This consultative document is issued by the Health and Safety Executive in compliance with its duty to consult under section 50(3) of the Health and Safety at Work etc Act 1974 and in line with the Government’s Consultation Principles for consulting with stakeholders for proposed policy and legislation changes.

Comments should be sent to the address or e-mail below by no later than 4th September 2023:

Cost Recovery Consultation

Health and Safety Executive

Building 2.3 Redgrave Court

Merton Road

Bootle

Merseyside L20 7HS

E-mail: costrecoveryconsultation@hse.gov.uk

The Executive aims to make its consultation procedure as thorough and open as possible. A summary of responses to this consultation document will be made available on the consultation webpage after the close of the consultation period where they can be viewed by members of the public.

Information provided in response to this consultation may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the UK’s General Data Protection Regulations (GDPR) and the Environment Information Regulations 2004 (EIR). Statutory Codes of Practice under the FOIA and EIR also deal with confidentiality obligations, among other things.

If you would like us to treat any of the information you provide as confidential, please explain your reasons for this in your response. If we receive a request under FOIA or EIR for the information you have provided, we will take full account of your explanation, but we cannot give assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will be disregarded for these purposes. Requests for confidentiality should be made explicit within the body of the response.

HSE will process all personal data in accordance with the GDPR. This means that personal data will not normally be disclosed to third parties and any such disclosures will only be made in accordance with the Regulations. See HSE’s Privacy Policy Statement (<http://www.hse.gov.uk/privacy.htm>).

**Consultative Document**

**Health and Safety Executive Cost Recovery**

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# **Consultation by the Health and Safety Executive**

## Foreword

### The Health and Safety Executive (HSE) undertakes a wide range of regulatory functions fundamental to enabling a safe and healthy workplace with our mission being the prevention of death, injury and ill health to those at work and those affected by work activities.

### Great Britain has one of the best workplace health and safety performances in the world and achieves some of the lowest rates of occupational injury and fatality in Europe.

### HSE’s work supports innovation, productivity and economic growth in GB and its influence and value has a positive impact which far outweighs the cost of the organisation. Businesses that adopt effective, proportionate health and safety practices increase jobs, employee engagement and productivity. We are also playing an important role in the transition to net zero and some of the activity included in these proposals supports this and seeks to ensure health and safety risks are managed effectively during this period of growth.

### We currently charge major hazard businesses for our regulatory activity (e.g. for onshore chemicals through Control of Major Accident Hazards Regulations 2015 (COMAH), and The Offshore Installations (Safety Case) Regulations 2005 where a person meets the definition of a duty holder in the Regulations. HSE introduced Fee for Intervention (FFI) in October 2012, for regulatory activity where there is a contravention of the relevant statutory provisions in the Health and Safety at Work Act etc (1974) and where that activity is not covered by other HSE cost recovery regimes. Under FFI, we recover our costs where a risk-based intervention identifies a ‘material breach’ of the law. If there is no material breach, then there are no charges imposed on the duty holder.

### The independent Tailored Review of HSE (published in November 2018)[[1]](#footnote-2) recommended that HSE should explore opportunities for expansion of the use of cost recovery in certain sectors, building on the lessons learned from FFI to ensure clear objectives.

### HSE has reviewed the scope of its regulatory activity and identified where current cost recovery mechanisms do not recover the full cost of the regulatory activity.

### For the three sectors identified, it is essential that HSE recruits and retains highly specialised staff to maintain our regulatory excellence and support these high hazard sectors with strategic national importance to effectively manage the associated risks. There is a significant amount of sector specific activity which is not currently cost recovered. Continuing to deliver these functions and in some cases the expected growth is only possible through additional funding or cost recovery.

### The policy aim on which HSE is consulting is to ensure full cost recovery where the risk profile of the sector, the hazard or the nature of emerging technologies require risk-based interventions to reduce the potential for injury or ill-health to workers and / or the wider public. This proposal focuses on high hazard activities and emerging technologies with strategic national importance. The implementation of these cost recovery proposals will not change HSE’s regulatory approach to these sectors, which are evidence-based, but will provide a sustainable financial model to ensure effective regulation now and in the future.

### We are committed to continually seek efficiencies in the work that we deliver, making sure our charges are fair and transparent.

### This consultation sets out the activities for which HSE proposes to introduce new cost recovery regimes, some simplifications to existing regimes and changes to cost recovery rates to ensure full cost recovery.

## How consultations are handled

### When consulting stakeholders to seek their views on its policy and legislative proposals, the Health and Safety Executive (HSE) follows the Government Consultation Principles. HSE is committed to best practice in consultation and believes effective public consultation provides an open and transparent approach to decision-making. This is essential if policies and decisions are to have widespread support and to reflect the needs and aspirations of the people they will affect. Following this consultation HSE will decide on the best way forward based on careful consideration of all the views expressed.

### Responses to consultation documents are normally made publicly available unless respondents request confidentiality. If you reply to this consultation in a personal capacity, rather than as a post holder in an organisation, you should be aware that the information you provide may constitute “personal data” under the Data Protection Act 2018 (DPA 2018), and the UK’s General Data Protection Regulation (GDPR). For the purposes of this legislation HSE is the data controller and will process the data for health, safety and environmental purposes. HSE may disclose the data to any person or organisation for the purposes for which it was collected, or where this legislation allows disclosure. You have the right to ask for a copy of the data and to ask for inaccurate data to be corrected.

## How responses are handled

### HSE will consider all the views and comments received in response to this consultation. We may also contact you if, for example, we have a query in respect of your response. When the consultation has closed, we will produce a summary of the views expressed to each question and we will also collate a list of all the organisations that have responded to this consultation. This information will be placed on HSE’s website. HSE will then decide on how best to take the proposals forward based on an interpretation and analysis of the consultation responses.

### To take account of the responses received to this consultation document we may further refine the cost recovery proposals before the regulations are made and laid before Parliament. Once Parliament has agreed the regulations, we will publish them together with further details of the cost recovery process. Subject to the necessary legislation, regulations could come into force from April 2024 or the next common commencement date.

### A summary of the consultation questionnaire can be found in Appendix 6 and on the consultation webpage. You do not have to use the online questionnaire, and you are welcome to comment on any issue raised by this document.

You can:

* Complete the online questionnaire (questions are also highlighted throughout this document in the sections to which they directly relate); or
* Respond by email – costrecoveryconsultation@hse.gov.uk; or
* Respond on paper – by printing and completing the online questionnaire and sending responses to:

Cost Recovery Consultation

Health and Safety Executive

Building 2.3 Redgrave Court

Merton Road

Bootle

Merseyside L20 7HS

Responses must be received by 4th September 2023.

