was found to be in material breach of the law. Changes put in place from September 2017 include the power to issue contravention notices and a fully independent structure.

The fee charged is based on the time the Inspector has had to spend identifying the material breach, taking enforcement action.

### How much will it cost?

The Fee is charged at the rate of £100 per hour to the HSE website to check latest rates. It is based on the amount of time it takes to identify and conclude their investigations in relation to the breach (including the associated office work), multiplied by the relevant hourly rate. For example, if an Inspector is on site and finds a 'material breach' on a visit until he leaves site, then he will then revisit to ensure you have corrected the breach. This investigation and letter writing – could add up to 4-5 hours charged. In more complicated cases it can be more.

### What is a material breach?

A material breach is when there is a serious enough that it requires the duty holder to take action. The person in charge.

When an Inspector visits a business to assess the potential health and safety risks as detailed in the list below. This list is not exhaustive and serves as an example only.

### Does FFI apply to you?

FFI applies to all businesses in England and Wales. Northern Ireland is exempt at the moment. It will apply in all workplaces where HSE inspections. Those premises which are currently normally inspected by the Local Authority Environmental Health Offices will not be affected.

FFI applies to employers, self-employed persons, members of the public) at risk, and others (including their employees or partners). It includes those in a capacity other than as an employee, e.g. partners. It includes those who are themselves at risk.

- limited companies;
- general, limited and limited liability partnerships.

FFI does not apply to self-employed persons who are themselves at risk.

Under the Construction (Design and Management) Regulations 2015 almost every building project, except for the smallest, will be required to have a Principal Contractor managing it. So, no matter whether you are a contractor or a client, if you are acting as Principal Contractor you will be levied against you.

### How does it work?

HSE Inspectors have always made decisions about whether a business is compliant with health and safety law and what enforcement action they should take. Understanding how these decisions are made will help you to consider how well you are doing and what you can put right any issues requiring attention before an Inspector comes to see you.

When Inspectors come across a situation where they think a business may not be compliant with the law, they use existing guidelines to help them decide the appropriate enforcement decision making is to be taken.

Before taking further action for non-compliance, the Inspector is likely to make an assessment of the actual risk in the workplace.

#### 1. What is the actual risk?

What harm could arise from the work? i.e. injury or ill health
How likely is it that the event could happen?
How many people are likely to be affected?

1.1 What standard of compliance is required when the law is complied with?

For example, the law requires that ladders are not used for short duration work on fragile roofs. The legal standard is compliance with the law.

1.2 Identify the risk gap between the expected standard of compliance and the legal standard of compliance.

The Inspector then assesses the risk with the legal standard of compliance required.

The gap between the expected standard of compliance and the legal standard of compliance required could be:

- extreme.
- substantial;
- moderate;
- nominal (insignificant).

Where the risk gap is established, enforcement action and prosecution will be taken.

Under the Construction (Design and Management) Regulations 2015 almost every building project, except for the smallest, will be required to have a Principal Contractor managing it. So, no matter whether you are a contractor or a client, if you are acting as Principal Contractor you will be levied against you.

Other businesses are compliant with health and safety law and what enforcement action they should take. Understanding how these decisions are made will help you to consider how well you are doing and what you can put right any issues requiring attention before an Inspector comes to see you.

When Inspectors come across a situation where they think a business may not be compliant with the law, they use existing guidelines to help them decide the appropriate enforcement decision making is to be taken.

Before taking further action for non-compliance, the Inspector is likely to make an assessment of the actual risk in the workplace.

What harm could arise from the work?  
i.e. injury or ill health

How likely is it that the event could happen?

How many people are likely to be affected?

1.1 What standard of compliance is required when the law is complied with?

For example, the law requires that ladders are not used for short duration work on fragile roofs. The legal standard is compliance with the law.

1.2 Identify the risk gap between the expected standard of compliance and the legal standard of compliance.

The Inspector then assesses the risk with the legal standard of compliance required.

The gap between the expected standard of compliance and the legal standard of compliance required could be:

- extreme.
- substantial;
- moderate;
- nominal (insignificant).

Where the risk gap is established, enforcement action and prosecution will be taken.

S

Where the risk gap is clearly defined, established, enforced or expected enforcement action.

Where the risk gap is established or interpretive the expected enforcement action.

Where the risk gap is a very effective of the legal standard, the expected enforcement action.

