

Fee for Intervention

An Update

Peter Galsworthy
Head of Operations

Fee for Intervention

- In operation from 1 October 2012
- Compliant businesses will not pay a fee
- Recovery of costs for material breach
- Current cost £124 per hour
- Prosecution costs sought through the courts
- Invoicing every two months with 30 days to pay
- Queries and disputes process established

Material breach



“A material breach is when, in the opinion of the HSE inspector, there is or has been a contravention of health and safety law that requires them to issue notice in writing of that opinion to the dutyholder

Examples of failures

Health

Asbestos - results of an asbestos survey have not been addressed in an up-to-date management plan for asbestos containing materials, leading to a failure to control the risk.

Safety

Machinery guarding - deliberate defeating of guard interlocks designed to ensure that the machine cannot be operated without the guard properly in place.

Scope - exclusions

- Existing permissioning regimes
- Local Authorities
- Self-employed dutyholders (putting only themselves at risk)
- Non-Health and Safety at Work Act legislation

Examples of Non-HSWA Legislation



Employers' Liability (Compulsory Insurance) Act 1969

Food and Environment Protection Act 1985

Health and Safety (Consultation with Employees)
Regulations 1996

Regulatory Reform (Fire Safety) Order 2005

Supply of Machinery (Safety) Regulations 2008

Working Time Regulations 1998

50 - Acts and Regulations in appendix 1 of HSE 47

Consultation outcomes

Concern

- HSE Priorities
- Material breach
- Trigger for FFI
- Financial impact
- Disputes process
- LA regulators
- Relationship between HSE and business

Action

- Transparency of plans
- Guidance & examples
- Significant h&s failings
- Reasonably incurred costs
- Independence at 2nd stage
- Excluded from scope
- Experience in operating similar schemes

Approach to Enforcement

No change

- Enforcement Policy Statement (EPS)
- Enforcement Management Model (EMM)

Enforcement options

- Verbal warning
- Written confirmation of the need for improvement, includes a notification of contravention
- Improvement notice
- Prohibition notice
- Prosecution in the courts

EMM - stages

- 1 - What is the actual risk?
- 2 - What standard of compliance does the law require?
- 3 - Identify the risk gap
- 4 - Identify the dutyholder factors – what is the employer’s current and previous approach and performance towards health and safety?
- 5 - Identify the public interest (Strategic) factors?

Basic mistakes - as examples

- HSE has identified 9 topics that are crippling British industry
- These same basic health and safety mistakes that have been injuring and killing people for decades.

www.hse.gov.uk/fee-for-intervention/basic-safety-mistakes/crippling-british-industry.pdf

Basic Mistakes

- **Exposure to toxic paint vapours**
- Exposure to deadly asbestos fibres
- Damage caused by vibrating power tools
- Creating clouds of silica dust
- Unhygienic or non-existent welfare facilities
- **Inadequate safety guards on machines**
- Dangerous work at height
- Badly organised workplace transport
- Poorly maintained or misused ladders