**If you require a more accessible format of this document, please send details to:** [HSE.Online@hse.gov.uk](mailto:HSE.Online@hse.gov.uk) **(mail to:** [HSE.Online@hse.gov.uk](mailto:HSE.Online@hse.gov.uk)**) and your request will be considered.**

## Queries and complaints

### If you are not satisfied with the way this consultation exercise has been conducted, please either write to: David Murray, Director of Finance and Corporate Services, Health and Safety Executive, Building 2.3, Redgrave Court, Merton Road, Bootle, Merseyside L20 7HS or send an email outlining your concern to: [David.murray@hse.gov.uk](mailto:David.murray@hse.gov.uk).

### We aim to reply to all complaints within 10 working days. If you are not satisfied with the response, you can then raise the matter with HSE’s Chief Executive, Sarah Albon, Health and Safety Executive, Redgrave Court, Merton Road, Bootle, Merseyside L20 7HS. You can also write and ask your MP to take up your case with us or with Ministers. Your MP may also ask the independent Parliamentary Commissioner for Administration to review your complaint.

# **Introduction**

## Summary – the new cost recovery proposals and other changes

**Full cost recovery proposals**

### Our main proposal is that HSE recovers the full cost of all its regulatory activities in the following three sectors:

### Oil, Gas and Chemicals Pipeline Systems (section 3.1).

### Onshore Oil, Gas and Geothermal Exploration and Production (section 3.2).

### Wind and Marine Energy (Renewables) (section 3.3).

### These sectors are highly specialised and high hazard, with strategic national importance from both an economic and social infrastructure perspective. In some cases, they present some new health and safety challenges in complex, high growth emerging technology industries. It is therefore essential that HSE is proactive in ensuring these sectors are properly managed to minimise risks to not only the immediate workforce but also the environment and the public.

**Current funding of these sectors via Fee for Intervention**

### Currently HSE’s regulatory interventions are funded only partially in these sectors by Fee for Intervention (FFI)[[2]](#footnote-3). FFI only applies where a material breach of the law is found through a regulatory intervention, so where there is no breach, HSE does not recover its costs in these sectors. This is not suited to HSE’s approach to regulating these three sectors which require highly specialised staff and a significant amount of sector specific activity with the aim of prevention rather than addressing issues after a breach has occurred. More information is provided in each of the respective sections of this document (listed in paragraph 2.1.1).

### Rationale for intervention

### There is a compelling case for the prevention of incidents in high hazard industries, including the three sectors listed in paragraph 2.1.1. Such incidents can lead to fatalities, ill-health and / or have a serious impact on the energy infrastructure which would adversely affect industry and the public. Prevention of such incidents through a fully funded cost recovery regime of regulatory interventions is HSE’s preferred approach rather than rely on FFI which only recovers costs when a material breach has been found. Self-regulation of these sectors is not appropriate because the societal consequence of adverse outcomes in these sectors is high and, in most cases, where workplace injury or death occurs, or there is an infrastructure impact, the duty holder will not bear the full societal cost.

### Following a detailed review, HSE considers that many of the characteristics of these three sectors match the characteristics of similar sectors for which full cost recovery is already in place (see Appendix 1 for the checklist of main features relevant to each of the sectors in this proposal). These characteristics include (but are not limited to): the potential to create great harm to workers, the environment and the public; the highly specialised and strategically important nature of these industries; the requirement for staff with specialist skills; regime specific regulatory activity is used; and / or emerging technology with expected growth and complexity. The only sustainable way for HSE to maintain regulatory excellence and support of these three highly specialised and / or strategically important hazard sectors is through full cost recovery.

### Through the proposed cost recovery rates HSE will recover the full cost of regulating duty holders in these sectors. This includes indirect costs (executive delivery) e.g. inspector training related to the regime; intervention planning; guidance; advice; standards; working with trade associations and bodies; working with other regulators to ensure consistency; public engagement and research. These are costs that HSE should recover from businesses that operate in these sectors.

### As with other full cost recovery regimes such as COMAH and Offshore safety, if full cost recovery is introduced in the three proposed sectors, then FFI will cease to apply.

### Draft, indicative hourly rates for each of the three sectors are summarised in Table 1 below and more detail is provided in each of sections 3.1 to 3.3 about each of the proposed regimes. It is important to note that these rates are draft only and cannot be finalised until after the consultation. Hourly rates for full cost recovery are different across the three sectors because the grade mix and specialism of the staff employed on them varies (i.e. salary costs of HSE staff regulating in one sector compared to another will affect the rate). Also, the amount of indirect costs (see 2.1.6) incurred for each regime will have an impact (i.e. more indirect costs will increase the hourly rate).

Table 1 – Summary of proposed rates for the Three Sectors

|  |  |
| --- | --- |
| **Sector** | **Proposed Draft Indicative Hourly Rates** |
| Oil, Gas and Chemicals Pipeline Systems | £220 |
| Onshore Oil, Gas and Geothermal Exploration and Production | £310 |
| Wind and Marine Energy (Renewables) | £192 |

**Other Changes Proposed to HSE Charging Regimes**

### Other changes are proposed to existing regimes. Firstly, HSE proposes to simplify the cost recovery structure in the Explosives Regulations 2014. It has been eight years since the introduction of these regulations and the associated fee structure which replaced the previous cost recovery arrangements. The proposal follows a review by both HSE and the other licensing authorities (Police and Local Authorities) and will ensure the full cost of the activities are recovered in a fair and proportionate manner and extend explosives cost recovery. Further details about the changes to the existing explosives cost recovery regime are provided in section 4.1.

### Secondly, HSE also proposes to simplify and revise the fees for the approval of offshore first aid and offshore medical training. These changes are explained in more detail in section 4.2.

# **Proposed new charging regimes**

## Oil, Gas and Chemicals Pipeline Systems

### HSE currently operates an established offshore cost recovery regime associated with oil and gas installations, up to 500 metres around installations and this will not change. At the moment, for any regulatory interventions that take place under the Pipeline Safety Regulations 1996 (PSR) and outside of the 500-metre zone of an offshore installation, FFI is the only charging regime that currently applies.

### HSE also currently operates an established cost recovery regime for onshore gas networks, under the Gas Safety (Management) Regulations 1996 (GSMR) for networks conveying natural gas through pipes to domestic and other consumers. For any gas other than ‘natural gas’ that is carried by onshore networks, FFI is the only charging regime that currently applies.

### In order to protect the continuity of supply and the potential impact on the public, industry or infrastructure if any part of the energy network fails, it is essential that HSE is proactive in ensuring risks are managed effectively. The competent and effective regulation of this sector requires the recruitment and retention of inspectors with specialist knowledge to ensure the risks are managed in an effective and proportionate way.

### HSE is therefore proposing that for offshore regulatory interventions that fall outside of the 500-metre zone around an installation, full cost recovery will apply.

### HSE is also proposing that for onshore interventions that fall under PSR 1996 and do not involve ‘natural gas,’ (for example hydrogen blend pipelines) full cost recovery will apply. These costs will be recovered from the duty holder in control of the activity who meets the definition of ‘operator’ under PSR ( see paragraph 3.1.6) or ‘person supplying or conveying gas’ in the GSMR (see paragraph 3.1.7) and those whose undertakings result in gas production and / or injection into a gas network. The fees will apply for any regulatory work associated with the relevant statutory provisions of the Health & Safety at Work etc Act 1974. It is also proposed that where full cost recovery is implemented, FFI will cease to apply.