### 1.3 Identify the duty-holder's current and previous approach and performance towards health and safety?

The Inspector considers the employer's current and previous approach and performance towards health and safety, and to help them decide the most appropriate enforcement action.

The questions considered are:

1.3.1 Does the duty-holder have a policy of relevant enforcement action taken against breaches?

1.3.2 Do they have a policy of relevant enforcement action taken against breaches?

1.3.3 Are they deliberate breaches for commercial gain?

1.3.4 Is there a poor inspection history?

1.3.5 Are they generally aware of the areas?

1.3.6 Do they demonstrate competence and capability to properly deal with breaches?

### 1.4 Identify the public interest in the indicated enforcement action

### 1.5 The Inspector will consider whether a fine will protect vulnerable people. Will it act as a deterrent to promote improvement and sustained compliance?

### 1.6 Once these factors are considered, the Inspector decides whether regulatory action is justified and what form it should take.

This could include:

1.6.1 a verbal warning

1.6.2 written confirmation of improvement (e.g. a report given at the time of the breach) (this includes a notification of contravention)

1.6.3 an improvement notice

1.6.4 a prohibition notice where the work is so serious that the work has to be stopped (where the work is stopped, the work is stopped);

1.6.5 prosecution

## 2. Potential Material Breach

### 2.1 Falls from height

the construction industry

Some examples of falls from height are:

2.1.1 not adequately supervising work at height;

2.1.2 not ensuring that the work is safe to do so;

A

M

P

L

E

legal standard is clearly defined or expected enforcement action.

legal standard is established or interpretive the expected enforcement action.

effective of the legal standard, the expected enforcement action.

the employer's current and previous approach and safety?

past and present approach, and to help them decide the most appropriate enforcement action.

The questions considered are:

1.3.1 Does the duty-holder have a policy of relevant enforcement action taken against breaches?

1.3.2 Do they have a policy of relevant enforcement action taken against breaches?

1.3.3 Are they deliberate breaches for commercial gain?

1.3.4 Is there a poor inspection history?

1.3.5 Are they generally aware of the areas?

1.3.6 Do they demonstrate competence and capability to properly deal with breaches?

the indicated enforcement action

ing a fine will protect vulnerable people. Will it act as a deterrent to promote improvement and sustained compliance?

ed, the Inspector decides whether regulatory action is justified and what form it should take.

Improvement (e.g. a report given at the time of the breach) (this includes a notification of contravention)

an improvement notice

are so serious that the work has to be stopped (where the work is stopped, the work is stopped);

prosecution

cause of serious injury or death in the construction industry

Some examples of falls from height are:

2.1.1 not adequately supervising work at height;

2.1.2 not ensuring that the work is safe to do so;

# S

2.1.1 not choosing equipment where falling from a height is possible;

2.1.2 not inspecting equipment, such as scaffolding, and ensuring it remains effective at preventing or reducing injury;

2.1.3 not providing safe access to fragile roof surfaces, such as asbestos sheet or roof lights;

2.1.4 using forks or a fork-lift truck for a person to work at height on a working platform; and

2.1.5 using damaged stepladders, e.g. splits in timber rungs, loose connections on metallic ladders, or missing rungs, and anti-slip devices.

## 2.2 Workplace safety

2.2.1 not keeping a safe access to and from a place of work, safe;

2.2.2 demolition or dismantling in an unsafe manner;

2.2.3 failure to prevent a collapse of an excavation;

2.2.4 failure to ensure that those responsible for the safe operation of cranes, managers who are competent to control the risks of mobile plant operators, scaffolders and those responsible for the safe use of scaffolding;

2.2.5 failure to ensure that structures on site, including temporary structures;

2.2.6 uncontrolled disturbance of asbestos during demolition/demolition work.

2.3 **Exposure to dusts and vibration**, can cause health effects, and to energy such as noise and vibration, can cause health effects or death. While some effects are immediate, others only show themselves some time after exposure. This is often irreversible.

### Asbestos

Some examples of

2.3.1 ACM (Asbestos Containing Materials) in poor or damaged condition, resulting in the release of fibres;

2.3.2 maintenance of suspected ACMs with limited or no controls, leading to the release of fibres;

2.3.3 where results of up-to-date monitoring have not been addressed in an effective manner, leading to a failure to control the risk;

2.3.4 maintenance of asbestos is present in a building, or its location (if a building is present).