Toxic paints

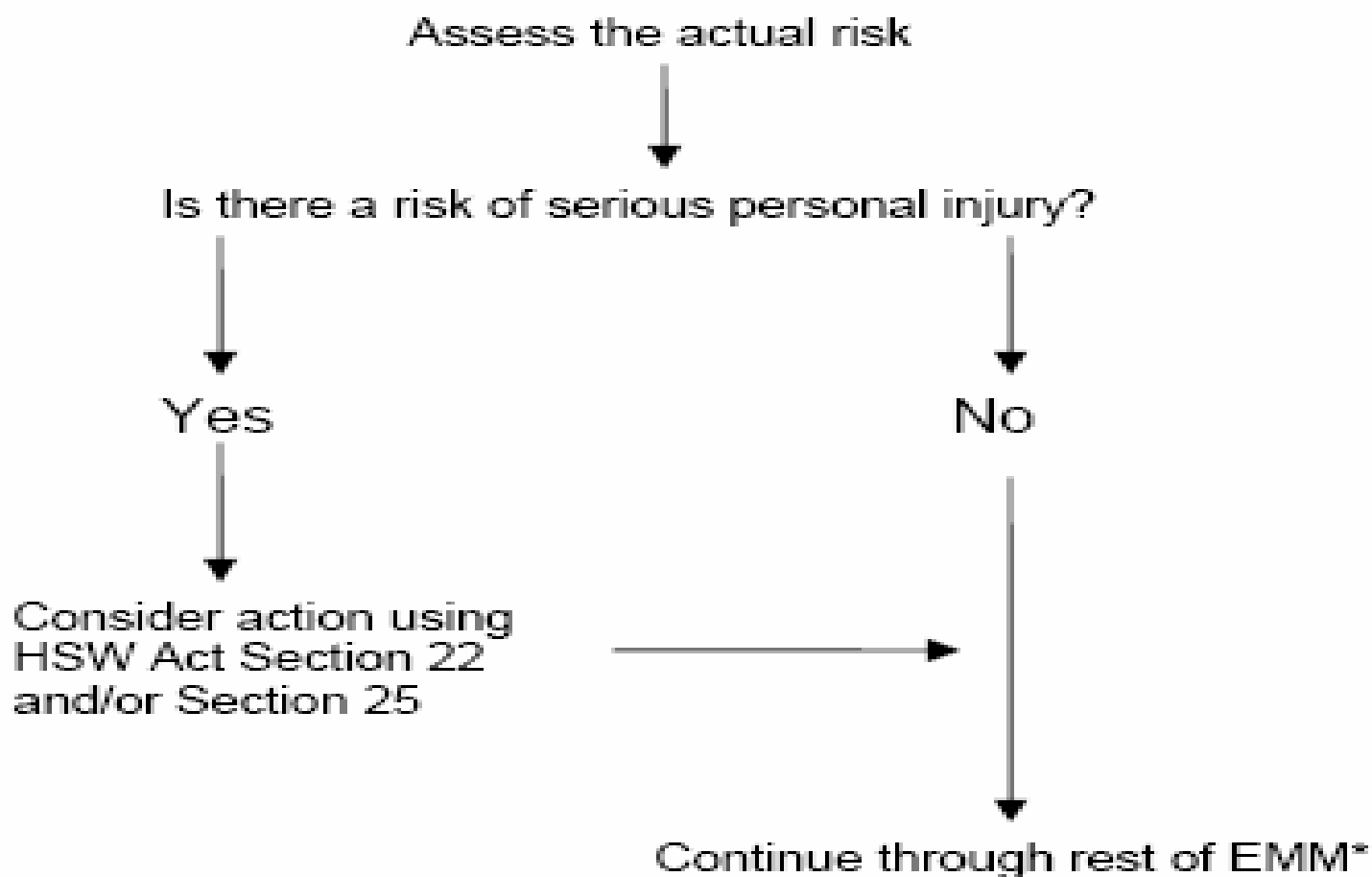


Isocyanate containing paints (2-pack or "2K" paints)

- Used in motor vehicle repair and other industries
- Biggest cause of occupational asthma
- In the top 10 for occupational dermatitis

Scenario





Machinery Guarding - Scenario



Drilling Machine

Using EMM an Inspector will identify the risk gap

Actual risk (where the duty holder is) verses where the benchmark standard expects them to be

What harm could arise?	How badly could someone be hurt or their health damaged? Would any injury or ill health be serious, significant or minor?
How likely is it that the event leading to the injury or ill health will happen?	Is it highly unlikely (remote), possible or highly likely (probable)?
How many people are likely to be affected?	Will one, several or many people be affected?

Corrected Table 2.1: Risk gap table: Single and low casualties

Measure of actual risk (where the dutyholder is)	Consequence	Likelihood	Dutyholder complies with or exceeds legal standard			Dutyholder complies with or exceeds legal standard				Dutyholder complies with or exceeds legal standard				
	Nil	Nil	Nil											
Minor injury	Remote	Possible												
		Probable												
		Probable												
Significant injury	Remote	Possible												
		Possible												
		Probable												
Serious personal injury	Remote	Possible												
		Possible												
		Probable												
Likelihood			Possible	Remote	Nil/neg	Probable	Possible	Remote	Nil/neg	Probable	Possible	Remote	Nil/neg	
Consequence			Serious personal injury			Significant injury				Minor injury/ Nil				
Benchmark (where dutyholder should be)														



Actual risk – significant injury possible
 Benchmark – significant injury remote
 Therefore – moderate risk gap

Health and safety risks Initial Enforcement Expectation table [Table 5.1]			
Risk Gap	Standards	Initial Enforcement Expectation* (to secure compliance with the law)	and consider Prosecution?
Extreme	Defined	Improvement Notice	Yes
	Established	Improvement Notice	Yes
	Interpretative	Improvement Notice	
Substantial	Defined	Improvement Notice	
	Established	Improvement Notice	
	Interpretative	Letter/inspection form	
Moderate	Defined	Improvement Notice	
	Established	Letter/inspection form	
	Interpretative	Letter/inspection form	
Nominal	Defined	Verbal warning	
	Established	Verbal warning	
	Interpretative	Verbal warning	
Immediate risk of serious personal injury has already been considered and dealt with where appropriate			



Guarding for drills is an established standard – PM83
 Leads to letter and possibly a material breach - now apply duty holder factors

Information available on HSE's website



Guidance for Businesses

'What You Need to Know' Leaflet

**Supplementary Inspector
Guidance**

Multiple Dutyholder Guidance

Enforcement Management Model

<http://www.hse.gov.uk/fee-for-intervention/index.htm>



Health and Safety
Executive

**Guidance on the application of Fee
for Intervention (FFI)**