### PSR defines a pipeline operator as:

1. the person who is to have or (once fluid is conveyed) has control over the conveyance of fluid in the pipeline;
2. until that person is known (should there be a case where at a material time he is not yet known) the person who is to commission or (where commissioning has started) commissions the design and construction of the pipeline;
3. when a pipeline is no longer, or is not for the time being used, the person last having control over the conveyance of fluid in it.

### GSMR refers to “any reference in these Regulations to a person supplying or conveying gas, preparing a safety case or carrying out work in relation to a gas fitting is a reference to a person who does so in the course of a business or other undertaking carried on by him”.

### HSE will recover its costs for all regulatory interventions associated with PSR and GSMR, irrespective of the findings of the intervention. HSE targets its proactive regulatory activity using risk-based analysis and topics. The basis for intervention will be:

* safety case submissions (new, periodic reviews or material changes);
* submissions for exemptions to regulations;
* required statutory notifications and consultations (e.g. notifications for Major Accident Hazard pipelines (MAHPs) before construction, before use or changes);
* proactive and reactive inspections to confirm regulatory compliance;
* risk based intelligence of performance or safety concerns raised with HSE;
* investigation of incidents and complaints.

### The duty holder will receive verbal and/or written feedback and/or an inspection report, on the outcome of the regulatory intervention specific to that site and/or intervention.

### It is proposed that HSE would recover all its costs using an hourly rate for all reasonable time associated with preparing for and completing the necessary regulatory intervention. A full explanation of HSE’s costing methodology is provided in Appendix 4, but briefly, this will include all direct costs and associated overheads plus an element of indirect costs (see paragraph 2.1.6). Where HSE engage third party advice on technical issues this will also be recovered from the duty holder on an actual cost basis..

### HSE propose to recover costs incurred through quarterly invoicing. If duty holders do not pay promptly normal credit control action will be taken, i.e. reminder, final reminder followed by recovery action through HSE’s debt collection agency and ultimately the civil courts.

### HSE would form a Cost Recovery Review Group for this sector that would meet annually to ensure the regime is meeting its objectives and to minimise the chance of any unforeseen consequences. This group would include representation from the industry (e.g. United Kingdom Onshore Pipeline operators’ Association; Gas Transporters Operational Safety Group; Pipeline User Group; Offshore Energies UK; Chemical Industries Association).

**Example 3**: Interventions carried out by inspectors for onshore and offshore pipelines carrying chemicals such as ethylene and carbon dioxide are not currently cost recoverable. HSE will recover the full cost of all its regulatory activity that is not currently recovered through other cost recovery regimes.

**Example 1**: HSE is becoming increasingly engaged in areas of emerging technologies, for which its interventions are not cost recoverable. An example is Hydrogen which requires appropriate management to ensure safe storage and so HSE must proactively manage the associated risks. Although Hydrogen is regulated under PSR 1996, HSE’s onshore regulatory interventions associated with Hydrogen are not currently cost recoverable. HSE’s regulatory involvement is expected to include in its remit all stages of the project from design, through testing and piloting, to commission and operation and the only sustainable way to do this is to fully recover the cost of all its regulatory activity.

**Example 2**: In an ‘end to end’ analysis of gas extracted, say from a sub-sea reservoir in the North Sea, pipeline interventions within the 500-metre zone around each installation are cost recoverable. The pipeline section from the 500-metre zone to shore and for infield pipelines to/from the subsea well are regulated under PSR and are not currently cost recoverable unless the intervention is linked to the safety of the installation through an issue such as pipeline integrity management. GSMR and PSR apply from the terminal through the transmission and distribution networks for natural gas. PSR also applies to onshore oil and chemical pipelines. HSE will recover the full cost of all its regulatory intervention under PSR and GSMR that is not currently recovered through other cost recovery regimes.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tick the relevant box below** | | | | |
| **1**  Strongly Disagree | **2**  Disagree | **3**  Don’t Agree or Disagree | **4**  Agree | **5**  Strongly  Agree |
|  |  |  |  |  |

**Please explain the reasons for this score:**

**Question 1**: To what extent do you agree or disagree that the proposed Oil, Gas and Chemicals Pipeline Systems cost recovery regime is a fair and reasonable way for HSE to recover the cost of this activity?

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tick the relevant box below** | | | | |
| **1**  Strongly Disagree | **2**  Disagree | **3**  Don’t Agree or Disagree | **4**  Agree | **5**  Strongly  Agree |
|  |  |  |  |  |

**Question 1**: Do you agree that the proposed Onshore Oil and Gas Transmission and Distribution cost recovery regime is a fair and reasonable way for HSE to recover the cost of this activity? se

## Onshore Oil, Gas and Geothermal Exploration and Production

### Onshore Oil, Gas and Geothermal Exploration and Production is a small but strategically important sector, covering onshore sites producing oil, gas and geothermal energy from wells drilled into the ground which includes emerging technologies and creates high hazard risks that have the potential to adversely impact on workers and the wider public. Currently HSE inspects notifications under Reg 6(1) and (5) of the Borehole Sites and Operations Regulations 1995 (BSOR) and can recover all of the associated costs under regulation 20 of the Fees Regulations. However, HSE cannot recover costs for the inspection of Regulation 19 weekly reports under Offshore Installations and Wells (Design and Construction, etc) Regulations 1996 (DCR) submitted by the Well Operator or for onsite inspections of petroleum borehole sites. FFI is currently the only charging regime that applies here.

### Self-regulation is not appropriate for this high hazard industry due to its major hazard potential and the fact in most cases, where workplace injury or death occurs, or there is an infrastructure impact the duty holder will not bear the full societal cost of health and safety failings. In order to protect the continuity of supply and the potential impact on the public, industry or infrastructure if any part of the energy network fails, it is essential that HSE is proactive in ensuring that risks are managed effectively. The competent and effective regulation of this sector requires the recruitment and retention of inspectors with specialist knowledge to ensure the risks are managed in an effective and proportionate way. The only sustainable way to fund this effective regulation is through full cost recovery.

### HSE is proposing to recover the full cost of its regulatory interventions at and related to onshore oil, gas and geothermal exploration and production from the Borehole Site Operator and/or Well Operator. The fees will apply for any regulatory work associated with the powers conferred by 43(2), (4), (5) and (6) and 82(3)(a) of the Health & Safety at Work etc Act 1974. Where cost recovery is introduced, FFI will cease to apply.

### All onshore oil and gas operators as defined in BSOR and DCR will be charged for the full cost of all regulation, irrespective of the size of the business.

### Operator as per BSOR means:

* a person appointed by the owner in writing to exercise for the time being the function of organising or supervising borehole operations at the site, where that function involves the exercise of overall control of the borehole site; or
* where for the time being there is no such person, the owner.