A number of substances exposed to at work are known to cause asthma (e.g. dust and metal vapours, solder fume, isocyanates, grain dust and metal vapours). Occupational asthma includes severe shortness of breath, e.g. walking upstairs, and is often irreversible.

# A

# M

# P

# L

# E

S

Some examples of

2.3.5 not examining  
intervals, so

extraction systems at suitable  
assured;

2.3.6 machines in  
effective me

using metal working fluids without  
generation of oil mist;

2.3.7 not providing  
training, to  
engineering

ent information, instruction and  
be exposed, about the use of  
al protective equipment provided;

2.3.8 not providing  
asthmagens  
the causes of

allance for employees exposed to  
of ill health can be identified and

2.3.9 dry cutting  
hazardous l  
protective ec

or concrete products producing  
effective extraction or respiratory

2.3.10 not thorough  
suitable inte

maintaining extraction systems at  
ess is not assured;

## 2.4 Confined spaces

A confined space is  
entirely), and where  
substances, lack of  
engulfment (e.g. in a

cially enclosed (though not always  
injury can occur from hazardous  
r through fires and explosions, or

People who try to re  
and equipment start

ined space without proper training  
ng overcome and dying.

Some examples of

2.4.1 work in a  
precautionar

o understanding of the risks or

2.4.2 lack of adeq  
work, arran  
procedures of

e work including safe systems of  
t for rescue in emergencies,

2.4.3 lack of suit  
atmosphere

hen it is necessary to test the  
ed space, or during the work.

## 2.5 Hand-arm vibration

Hand-arm vibration  
cause of significant  
vessels, nerves and  
hands). Once the d

hand-held power tools and is the  
disabling disorders of the blood  
including loss of strength in the  
anent.

Some examples of

2.5.1 where expos  
values of a  
eliminate or

s, or is likely to exceed, the action  
ere it is reasonably practicable to

2.5.2 where emplo  
the risks and

on have not been informed about

2.5.3 where expo  
reasonably  
such as job

not been reduced to as low as  
of alternative working methods,  
less vibration.

A

M

P

L

E

## 2.6 Hazardous substances

There are a wide range of hazardous substances in the workplace and the risks they can cause are equally broad, e.g. breathing in dust can lead to chronic obstructive pulmonary disease or cancer and some substances can lead to dermatitis.

Some examples of factors that can lead to hazardous substances being present in the workplace are:

- 2.6.1 inadequate information and training to employees about the risks and prevention measures
- 2.6.2 lack of suitable health control measures, e.g. risk of burns from welding of a woodwork

## 2.7 Legionellosis, including other respiratory diseases

People contract legionnaires' disease and other similar, less common respiratory diseases by inhaling small droplets of water that contain the bacteria.

Legionnaires' disease is a severe form of pneumonia, with symptoms similar to flu. Outbreaks can cause multiple deaths and/or significant ill health.

Some examples of factors that can lead to legionnaires' disease being present in the workplace are:

- 2.7.1 lack of water management programme, or lack of cleaning or disinfection of water systems
- 2.7.2 signs of organic growth in the water system; and
- 2.7.3 cooling towers or other water systems not assessed for legionella risk and no assessment or control system.

## 2.8 Musculoskeletal disorders

The term MSD covers a range of disorders of the joints or other tissues in the upper limb. These can occur from manually lifting heavy, unwieldy objects or repetitive work. These are the most common cause of occupational injury and illness.

Some examples of factors that can lead to musculoskeletal disorders being present in the workplace are:

- 2.8.1 significant use of manual handling or repetitive work where reasonable alternatives are available;
- 2.8.2 failure to provide adequate information and training to employees about the risks and prevention measures where there are significant risks;
- 2.8.3 failure to manage the risk factors and the need for early symptom recognition and/or workplace changes.

## 2.9 Noise

Noise-induced hearing loss is a common occupational health problem. Damage to the ears caused by exposure to high levels of noise can result in permanent ringing in the ears (tinnitus). Some people may also experience hearing loss.

Some examples of factors that can lead to noise-induced hearing loss being present in the workplace are:

There are a wide range of hazardous substances in the workplace and the risks they can cause are equally broad, e.g. breathing in dust can lead to chronic obstructive pulmonary disease or cancer and some substances can lead to dermatitis.

Some examples of factors that can lead to hazardous substances being present in the workplace are:

There are a wide range of hazardous substances in the workplace and the risks they can cause are equally broad, e.g. breathing in dust can lead to chronic obstructive pulmonary disease or cancer and some substances can lead to dermatitis.

