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## Health and Safety Executive

### HSE proposal for extending cost recovery

#### Completing this questionnaire

You can move between questions by pressing the 'Tab' / 'Shift-Tab' or 'Page Up' / 'Page Down' keys or by clicking on the grey boxes with a mouse. Please type your replies within the rectangular grey boxes or click on the square grey boxes to select an answer (eg 'Yes' or 'No').

#### Respondent's details:

|                      |                                    |
|----------------------|------------------------------------|
| <b>Name:</b>         | Len McCluskey                      |
| <b>Job title:</b>    | General Secretary                  |
| <b>Organisation:</b> | Unite the Union                    |
| <b>Email:</b>        | c/o susan.murray@unitetheunion.org |
| <b>Street:</b>       | Theobald's Road                    |
| <b>Town:</b>         | London                             |
| <b>Postcode:</b>     | WC1X 8TN                           |
| <b>Telephone:</b>    | 020 7 611 2596                     |
| <b>Fax:</b>          |                                    |

**Size of organisation:**

Choose one option:

|                                                    |                                              |
|----------------------------------------------------|----------------------------------------------|
| Not applicable <input checked="" type="checkbox"/> | 1 to 9 employees <input type="checkbox"/>    |
| 10 to 49 employees <input type="checkbox"/>        | 50 to 249 employees <input type="checkbox"/> |
| 250 to 1000 employees <input type="checkbox"/>     | 1000+ employees <input type="checkbox"/>     |
| Self-employed <input type="checkbox"/>             |                                              |

**Confidentiality**

|                                                                                                                                                                                                                                                                                                 |                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| <p>Please put a cross in the box if you do not wish details of your comments to be available to the public. (NB if you do not put a cross in the box they will be made public. This takes precedence over any automatic notes on e-mails that indicate that the contents are confidential.)</p> | <input type="checkbox"/> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|

**What is your type of organisation:**

Choose one option

|                                                       |                                                        |
|-------------------------------------------------------|--------------------------------------------------------|
| Industry <input type="checkbox"/>                     | Local government <input type="checkbox"/>              |
| National government <input type="checkbox"/>          | Non-governmental organisation <input type="checkbox"/> |
| Non-departmental public body <input type="checkbox"/> | Trade union <input checked="" type="checkbox"/>        |
| Charity <input type="checkbox"/>                      | Trade association <input type="checkbox"/>             |
| Academic <input type="checkbox"/>                     | Consultancy <input type="checkbox"/>                   |
| Member of the public <input type="checkbox"/>         | Pressure group <input type="checkbox"/>                |
| Other <input type="checkbox"/>                        |                                                        |

|                            |
|----------------------------|
| If 'Other' please specify: |
|----------------------------|

**In what capacity are you responding:**

Choose one option:

|             |                          |
|-------------|--------------------------|
| An employer | <input type="checkbox"/> |
|-------------|--------------------------|

|             |                          |
|-------------|--------------------------|
| An employee | <input type="checkbox"/> |
|-------------|--------------------------|

|                      |                                     |
|----------------------|-------------------------------------|
| Trade union official | <input checked="" type="checkbox"/> |
|----------------------|-------------------------------------|

|                                                      |                          |
|------------------------------------------------------|--------------------------|
| Health and safety professional/Safety representative | <input type="checkbox"/> |
|------------------------------------------------------|--------------------------|

|                   |                          |
|-------------------|--------------------------|
| Training provider | <input type="checkbox"/> |
|-------------------|--------------------------|

**1. If you do not agree with the proposals outlined in this consultation document for implementing the Government and HSE Board policy of cost recovery please offer reasons for your disagreement and suggest an alternative proposal for delivering cost recovery?**

Unite broadly accepts the case for cost recovery in the current economic situation so long as it is linked to prevention.

Unite is also concerned that the recovery regime does not influence the HSE's inspection and intervention strategy in any way, nor compromise the integrity of inspectors, nor create risks to their health and safety.

Unite would also expect that all the net proceeds of costs recovery are retained by the HSE.

However, Unite strongly condemns the draconian cuts being made to the HSE and local authorities and we do not regard the costs recovery regime as a substitute for this lost funding.

Unite is also concerned that the existence of a cost recovery scheme may act as a deterrent to employers reporting accidents – especially as it is generally accepted that there is already under-reporting of incidents (especially in the private sector) and that the reporting of near misses is even lower. Our concern is that in these difficult times, the cost implications of reporting incidents etc to the HSE could be the driving factor. So, yet again, we urge the HSE to conduct a vigorous publicity and enforcement campaign to ensure that employers comply with their legal obligations under RIDDOR.

**2. Were you clear about how the cost recovery proposals would operate?**

Yes

No

**If No please explain the reason for your answer.**

Not enough detail is given to enable us to understand the practicalities of the proposal.