### ‘Well operator’ in relation to a well in Great Britain, as per DCR means:

* the person appointed by the licensee for the well to execute the function of organising and supervising all operations to be carried out by means of such well or, where no such person has been appointed, the licensee.

### Regulatory intervention means any inspection, investigation or enforcement. Investigation could include investigations of accidents, dangerous occurrences and concerns raised by employees or members of the public. Accidents and incidents are only investigated where they meet the published Incident Selection Criteria.

### HSE determines the basis for regulatory intervention activity using specific trigger points and risk-based analysis:

* Inspection of the submission of a borehole site notification as required by Reg 6(1) & (5) of the Borehole Sites and Operations Regulations 1995 or the weekly report as per the requirements of Reg 19 of the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996.
* Shale gas or unconventional operations that HSE must visit as per the Infrastructure Act 2015.
* Risk based intelligence of operator performance or topic led inspections.
* Investigation of incidents that meet HSE’s Incident Selection Criteria.

### As a result of the regulatory interventions the onshore oil and gas operator will receive advice and guidance as well as directed enforcement activities that will improve their health and safety performance.

### HSE proposes to recover all its costs using an hourly rate for all reasonable time associated with preparing for and completing the necessary regulatory intervention. A full explanation of HSE’s costing methodology is provided in Appendix 4, but briefly, this will include all direct costs and associated overheads plus an element of indirect costs (see paragraph 2.1.6). Where HSE engages third party advice on technical issues this will also be recovered from the duty holder on an actual cost basis.

### HSE proposes to recover costs incurred through quarterly invoicing. If duty holders do not pay promptly normal credit control action will be taken, i.e. reminder, final reminder followed by recovery action through HSE’s debt collection agency and ultimately the civil courts.

### HSE would form a Cost Recovery Review Group for this sector that would meet annually to ensure the regime is meeting its objectives and to avoid any unforeseen consequences. This group would include representation from the industry (e.g. Onshore Oil and Gas Wells Trade Body, United Kingdom Onshore Oil and Gas).

**Example 2**: The borehole operator is now executing the operations at the petroleum site that were previously notified to HSE in Example 1 above. The borehole operator is also the well operator and is therefore required to send weekly well operations reports to HSE as per the requirements of Regulation 19 of the Offshore Installations and Wells (Design and Construction, etc) regulations 1996 (DCR). These weekly reports and any follow up questions and/or site/ office inspection would become cost recoverable under this proposal.

**Example 1**: A borehole operator plans to drill and/or conduct an operation at a petroleum borehole site. The operator is required to submit a notification to HSE under the Borehole Sites and Operations Regulations 1995 (BSOR).

The borehole operator has not conducted such an operation before and contacts HSE for advice. The advice about what should be in a notification is not currently cost recoverable but would be cost recoverable under this proposal. Subsequent advice to the borehole site operator would also be cost recoverable under this proposal.

The borehole operator submits the notification and the following are currently cost recoverable and will remain so:

* inspection by a specialist Well Engineering and Operations Inspector.
* time spent on any questions asked by the inspector of the borehole operator and any correspondence between the borehole operator (or its consultants or agents) and the inspector.
* creation of the inspection summary record and review of it by the inspector’s line manager.
* follow-up inspection to confirm that actions and risk mitigations in the notification are being implemented.

Time spent by the inspector on aspects of the inspection not related to the borehole notification are currently not cost recoverable but would be under this proposal. All time spent by inspectors in preparing for the site inspection, conducting the inspection, writing reports, sending letters, any enforcement actions, and closing out the inspection would also be cost recoverable under this proposal.

**Example 1**: A borehole operator plans to drill and/or conduct an operation at a petroleum borehole site. In this instance the borehole site involves high volume hydraulic fracturing operations, however all petroleum borehole sites will be treated the same with regard to cost recovery. The operator is required to submit a notification to HSE under Borehole Sites and Operations Regulations 1995.

The borehole operator has not conducted such an operation before and contacts HSE for advice. The advice about what should be in a notification is not currently cost recoverable but will be cost recoverable in future. Subsequent advice to the borehole site operator will also be cost recoverable

The borehole operator submits the notification and the following are currently cost recoverable and will remain so:

* inspection by a specialist Well Engineering and Operations Inspector.
* time spent on any questions asked by the inspector of the borehole operator and any correspondence between the borehole operator (or its consultants or agents) and the inspector.
* creation of the inspection summary record and review of it by the inspector’s line manager.
* follow-up inspection to confirm actions and risk mitigations in the notification are being implemented.

Time spent by the inspector on aspects of the inspection not related to the borehole notification are currently not cost recoverable but would be in future. All time spent by inspectors in preparing for the site inspection, conducting the inspection, writing reports, sending letters, any enforcement actions, and closing out the inspection will now be cost recoverable.

**Example 3**: A general proactive inspection of a borehole site is to be conducted by HSE inspectors and/or visiting officers. All time spent by the inspectors/visiting officers in preparing for the site inspection, conducting the site inspection, writing reports, sending letters and any other enforcement actions, and closing out the inspection will now be cost recoverable.

A general proactive inspection of an element of the borehole site operator/well operator’s safety management system e.g. Well Examination Scheme, competency management system, is to be conducted by HSE inspectors and/or visiting officers at the borehole/well operator’s offices. All time spent by the inspectors/visiting officers in preparing for the office inspection, conducting the office inspection, writing reports, sending letters and any other enforcement actions, and closing out the inspection would now be cost recoverable under this proposal. Any time spent by the inspector’s line manager in connection with the inspection would also be cost recoverable under this proposal.

**Example 3**: A general proactive inspection of a borehole site is to be conducted by HSE inspectors and/or visiting officers. All time spent by the inspectors/visiting officers in preparing for the site inspection, conducting the site inspection, writing reports, sending letters and any other enforcement actions, and closing out the inspection will now be cost recoverable.

A general proactive inspection of an element of the borehole site operator/well operator’s safety management system e.g. Well Examination Scheme, competency management system, is to be conducted by HSE inspectors and/or visiting officers at the borehole/well operator’s offices. All time spent by the inspectors/visiting officers in preparing for the office inspection, conducting the office inspection, writing reports, sending letters and any other enforcement actions, and closing out the inspection will now be cost recoverable. Any time spent by the inspector’s line manager in connection with the inspection will be cost recoverable.

**Question 2**: To what extent do you agree or disagree that the proposed Onshore Oil and Gas Exploration and Production cost recovery regime is a fair and reasonable way for HSE to recover the cost of this activity?