## Legionellosis, including other respiratory diseases

People contract legionnaires' disease and other similar, less common respiratory diseases by inhaling small droplets of water that contain the bacteria.

Legionnaires' disease is a severe form of pneumonia, with symptoms similar to flu. Outbreaks can cause multiple deaths and/or significant ill health.

Some examples of factors that can lead to legionnaires' disease being present in the workplace are:

- 2.7.1 lack of water management programme, or lack of cleaning or disinfection of water systems
- 2.7.2 signs of organic growth in the water system; and
- 2.7.3 cooling towers or other water systems not assessed for legionella risk and no assessment or control system.

## Musculoskeletal disorders

The term MSD covers a range of disorders of the joints or other tissues in the upper limb. These can occur from manually lifting heavy, unwieldy objects or repetitive work. These are the most common cause of occupational injury and illness.

Some examples of factors that can lead to musculoskeletal disorders being present in the workplace are:

- 2.8.1 significant use of manual handling or repetitive work where reasonable alternatives are available;
- 2.8.2 failure to provide adequate information and training to employees about the risks and prevention measures where there are significant risks;
- 2.8.3 failure to manage the risk factors and the need for early symptom recognition and/or workplace changes.

## Noise

Noise-induced hearing loss is a common occupational health problem. Damage to the ears caused by exposure to high levels of noise can result in permanent ringing in the ears (tinnitus). Some people may also experience hearing loss.

Some examples of factors that can lead to noise-induced hearing loss being present in the workplace are:

# S

2.9.1 not reducing levels by controlling at source, e.g. providing silencing machinery, or reducing exposure, e.g. by enclosing machinery, or providing noise refuges or limiting the time spent in noisy areas;

2.9.2 not providing adequate hearing protection to employees whose hearing is likely to be high; and

2.9.3 not providing adequate lighting where employees are likely to be exposed to high levels of noise.

## 2.10 Gas work

If gas appliances are not maintained correctly, there are risks of explosions or of carbon monoxide poisoning, sometimes fatally, by carbon monoxide.

Some examples of failures are:

2.10.1 anyone carrying out gas work without being Gas Safe Registered;

2.10.2 a landlord not ensuring that domestic gas appliances have been maintained in accordance with the regulations if there is evidence of risk such as a gas leak; and

2.10.3 a landlord not ensuring that gas appliances and flues have been checked for safety by a registered engineer at regular intervals.

## 2.11 Flammable liquids

Failure to control the use of flammable liquids can give rise to the obvious risks and consequences of fire and explosion.

Some examples of failures are:

2.11.1 drums of solvent stored in a workshop without lids leading to spillage;

2.11.2 flammable liquids stored in a wooden cupboard with no protection against fire;

2.11.3 using flammable liquids in the vicinity of sources of ignition, such as open flames or electrical sockets in a workroom with unprotected wiring.

## 2.12 Lifting equipment

Lifting loads can cause injury through failure of equipment such as hooks, chains and slings, or through poorly planned or supervised lifting operations leading to collisions or falls from height.

Some examples of failures are:

2.12.1 use of unsuitable lifting equipment leading to its failure, overturning or falling;

2.12.2 use of poorly maintained equipment with no system for identifying and recording defects;

2.12.3 continuing to use equipment after having been notified of a defect by a competent person during a thorough examination;

2.12.4 no statutory or manufacturer's instructions for lifting equipment;

2.12.5 no inspection or maintenance system for ensuring lifting equipment remains safe.

