

Guidance on Intervention

The Health and Safety Executive came into effect in October 2012 found to be in material breach. September 2017 include the payment of contravention notices and a fully informed

The fee charged is based on the time spent identifying the material breach, the time spent taking enforcement action.

How much will it cost?

The Fee is charged at the rate of £150 per hour to the HSE website to check latest rates. It is based on the amount of time it takes to complete investigations in relation to the breach, multiplied by the relevant hourly rate. If an Inspector is on site and finds a 'material breach' on visit until he leaves site, then he will return for a revisit to ensure you have corrected the breach. Investigation and letter writing – on average would 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 breach of health and safety law serious enough that it requires the HSE to take action against the person in charge.

When an Inspector visits a business to assess the potential safety risks as detailed in the list below. This serves as an example only.

Does FFI apply to you?

FFI applies to all businesses in England and Wales at the moment. It will apply in all workplaces where there are currently normally inspected premises. It will not be affected.

FFI applies to employers, self-employed persons, members of the public) at risk, and to those who are an employee, e.g. partners. It includes:

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

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

FFI – the Fee for Intervention (FFI) is a charge levied by the HSE to recover its costs from those who are found to be in breach of health and safety law. Changes put in place from October 2012 include the payment of contravention notices and a fully informed structure.

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

FFI applies to all businesses in England and Wales. Northern Ireland is exempt at the moment. It will apply in all workplaces where there are currently normally inspected premises. It will not be affected.

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Under the Construction (Design and Management) Regulations 2015 almost every building project, except for the smallest and least complex, 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 liable and FFI fees 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 action should be taken. Understanding how these decisions are made will help you to make your own decisions. These notes will also 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 level of enforcement. The starting point for an Inspector's decision making is to consider the risk to people involved in a particular work activity.

Before taking further action for non-compliance, the Inspector is likely to make an assessment of the actual risk in the workplace. Below are the factors that the Inspector will consider:

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 concerned?

For example, the law requires that ladders should be used for short duration work on fragile roofs. The legal standard is compliance with the law.

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

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

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

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

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

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Other businesses are compliant with health and safety law and what action should be taken. Understanding how these decisions are made will help you to make your own decisions. These notes will also 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.

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

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Where the risk gap is a very effective of the legal standard, the expectation is a very effective of the legal standard, the

- 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 poor areas?

- 1.3.6 Do they demonstrate a lack of competence and capability to properly deal with breaches?

- 1.4 Identify the public interest in the indicated enforcement action meet the public interest.

- 1.5 The Inspector will consider whether imposing 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 breach)

- 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 (prohibition notice where the work is stopped is safe to do so);

- 1.6.5 prosecution

2. Potential Material Breach

- 2.1 **Falls from height** 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 proper working at height;

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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 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 the collapse of an excavation;

2.2.4 failure to ensure that those responsible for and competent to control the risks of operating cranes, managers who supervise mobile plant operators, scaffolders and those erecting or dismantling scaffolding;

2.2.5 failure to ensure the safety of structures on site, including temporary structures;

2.2.6 uncontrolled disturbance of asbestos during maintenance or demolition work.

2.3 **Exposure to dusts and vibration**, can cause health effects, including cancer, which may 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, leading to the release of fibres;

2.3.2 maintenance work on 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 work on a building where asbestos is present in a building, or its removal (if appropriate).

A number of substances known to cause asthma (e.g. dust and metal fumes) and shortness of breath (e.g. walking upstairs) are known to be able to work again.

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Some examples of

2.3.5 not examining
intervals, so

extraction systems at suitable
assured;

2.3.6 machines in
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using metal working fluids without
generation of oil mist;

2.3.7 not providing
training, to
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ent information, instruction and
be exposed, about the use of
al protective equipment provided;

2.3.8 not providing
asthmagens
the causes of

lance 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

tially 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
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hands). Once the d

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

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2.5.2 where emplo
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of alternative working methods,
less vibration.

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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 similar diseases

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

Legionnaires' disease is a 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 are:

- 2.7.1 lack of water treatment or disinfection programme
- 2.7.2 signs of organic matter in the water system
- 2.7.3 cooling tower or other water system not properly maintained or appointed

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.