**Please explain the reasons for your score:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tick the relevant box below** | | | | |
| **1**  Strongly Disagree | **2**  Disagree | **3**  Don’t Agree or Disagree | **4**  Agree | **5**  Strongly  Agree |
|  |  |  |  |  |

## Wind and Marine Energy (Renewables)

### The Wind and Marine Energy (Renewables) sector produce energy from water or winds. The renewable energy sector is of growing importance to the UK electricity generation mix and as part of the government’s commitment to meet Net Zero. Powering up Britain[[3]](#footnote-4) the Government’s blueprint for the future energy of this country includes the ambition to produce 50GW of offshore wind by 2030. Similar growth is anticipated in the Wind and Marine Energy (Renewables) sector. Currently HSE only recovers costs of regulating this sector when a material breach of health and safety law is found and FFI applies.

### The expansion of Wind and Marine Energy (Renewables) industry with emerging technology has resulted in new and/or increased health and safety challenges. The competent and effective regulation of this sector requires specialist inspectors with deep topic knowledge to ensure the risks are managed in an effective and proportionate manner. It is essential that HSE has the requisite number of inspectors to undertake the required levels of regulatory activity. The only sustainable way to fund the regulation of this expanding sector is through full cost recovery.

### Self-regulation is not appropriate for this industry as there are high hazard construction activities in remote and hostile locations and the sector provides critical national infrastructure. While there is no hydrocarbon risk associated with Wind and Marine Energy (Renewables), there is the potential for a major accident including:

* An event involving major damage to the structure of an Offshore Renewable Energy Installation (OREI) or vessel in attendance or any loss in the stability of the OREI or vessel;
* Collision of a helicopter with an OREI or attending vessel;
* An event arising from a work activity involving death or serious personal injury to five or more persons on the OREI or engaged in an activity in connection with it;
* Diving operations.

### HSE is proposing to recover the full cost of its regulatory interventions at and related to the Wind and Marine Energy (Renewables) sector where there is exploitation of the immediate site for the production of energy from wind and marine renewable sources. The following will be liable for cost recovery purposes:

### Fees will apply for any regulatory work associated with Wind and Marine Energy (Renewables) in line with the powers conferred by 43(2), (4), (5) and (6) and 82(3)(a) Health & Safety at Work etc Act 1974. Where cost recovery is introduced, FFI will cease to apply.

### HSE’s risk-based intervention strategy targets the regulatory interventions at Wind and Marine Energy (Renewable) sites (that is: offshore wind generation and transmission developments; marine energy developments; and onshore wind generation and transmission developments). The regulatory interventions will include:

* inspections at key project milestones in the construction, operation, maintenance, decommissioning or demolition of sites.
* investigation of incidents that meet HSE’s Incident Selection Criteria.

### The licensee will receive a written report which will be a point in time record of the health and safety topics inspected or in the case of an investigation a full outcome report. Also, verbal advice on the outcome of the visit specific to that site.

### HSE propose to recover all its costs using an hourly rate for all reasonable time associated with preparing for and completing the necessary regulatory intervention. A full explanation of HSE’s costing methodology is provided in Appendix 4, but briefly, this will include all direct costs and associated overheads plus an element of indirect costs (see paragraph 2.1.6). Where HSE engage third party advice on technical issues this will also be recovered from the duty holder on an actual cost basis.

### HSE propose to recover costs incurred through quarterly invoicing in arrears. If duty holders do not pay promptly normal credit control action will be taken, i.e. reminder, final reminder followed by recovery action through HSE’s debt collection agency or ultimately the civil courts.

### HSE would form a Cost Recovery Review Group for this sector that would meet annually to ensure the regime is meeting its objectives and to minimise the chance of any unforeseen consequences. This group would include representation from the industry (e.g. G+ Offshore Wind Health and Safety Association; Renewable UK; Safety On).

**Example 2**: Investigations will use the Incident Selection Criteria and also use statutory examination reports to trigger regulatory interventions. Due to the importance to the sector, HSE are also involved in product safety with some of the 10 Turbine Suppliers and other original equipment manufacturers. All these activities would be fully cost recovered under this proposal.

**Example 1**: The priority will be inspection of construction activities for onshore and offshore wind farms identified in the F10 database (construction notification). For the 39 operational offshore windfarm sites HSE will undertake targeted inspections. These will include major component exchange and joint intervention with the HM Coastguard for emergency planning. Also, some inspections at operational onshore sites, this will be a small sample of the larger 300 or so sites in GB. All this activity would be cost recoverable under this proposal.

**Question 3**: To what extent do you agree or disagree that the proposed Renewables cost recovery regime is a fair and reasonable way for HSE to recover the cost of this activity?

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tick the relevant box below** | | | | |
| **1**  Strongly Disagree | **2**  Disagree | **3**  Don’t Agree or Disagree | **4**  Agree | **5**  Strongly  Agree |
|  |  |  |  |  |

**Please explain the reasons for your score:**

# **Proposed Changes to Existing Fees Regulations**

## Explosives

### The explosives industry is a high hazard sector where hazards have the potential to cause considerable harm to workers, the environment and the general public. The regulated sectors include sites manufacturing and storing explosives; ports handling explosives; the transport of explosives by road; and the security of explosives. HSE’s regulatory activity focuses on the prevention of major incidents from fire and explosion, the safe transport of explosives, the security of explosives and public assurance.

### *Sites manufacturing and storing explosives* are regulated under the Explosives Regulations 2014 (ER2014). ER2014 places specific duties on people who acquire/ acquire and keep, manufacture, store or transfer explosives or place them on the market. The sector is engaged in the development of new and emerging technologies that are expected to grow capacity as well as increasing the performance of explosives. ER2014 is enforced by HSE, the Police, the Local Authority (Trading Standards Department or Fire & Rescue Services) or the Office for Nuclear Regulation (ONR) depending on the activity and the type and quantity of explosives.

### The Dangerous Goods in Harbour Areas Regulations 2016 (DGHAR 2016) prohibit with certain exemptions, *explosives from being brought into or handled in a harbour area*, or from being loaded onto or unloaded from a vessel in any part of the coast or tidal waters or territorial waters adjacent to Great Britain, unless such activities are covered by an explosives licence. HSE is the enforcing authority for DGHAR 2016.

### The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (as amended) (CDG) specify the requirements for the *transport of dangerous goods, including explosives*. CDG places specific duties on consigners and those who transport dangerous goods. HSE is the Competent Authority for Class 1 goods (Explosives) under the Regulations.

### HSE has historically recovered the costs for explosives permissioning activities, however this is not consistent for all interventions covered by the relevant regulations and the proposal is to regularise cost recovery for all interventions.

### It is proposed:

### For permissioning activities undertaken by HSE, under the provisions of ER2014 and DGHAR 2016 to revise the hourly rate to £187 per hour.

* For permissioning activities undertaken by HSE, relating to the classification under the provisions of CDG 2009 (as amended)to revise the hourly rate to £91 per hour.
* For permissioning activities undertaken by HSE, relating to approvals, authorisations or directions under the provisions of CDG 2009 (as amended) to introduce cost recovery for these interventions at an hourly rate of £187 per hour.

### It is proposed to remove the current application fee payable for interventions under ER2014 and DGHAR 2016 and that the hourly rates be applied for all work undertaken. The same hourly rate would be applied for all parties undertaking the work on the activity (administration/technical). This proposal will ensure that the actual delivery costs will be recovered.