**3. Do you agree with the extent of the regulatory activity for which HSE would recover its costs?**

Yes

No

**If No what regulatory activities should HSE recover costs?**

**4. Do you agree with the proposals for when these costs would be incurred?**

Yes

No

**If No, please explain the reason for your answer.**

The exemption for self-employed people may cause some confusion. Section 3(2) of the HSW Act already makes it clear that self-employed people are only covered where there is a risk from their activities to others. The definition of “self-employed” in 53(1) is relatively wide and includes owner-managers who employ others. In addition a considerable number of people are designated “self-employed” but operate under the control of another party. This is particularly the case in construction, but also applies in many other sectors.

The proposals should be consistent with the provisions of the Health and Safety at Work Act. Any specific exemption from the charging regime that is not consistent with the HSW Act will complicate the situation and may lead to employers believing that they can get round the regulations simply by ensuring that their employees are bogus “self-employed”.

**5. Do you agree with the model used for setting the hourly rates for cost recoverable work?**

Yes

No

**If No, please explain the reason for your answer.**

**6. HSE will not use cost recovery to drive intervention approaches. Other than clearly stating this policy and the continued application of HSE's Enforcement Management Model and Enforcement Policy Statement, how else do you think that HSE can reassure duty holders it will not use cost recovery to drive its intervention approaches?**

Unite supports an evidence based approach to enforcement with a mixture of proactive and reactive enforcement based on risk. Unite is very strongly opposed to the Government’s decision to prevent the HSE from conducting proactive inspections

The only way that the HSE can ensure that its intervention approach is not altered by

cost recovery is to revert to an enforcement model based on risk and which recognises the dangers to health of both injury and occupational illness, and to intervene on that basis with regular audits against the enforcement management model.

**7. Do you agree with the two level dispute process outlined in this consultation document?**

Yes

Insufficient information available  
to take a view

**If No, what alternative system would you propose to ensure a practical, fair and transparent dispute process?**

There is insufficient information on how the level 2 disputes process will operate. Unite believes that it is important to have a simple process that is cost effective but which has an element of independence and will give confidence of impartiality to the appellant. Otherwise a considerable number of disputes could end up in court with the costs implications this entails.

**8. Do you agree that Containment Level 3 and Containment level 4 containment laboratories should be exempt from fee for intervention for a short interim period until the SRF is implemented?**

Yes

No

**If No, can you explain why you believe they should not be exempt?**

**9. Do you agree with the proposal that HSE recovers full costs in relation to Boreholes, irrespective of material breach?**

Yes

No

**If No please explain the reason for your answer.**

**10. Do the assumptions made in the impact assessment look reasonable in relation to the estimates made for:**

|                             |     |                          |    |                          |
|-----------------------------|-----|--------------------------|----|--------------------------|
| Familiarisation costs       | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| Cost of processing invoices | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |

**10a. What are your estimated costs for familiarisation?**

N/A

**10b. What are your estimated costs for processing invoices?**

N/A

**11. Are there any costs or benefits not detailed in the impact assessment which HSE needs to consider?**

Yes

No

**Please provide additional details.**

No attempt is made to quantify the likely benefit that the process will have on changing behaviour of employers and improving prevention, although this is raised in section 7.1.

**12. The impact assessment details risks and uncertainties. Which of these are most likely to be realised? Please provide your views/comments.**

The HSE will have some difficulty in trying to ensure that the introduction of cost recovery does not lead to inspectors spending much more of their time on administration. It is therefore crucial that the HSE sets up procedures to ensure that this does not happen, by retaining sufficient administrative staff. In addition we are concerned that the appeals process could lead to greater costs.

**13. Do you think there are any other risks or uncertainties HSE need to consider in the impact assessment?**

Yes

No

**Please provide your views/comments.**

Unite is concerned that the government may, at some future date, seek to recover some of the cost recovery for its own purposes. All costs recovery must be ploughed back into HSE's enforcement and other regulatory activities.

**14. Are you satisfied with the conclusions of the Equality Impact Assessment related to this consultation document?**

Yes

No

**If no what conclusions are you concerned about?**

Unite is very concerned that the new regime will focus more on injuries, and not so much on ill-health. We seek assurances that this will be not the case, as the consequence may not only be that occupational illness will be ignored generally, but also that occupational illnesses which are more prevalent in areas where there are more women workers will be subject to even less enforcement action. HSE's public authority duties under the Equality Act should be revisited in the context of these proposals. Please also see our response to question 6.

**15. Are there any additional factors which you believe should be taken into account in the impact assessment?**

Yes

No

**If yes what additional factors need to be taken into account?**

**16. Do you have any specific comments on cost recovery not covered by the questions above?**

Yes

No

**Please send your response by 14 October 2011 to:**

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Bootle  
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**Thank you for taking the time to complete this questionnaire**