Some examples of factors that can lead to MSD are:

- 2.8.1 significant use of force where reasonable alternatives are available
- 2.8.2 failure to provide appropriate training to the task where there are significant risks
- 2.8.3 failure to manage symptoms, e.g. by providing rest and/or workplace adjustments

2.9 Noise

Noise-induced hearing loss is a common occupational hazard. 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 are:

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Legionnaires' disease

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2.9.1 not reducing levels by controlling at source, e.g. providing silencing machinery, or reducing exposure, e.g. by enclosing machinery; 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 hearing protection in noisy areas where employees are likely to be exposed for long periods.

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 competent person 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 near 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 company training for lifting equipment;

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

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	2.12.6 lifting operations not properly planned, supervised or done safely.	
2.13	<p>Liquefied petroleum gas</p> <p>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.</p> <p>Some examples of failures are:</p> <p>2.13.1 LPG tanks vulnerable to impact where vehicles are in use close to the tanks;</p> <p>2.13.2 combustible tanks;</p> <p>2.13.3 buried metal tanks without corrosion protection and not subject to regular inspection; and</p> <p>2.13.4 inadequate separation between LPG cylinder storage areas and occupied areas.</p>	
2.14	<p>Machinery guarding</p> <p>Many machines are in use from the common domestic appliances to specialist machines. Injuries commonly occur where workers may easily come into contact with moving parts of machinery. Inadequate guarding is not in place and workers may easily come into contact with the dangerous parts of the machinery.</p> <p>Some examples of failures are:</p> <p>2.14.1 a broken or missing guard on a wheel or tools of a power press;</p> <p>2.14.2 access to the moving parts of a machine exposing operators to crushing and de-skinning because of missing or damaged guards;</p> <p>2.14.3 no guards on the rotating chuck and drill bit on a lathe;</p> <p>2.14.4 inadequate guarding of a roller of a conveyor system fitted with a heavy arm that can draw in and crush an employee's arm;</p> <p>2.14.5 inadequate guarding of a machine when guarding is needed; and</p> <p>2.14.6 deliberate deactivation of guarding that the machine is not in place.</p>	
2.15	<p>Pressure systems</p> <p>There are many types of pressure systems in use, including boilers, steam heaters, compressors, refrigerators, cookers, autoclaves and heat exchangers. They can cause serious injuries if they fail. A pressure system, which, if released inadvertently, can cause serious injury or death.</p> <p>Some examples of failures are:</p> <p>2.15.1 an air receiver that has not been maintained or checked with any safe operating limit; and</p>	

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

2.16 Safe maintenance

Maintenance is essential to keep equipment 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:

2.16.1 employees not identifying dangerous parts of machines before carrying out maintenance; and

2.16.2 no effective isolation of equipment, or certain precautions, such as testing for harmful substances, before work begins in high hazard plant.

2.17 Moving vehicles

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

Some examples of failure are:

2.17.1 not ensuring that vehicles are safe, e.g. no defined traffic routes, obstruction of sightlines, uneven surfaces and no separation of vehicles where this is reasonably practicable;

2.17.2 not providing vehicles with adequate lights, and no maintenance;

2.17.3 not ensuring that drivers are trained and competent, or that lift truck drivers who are neither trained nor competent;

2.17.4 not organising the movement of pedestrians and vehicles on site.

2.18 Inadequate Welfare

Adequate welfare facilities are essential for health where people work with hazardous substances, or where the risk of contamination is high, or where the provision of toilets, washing facilities etc. does not reduce the risk to health in a modern society.

Some examples of failure are:

2.18.1 have no readily accessible toilets;

2.18.2 have no readily accessible washing facilities, e.g. no hot and cold running water;

2.18.3 have no adequate rest facilities to ensure that workers are regularly eaten at work, and that food is likely to be eaten.

2.19 Breaches of health and safety

The examples in this section are the result of a 'one-off' failure. However, often the failure is a result of a failure to control the risks in general.

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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 management system for managing health and safety (including emergency procedures) 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 expectant mothers, where significant risks to them are present (e.g. exposure to noise or vibration);
- 2.19.3 no access to external health and safety advice where significant risks are present and not adequately controlled;
- 2.19.4 not providing information or training to employees on significant risks where such information or training is a key control measure;
- 2.19.5 not making a risk assessment where significant risks are not controlled and the precise control measures are not straightforward (e.g. to identify and implement control measures or management systems suitable for a particular site).

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