* For activities relating to the issue of an authorisation to transfer explosives namely a Recipient Competent Authority (RCA) document or GB transfer approval to introduce a flat fee of £150. This would apply to authorisations issued by HSE and by the Police.
* For activities relating to the issue of a site manufacturing code to introduce a flat fee of £150.

### It is proposed that cost recovery will apply to all of the activities undertaken under ER2014, DGHAR 2016 and CDG as set out in Appendix 2.

### The hourly rates would include all direct costs, including third party costs where appropriate and associated overheads plus an element of indirect costs.

### Explosives interventions other than permissioning related activity are currently only partially recovered through the Fee for Intervention (FFI) cost recovery regime which applies where there is a material breach of health and safety law. Also, where a material breach is identified the FFI hourly rate does not recover the full cost of the specialist staff required to regulate this sector. FFI will not apply to this activity in future and alternative arrangements will apply as set out below.

### HSE proposes to recover the full cost of its regulatory interventions for the explosives sector from the duty holder in control of the explosives. In most cases this will be the licensee of the site, unless fees are already recovered under the Explosives Regulations 2014, DGHAR 2016, CDG or Control of Major Accident Hazards 2015 (COMAH 2015). The fees will apply for any explosives regulatory work associated with the powers conferred by 43(2), (4), (5) and (6) and 82(3)(a) of the Health & Safety at Work etc Act 1974.

### The regulatory interventions will include:

* targeted proactive regulatory activity based on historic performance data, intelligence data and analysis of risk.
* investigations including of accidents, dangerous occurrences and concerns where they meet the HSE Incident Selection Criteria.

### HSE proposes to recover costs by invoice utilising HSE’s existing system. Invoices will be issued quarterly for licensing activities, with a final invoice on issue of the authorisation/licence and on completion of all work for activities relating to explosives transport. Authorisations relating to the transport of explosives will not be issued until payment has been received in full. If duty holders do not pay promptly normal credit control action will be taken, i.e. reminder, final reminder followed by recovery action through HSE’s debt collection agency and ultimately the civil courts.

**Police and Local Authorities Authorisations**

### The fees currently applied by the Police and Local Authorities for all authorisations are specified in the Health and Safety and Nuclear (Fees) Regulations. The fees vary depending on whether the application is for a new authorisation or a renewal and the duration up to a maximum of 5 years.

### HSE propose to revise the fees to reflect the full cost of the explosives permissioning activity, including renewals, undertaken by the Police and Local Authorities. The increase in fees is based on evidence provided by Police and Local Authorities detailing the cost of delivering permissioning functions. The revised rates retain the graded structure where the longer the duration of the multi-year licence, both for initial licence and renewals, the less expensive the pro-rata annual cost. The costs for each respective multi-year licence incorporates the cost of expected inspection activity over the life of the licence. Both Local Authorities and the Police have expressed a preference to retain fixed fees based on planned activity levels for ease of administration.

**Example 2:** HSE hasthe power to issue exemptions from any requirement or prohibition imposed by the Explosives Regulations 2014, including for authorisations to manufacture and/or store explosives. All time spent in preparing and issuing the exemption, by inspectors and administrators, would be cost recoverable under the current proposal.

**Example 2:** HSE hasthe ability to issue exemptions from any requirement or prohibition imposed by the Explosives Regulations 2014, including for authorisations to manufacture and/or store explosives. All time spent in preparing and issuing the exemption, by inspectors and administrators, will now be cost recoverable.

**Example 1:** HSE undertake proactive targeted inspections of licensed explosives sites to ensure compliance with the conditions of the licence and requirements of the Explosives Regulations 2014 and other relevant legislation. All time spent in preparing for, conducting and closing out the site inspection would be cost recoverable irrespective of the conditions found under this proposal.

**Example 1:** HSE will undertake proactive targeted inspections of licensed explosives sites to ensure compliance with the conditions of the new licence and requirements of the Explosives Regulations 2014 and other relevant legislation. All time spent in preparing for, conducting and closing out the site inspection will now be cost recoverable irrespective of the conditions found.

**Example 3:** A person must obtain permission from HSE for the transfer of civil explosives into or out of Great Britain. The costs for the issue of this permission would be recovered as a one-off fee per application, under this proposal.

**Example 3:** A person must obtain permission from HSE for the transfer of civil explosives into or out of Great Britain. The costs for the issue of this permission will now be recovered as a one-off fee per application.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tick the relevant box below** | | | | |
| **1**  Strongly Disagree | **2**  Disagree | **3**  Don’t Agree or Disagree | **4**  Agree | **5**  Strongly  Agree |
|  |  |  |  |  |

## 

**Question 4** To what extent do you agree or disagree that the proposed changes produce a fair and reasonable way for HSE, Local Authorities and Police to recover the cost of this activity?

**Question 7**: TBC upon completion of LA and Police engagement – end of October 2019.

**Please explain the reasons for your score:**

## Offshore First-Aid and Medical training approvals

### This work covers the cost to HSE of approving training related to:

* Offshore First-Aid training: which covers rendering of first-aid to persons who are injured or become ill while at work.
* Offshore Medical training: which covers rendering first-aid to, and treating in accordance with the directions of a registered medical practitioner (who may or may not be present) persons who are injured or become ill while at work, and giving simple advice in connection with the health of persons at work

### For each of the two types of training approvals, the current cost recovery fees cover original approval of training; renewal of approval of training; initial site-visit relating to training; additional site visit related to training; fee for a site visit relating to a complaint; and fee for a cancelled visit. The fees span 4 multi-columned tables as per schedule 13 of the Fees Regs.

### Following review HSE proposes to simplify the fees to provide for 3 distinct fees for each of the two types of training approvals:

* Fee for an original approval of offshore first-aid/offshore medical training.
* Fee for any additional site-visit (for (i) renewal or (ii) investigation of a complaint) relating to offshore first-aid/offshore medical training.
* Fee for cancelled site-visit relating to offshore first-aid/offshore medical training.

### The proposed fees are based on the full cost (direct costs and associated overheads) of delivering the approval work based upon a review of the expected average amount of time, both specialist and administrative, to deliver the required approval activity. HSE expects to deliver original approval work through more efficient processes with a lower grade of staff.

### The proposed rates are shown in Appendix 3.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tick the relevant box below** | | | | |
| **1**  Strongly Disagree | **2**  Disagree | **3**  Don’t Agree or Disagree | **4**  Agree | **5**  Strongly  Agree |
|  |  |  |  |  |

**Question 5**: To what extent do you agree or disagree that the proposed simplification and associated rates are a fair and reasonable way for HSE to recover the cost of this activity?