# A

# M

# P

# L

# E

2.12.6	lifting operations not properly planned, supervised or done safely.	erly planned, supervised or done
2.13	<b>Liquefied petroleum gas</b> LPG is a widely used gas that is usually kept under pressure in a tank. LPG from poorly maintained and corroded metal pipes or inadequately sited or protected tanks, can lead to fires and explosions. Some examples of failures are: 2.13.1 LPG tanks vulnerable to impact where vehicles are in use close to the tanks; 2.13.2 combustible tanks; 2.13.3 buried metal tanks without corrosion protection and not subject to regular inspection; and 2.13.4 inadequate separation between LPG cylinder storage areas and occupied areas.	erly planned, supervised or done gas that is usually kept under LPG from poorly maintained and adequately sited or protected tanks, can lead to fires and Some examples of failures are: impact where vehicles are in use tanks; without corrosion protection and not ction; and between LPG cylinder storage areas and occupied areas.
2.14	<b>Machinery guarding</b> Many machines are associated with the risk of death or severe injuries. They range from the common domestic machines such as lawnmowers, through to specialist machines such as power presses and pedestal drills. Injuries commonly occur where adequate guarding is not in place and workers may easily come into contact with the dangerous moving parts of machinery. Some examples of failures are: 2.14.1 a broken or missing guard on a machine exposing operators to crushing and de-skinning because of the rotating chuck and drill bit 2.14.2 access to the moving parts of a machine without adequate guarding 2.14.3 no guards on the rotating chuck and drill bit 2.14.4 inadequate guarding on the rotating roller of a conveyor system fitted with a heavy arm that can draw in and crush an employee's arm; 2.14.5 inadequate guarding on a machine exposing operators to crushing and de-skinning because of the rotating chuck and drill bit 2.14.6 deliberate design failure of a machine where the guard interlocks designed to ensure the guard is in place when the machine is operating. 2.15	ath or severe injuries. They range associated pulleys through to more power presses and pedestal drills. adequate guarding is not in place and into contact with the dangerous moving parts of machinery. Some examples of failures are: wheel or tools of a power press; on a machine exposing operators crushing and de-skinning because of the rotating chuck and drill bit roller of a conveyor system fitted draw in and crush an employee's arm; g that guarding is in place when guard interlocks designed to ensure ed without the guard properly in place.
2.15	<b>Pressure systems</b> There are many types of pressure systems in use, including boilers, steam heaters, compressors, autoclaves and heat exchangers. They can cause serious injuries if they fail. Some examples of failures are: 2.15.1 an air receiver that has not been maintained or checked with any safe operating limit;	s in use, including boilers, steam e cookers, autoclaves and heat exchangers. They can cause serious i Some examples of failures are: at has not been maintained or checked with any safe operating limit;



# S

2.15.2 a steam boiler without a written scheme of examination or preventive maintenance or being serviced by untrained personnel.

written scheme of examination or preventive maintenance or being serviced by untrained personnel.

## 2.16 Safe maintenance

Maintenance is essential to ensure that equipment is in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

Some examples of failure are:

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

2.16.1 employees not trained to carry out maintenance;

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

2.16.2 no effective isolation of certain processes or substances, or

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

## 2.17 Moving vehicles

Every year, a significant number of people are injured from being struck by a vehicle, whether planned or managed. The key to safe transport is ensuring that the vehicle is in a safe condition.

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

Some examples of failure are:

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

2.17.1 not ensuring that traffic routes are defined, aisle ways are clear, separation of pedestrian and vehicle traffic is practicable;

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

2.17.2 not providing adequate lighting, and not

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

2.17.3 not ensuring that lift truck drivers are trained nor

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

2.17.4 not organising

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

## 2.18 Inadequate Welfare

Adequate welfare facilities are essential to ensure that people working in hazardous conditions are protected from contamination and avoid contamination. For example, the provision of toilets, washing facilities etc. does not reduce the risk of people at work in a modern society.

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

Some examples of failure are:

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

2.18.1 have no readily accessible

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

2.18.2 have no readily accessible cold running

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

2.18.3 have no adequate facilities to ensure that food is likely to be

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

## 2.19 Breaches of health

The examples in this section are the result of a 'one-off' failure. However, often the

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

Equipment must be kept in a safe condition, but it introduces its own risks. For example, when the first line of defence is removed, such as a guard on a dangerous machine or a valve on a section of a gas pipeline, the consequences are critical to ensuring safety.

# A

# M

# P

# L

# E

This can be due to a situation where a risk exists or has been identified.

Some examples of situations that might include:

- 2.19.1 no effective control measures (including engineering controls) where significant risks are present, such as the safety implications of new processes, or the safety implications of new contractors on site;
- 2.19.2 no assessment of risks to vulnerable people, such as young people or people at risk, where significant risks to them are present (e.g. working at height);
- 2.19.3 no access to or consultation with external health and safety advice where such advice is readily controlled;
- 2.19.4 not providing information or training to employees on site where such information or training is a key control measure;
- 2.19.5 not making a risk assessment where significant risks are not identified and the precise control measures are not straightforward (e.g. to identify and implement control measures suitable for a particular site).

# S

# A

# M

# P

# L

# E