**Please explain the reasons for your score:**

**Appendix 1** **–Cost Recovery Regimes – Main Features**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Potential to create great harm to workers, the environment and the public** | **Highly specialised, strategically important industries that support the economy and social infrastructure** | **Direct link to HSE’s Strategic Priorities and Sector Plans** | **Maintain HSE’s regulatory excellence – recruit and retain staff with the necessary skills and capability** | **Regime specific” activity** | **Supports the principle of Earned Recognition through risk-based intervention plans** | **Emerging Technology with expected growth and complexity** | **Economic case for prevention of incident in high hazard industries** |
| **Oil, Gas and Chemicals Pipeline Systems** | **** | **** | **** | **** | **** | **** | **** | **** |
| **Onshore Oil & Gas Exploration and Production** | **** | **** | **** | **** | **** | **** | **** | **** |
| **Wind and Marine Energy (Renewables)** | **** | **** | **** | **** | **** | **** | **** |  |
| **Explosives** | **** | **** | **** | **** | **** | **** | **** | **** |

# **Appendix 2 – Explosives Proposed Rates**

DRAFT

| **Activity** | **Enforcing Authority** | **Proposed cost recovery rate** |
| --- | --- | --- |
| **Explosives Regulations 2014 (as amended)** | | | |
| Issue of a new or renewal of an authorisation to acquire or acquire and keep explosives, or refusal of the same | Police | £700 (new)  £585 (renewal) |
| Issue of a new or variation of an existing authorisation to manufacture explosives, or refusal of the same | HSE/ONR | £187/ hour |
| Issue of a new, variation or renewal of an existing authorisation to store explosives, or refusal of the same | HSE  Police/Local Authority (Trading Standards or Fire & Rescue Service) | £187/ hour  New:£390 (1 year) - £590 (5 year)  Renewal: £185 (1year) - £385 (5 year)  Variation:  Varying name of licensee of address site - £125 (flat rate)  Any other kind of variation – The reasonable cost to the licensing authority of having the work carried out. |
| Issue of an authorisation to transfer explosives (RCA or GB transfer approval) | HSE (GB transfer approval and RCA)  Police (RCA only) | £150 (flat rate) |
| Issue of an exemption from the requirements of Explosives Regulations 2014 | HSE/ONR | £187/hour |
| Transfer, or refusal to transfer, an authorisation to manufacture and/or store explosives | HSE/ONR  Police/Local Authority (Trading Standards or Fire & Rescue Service) | £187/ hour  £125 (flat rate) |
| Issue of a manufacturing site code for Civil Explosives | HSE | £150 (flat rate) |
| Revocation of a licence | HSE/ONR  DRAFT  Police/ Local Authority (TS or FRS) | £187/ hour  £390 (flat rate) |
| Revocation of an explosives certificate | Police | £390 (flat rate) |
| Issue of a replacement of any authorisation, if lost. | HSE/ONR/Police/Local Authority (Trading Standards or Fire & Rescue Service) | £60 (flat rate) |
| **Dangerous Goods in Harbour Areas 2016** | | | |
| Issue or refusal of a new or variation of an existing licence to handle, load and unload explosives | HSE/ONR | £187/ hour |
| Issue of an exemption from requirements of Dangerous Goods in Harbour Areas Regulations 2016 | HSE/ONR | £187/ hour |
| **Carriage of Dangerous Goods and Use of Transportable Pressure Equipment 2009 (as amended)** | | | |
| Issue a classification to transport explosives | HSE | £91/ hour |
| Issue of an approval authorisation or direction | HSE | £187/hour |
| Issue of an exemption from the requirements of CDG2009 | HSE | £187/hour |

# **Appendix 3 – Offshore First-Aid and Medical training approvals**

|  |  |  |
| --- | --- | --- |
| Fee for an original approval of offshore medical training | Fee for any additional site visit for (i) renewal of (ii) investigation of a complaint relating to offshore medical training  DRAFT | Fee for a cancelled site-visit relating to offshore medical training |
| £2,007 | £1,424 | Reasonable cost to the Executive due to the cancellation |

|  |  |  |
| --- | --- | --- |
| Fee for an original approval of offshore first-aid training | Fee for any additional site visit for (i) renewal of (ii) investigation of a complaint relating to offshore first-aid training | Fee for a cancelled site-visit relating to offshore first-aid training |
| £1,237 | £1,082 | Reasonable cost to the Executive due to the cancellation |

# **Appendix 4 – How the cost recovery rates are calculated**

In setting cost recovery rates, HSE follows HM Treasury’s guidance as outlined in Managing Public Money (MPM). That means we pay particular consideration to:

* clarity and transparency: the approach must be simple enough to provide transparency to those being charged.
* seeking to recover the full cost of activities: a basic principle of setting charges is to recover the full cost of the activity, which includes a cost of capital.
* basing rates on sound forecasts of cost and activity levels: these are supported

by activity-based plans to minimise the risk of material deficits or surpluses on activities.

**Four step process**

To set fees and charges HSE follows a four-step activity-based costing process to cost the direct time required to deliver the relevant direct recoverable activities.

**Step 1 – salary costs:** identify the total forecast volume of effort and total payroll cost (salary, employers’ national insurance and employers’ superannuation) of the individuals involved in the **direct** delivery of the activity. This is calculated as an average hourly rate per grade and assumes a total of 220 available days in a working year allowing for weekends, leave and other absences.

**Step 2 – attributable costs (executive delivery):** this is costed staff effort that is directly linked to the chargeable activity and is material enough to justify direct attribution of the costs (for example, training and development effort linked to a specific capability, management oversight, guidance, cost of travel time, and direct administrative and management support).

**Step 3 – indirect costs:** identify expenditure that can be clearly linked to specific direct activities (for example, travel and subsistence costs and training costs). These are included in the hourly rates rather than charged on an actual basis to each project.

**Step 4 – overheads:** this category includes all the usual overheads such as:

* infrastructure costs (for example, information technology/desktop services and estates/facilities management).
* corporate services (for example, finance, procurement, HR, corporate learning and development, legal services, IT services, communications, senior management).
* depreciation and impairments of relevant fixed assets.

The sum of the costs identified through steps 1 to 4 divided by the total forecast direct hours provides a full cost per hour rate for delivery of a specific cost recovery regime. This is a blended rate (meaning it includes administration and management time rather than these being charged separately) which seeks to recover the full cost of operating the regime.

The accuracy of the activity assumptions and forecasts are reviewed annually and reported through a memorandum trading account in the HSE annual report and accounts which is audited by the National Audit Office.

# **Appendix 5 – Queries and Disputes Process**

The following outlines the proposed procedure for answering queries and resolving disputes for the new cost recovery regimes.

This procedure aims to ensure that queries and disputes are resolved promptly, transparently and fairly.

**Level 1 – Routine Queries**

Queries from duty holders about information contained in the invoice including:

* composition of charge;
* amount of the invoice;
* method of payment;
* terms of payment;
* invoicing arrangements; and
* the propriety of the charge.

Queries should be raised by the duty holder as soon as possible after receipt of the invoice and no later than 20 working days after the invoice date.

HSE will consider queries promptly and provide the duty holder with a response within 10 working days of receipt. The Cost Recovery Team will trigger liaison with the Operational Team to provide the Level 1 response.

**Level 2 – Queries unresolved at Level 1**

If the duty holder is not satisfied with the response under Level 1 they should send their reasons to HSE. This should be within 20 working days of the date of the invoice in dispute; or within10 working days of the date of the Level 1 response (where applicable).

HSE’s Cost Recovery Team will acknowledge receipt of the submission within 5 working days and confirm the name of the person dealing with the Level 2 query. This will be a senior manager in the relevant HSE Division, who has not been involved in the work giving rise to the disputed cost(s).

If the duty holder is dissatisfied with the response at Level 1 but does not invoke Level 2 within the specified time, HSE may do so on their behalf. Where it does so, the duty holder will be informed, and the same procedure followed.

The nominated senior manager will consider, as appropriate, whether:

* the work performed was a cost recoverable function within the meaning of the regulations;
* the work was done in accordance with the relevant policies and procedures;
* the costs invoiced to the duty holder reflect the costs reasonably incurred in carrying out the function.

The senior manager will set out the reasons for the decision taken, including whether the queried invoice is upheld, cancelled or varied. The decision will be sent to the duty holder no later than 15 working days following receipt of the duty holder’s case.

**Action if only part of an invoice is under dispute**

If only part of an invoice is under dispute the operator should agree with HSE the value of the disputed amount and pay the undisputed amount within the usual 20 working days from the date of the invoice.

**Level 3 – Dispute Panel**

If the duty holder is not satisfied with the Level 2 response, they may refer the matter to a Dispute Panel.

A panel will consist of:

* Senior HSE official as Chair.
* The Head of the relevant HSE Division.
* The Head of HSE’s Planning, Finance and Procurement Division.
* An External Member.

Any HSE member of staff involved in Level 1 or 2 determinations of a case will be precluded from being a member of the Level 3 Dispute Panel.

The duty holder will be informed of the composition of the Panel prior to the case being considered.

The Panel shall determine, where applicable, whether:

* The work performed was a cost recoverable function within the meaning of the Regulations.
* The work was done in accordance with the relevant policies and procedures.
* The costs invoiced to the duty holder reflect the costs reasonably incurred by cost recoverable work done by HSE in carrying out that function.

The duty holder should set out the reasons for disputing the cost(s), and the reasons for disputing the decision made at Level 2. This will need to be made available to HSE in advance of the case being considered.

# Initially, the Panel Chair and External Member will consider all the correspondence on the case and decide whether the disputed matter has sufficient merit to be put before the Panel. If they conclude there is no issue for determination within the scope of the Panel, the Chair will inform the duty holder of the decision and the reasons why. This decision will be sent no later than twenty-five working days following receipt of the request to refer the matter to Level 3.

# If the Panel Chair and External Member conclude that a case has been made for submission to the Panel, a meeting will be convened within thirty-five working days of receiving the request to refer the matter to Level 3.

# The duty holder has the right to appear before the Panel to support their submission. If they intend to appear in person, they should notify HSE at the same time as they make the request to refer the matter to Level 3.

# Where possible, a decision will be made on the day of the Panel meeting with all sides informed of the reasons for the decision verbally. If this is not possible both parties will be notified of the decision in writing.

# The Panel may uphold or reject the dispute and confirm, vary or cancel the cost in dispute. To vary or cancel an invoice the Panel must be of the view that; the functions were not cost recoverable and / or the cost contained in the invoice did not represent the costs reasonably incurred by HSE for the performance of the 4 function(s) in question.

# The decision of the Disputes Panel shall be sent to the duty holder by the Panel Chair within ten working days of their meeting.

# HSE will commence debt recovery action where an invoice has not been settled within ten working days of notification that;

# an invoice has been disputed under the Level 3 procedure and the cost has been upheld by the Panel;

# the Panel Chair and External Member concluded that there is no issue for determination; or

# the Level 3 process not being invoked.

# HSE is committed to meeting the timescales set out in this procedure. However, there may be occasions when this is not possible. Where such circumstances arise, HSE (at its discretion) may vary the timescales in consultation with the duty holder.

# 

# **Appendix 6 – Consultation questionnaire**

**Question 1**: **Oil, Gas and Chemicals Pipeline Systems**

To what extent do you agree or disagree that the proposed cost recovery regime is a fair and reasonable way for HSE to recover the cost of this activity?

**Please explain the reasons for your score:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tick the relevant box below** | | | | |
| **1**  Strongly Disagree | **2**  Disagree | **3**  Don’t Agree or Disagree | **4**  Agree | **5**  Strongly  Agree |
|  |  |  |  |  |

**Question 2**: **Onshore Oil and Gas Exploration and Production**

To what extent do you agree or disagree that the proposed cost recovery regime is a fair and reasonable way for HSE to recover the cost of this activity?

**Please explain the reasons for your score:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tick the relevant box below** | | | | |
| **1**  Strongly Disagree | **2**  Disagree | **3**  Don’t Agree or Disagree | **4**  Agree | **5**  Strongly  Agree |
|  |  |  |  |  |

**Question 3**: **Marine and Wind** **Renewables**

To what extent do you agree or disagree that the proposed cost recovery regime a fair and reasonable way for HSE to recover the cost of this activity?

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tick the relevant box below** | | | | |
| **1**  Strongly Disagree | **2**  Disagree | **3**  Don’t Agree or Disagree | **4**  Agree | **5**  Strongly  Agree |
|  |  |  |  |  |

**Please explain the reasons for your score:**

**Question 4**: **Explosives**

To what extent do you agree or disagree that the proposed changes produce a fair and reasonable way for HSE, Local Authorities and Police to recover the cost of this activity?

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tick the relevant box below** | | | | |
| **1**  Strongly Disagree | **2**  Disagree | **3**  Don’t Agree or Disagree | **4**  Agree | **5**  Strongly  Agree |
|  |  |  |  |  |

## Question 5: Offshore First-Aid and Medical training approvals

To what extent do you agree or disagree that the proposed simplification and associated rates are a fair and reasonable way for HSE to recover the cost of this activity?

**Please explain the reasons for your score:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tick the relevant box below** | | | | |
| **1**  Strongly Disagree | **2**  Disagree | **3**  Don’t Agree or Disagree | **4**  Agree | **5**  Strongly  Agree |
|  |  |  |  |  |

**Please explain the reasons for your score:**

1. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765480/hse-tailored-review.pdf> [↑](#footnote-ref-2)
2. If HSE visits a workplace and finds the duty holder in material breach of health and safety law then the duty holder will have to pay for the time it takes to identify what is wrong and to help the duty holder to put things right. More information, along with the current FFI rate is available at: [HSE: Fee for Intervention - What is FFI?](https://www.hse.gov.uk/fee-for-intervention/what-is-ffi.htm) [↑](#footnote-ref-3)
3. [Powering up Britain - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/powering-up-britain) [↑](#footnote-ref-4)