

Health and Safety Executive Board		HSE/11/79	
Meeting Date:	7 December 2011	FOI Status:	Fully open
Type of Paper:	Above the line	Exemptions:	
TRIM Reference:	2011/617385		

## Outcome of the Consultation on the Fee for Intervention Scheme

### Purpose of the paper

- This paper:
  - Informs the Board of the outcome of the formal consultation on the fee for intervention (FFI) and boreholes cost recovery schemes;
  - Seeks the Board's agreement on the proposals below for responding to the consultation as the basis for agreeing to recommend to the Minister for Employment the draft Health and Safety (Fees) Regulations 2012 which implement FFI, cost recovery for boreholes and which also update fees for a number of existing cost recovery schemes.

### Background

- In June, the Board agreed a formal consultation to seek views on the implementation of the FFI policy that formed part of the Minister for Employment's March statement, "Good Health and Safety, Good for Everyone". The statement set out the principles behind the policy. Firstly, it is reasonable that duty holders that operate in material breach of the law should bear the costs incurred by the regulator in putting things right, rather than the taxpayer. Secondly, it will provide an incentive for businesses to meet their obligations. Thirdly, it will provide a level playing field for those who do comply. Central to the scheme is the fact that compliant businesses will pay nothing and a contravention has to be significant - a material breach of law - to attract FFI. This ensures that the minimisation of costs incurred by any business within scope is in its own hands.
- The CD set out a FFI scheme which had the following main components:
  - FFI would apply where, in the inspector's opinion, there is a material breach of law requiring a formal regulatory intervention through a letter, e-mail, instant visit report, notice or prosecution (up to the point that court proceedings start);
  - Where there is a material breach, cost recovery would begin at the first visit that identifies it, through to the point that the breach has been rectified, and includes all the time that an inspector spends on the case;
  - An hourly rate would apply which takes account of the costs of a visit (salaries plus travel, subsistence, corporate services, accommodation, IT etc) and the time that HSE estimates it would spend on identifying and rectifying material breaches – £133 per hour (which has since been updated to £124 per hour);

- There would be a disputes process with 2 stages, both undertaken by HSE staff.
4. The CD also proposed cost recovery for assessing notifications, and undertaking verification inspections, of onshore boreholes.
  5. The consultation period ran from 22 July to 14 October. Following nearly 12000 downloads of the CD we received 295 responses. In addition to the published consultation, HSE had direct dialogue with approximately 60 trade associations and 17 companies. These included CBI, IoD, FSB, SBTAF, EEF, the Environmental Services Association, the UK Contractors Group and LGA and TUC.
  6. An analysis of the consultation responses is at Annex 1. We made it clear that FFI was agreed Government policy and that we were consulting just on its implementation. Nonetheless, people commented on the principle or made broader points about some of the risks that FFI might introduce.
  7. The responses were consistent. Those who supported in principle and those against both had the same concerns about its operation. The differences in the responses often boiled down to those who thought the risks could be managed and those who thought that they would inevitably materialise.
  8. The paper is structured around the key themes raised by the majority of consultees. These covered the following issues:
    - HSE potentially changing its priorities to maximise receipts;
    - Possible harm to the constructive relationship between HSE and business;
    - The definition of material breach and reliance on “inspector’s opinion” or judgement;
    - The trigger for FFI being a letter dealing with a material breach;
    - The position of local authority regulators being included within the scheme;
    - The financial impact on businesses, particularly SMEs;
    - The integrity of the disputes process.

## **Argument**

### Distorting HSE Priorities

9. We made a commitment in the CD that FFI would not change HSE’s decision-making, from setting organisation-wide priorities down to individual inspector behaviour. However, some consultees feel that, over time, we will come to rely on FFI receipts and this will inevitably start to drive what we do.
10. Our proposed response is to continue to be very transparent about our plans so that stakeholders can see that we remain driven by health and safety outcomes. We have a strategy backed by an annual business plan, soon to become a three-year plan. This sets out, amongst other things, the sectors that HSE will proactively inspect based on evidence of risk and performance. Furthermore, these plans are now underpinned by sector strategies which set out the rationale for HSE’s interventions. Those discrete sectors with well defined representative bodies are well sighted on these strategies e.g. waste

and recycling, explosives and quarries although it has been difficult to get the same engagement with diffuse sectors such as public services.

11. Construction is a good example of this in practice. It is a priority sector because of its injury and ill health record. Our intervention approach has changed over the years based on evidence of health and safety performance. We used to target large contractors and they have made significant improvements. The evidence now tells us that small firms are the least improved part of the sector so they are now the focus of our proactive efforts.
12. This combination of strategies and plans will be transparent to stakeholders and it will be clear to them if we have delivered on them. We also plan to go further. We propose to produce a publicly available report on the first year's operation of FFI . This may include, amongst other things, data such as number of letters triggering FFI that HSE has issued and to which sectors and size groups.
13. At the same time, it is important to recognise that, given the Ministerial statement and shrinking resources, our targeting should mean that we are encountering material breaches more frequently. If not, then we would need to review, but because we were inspecting too many compliant businesses rather than we were not generating estimated receipts. Therefore, there is an in built and entirely proper link between targeting and receipts but the latter is a consequence of the former and not driven by it.
14. **Does the Board agree that the key to demonstrating that HSE's priorities will remain focussed on health and safety outcomes is clarity and transparency in our strategies, plans and reports and that we should produce a specific report on the operation of FFI in due course?**

#### Relationships between HSE and Business

15. Consultees felt that the possibility of a visit generating an invoice would harm relations between businesses and HSE. They would view HSE as more of a threat and be less willing to raise problems and seek help. Consultees also felt that inspectors would be less likely to give advice.
16. The key to minimising this risk lies in the other issues discussed in this paper. For example, if business sees HSE not to have changed its priorities and decision-making and staying a proportionate regulator, then their fears may dissipate. Furthermore, they will continue to see HSE working in partnership with representative bodies and individual organisations outside of a FFI environment.
17. However, it is also true that, as resources decline, HSE must spend a greater proportion of its time on securing compliance from high-risk businesses and poor performers rather than helping more compliant businesses improve. Put starkly, we will be spending more time with businesses where there is not necessarily a healthy and mutually supportive relationship in the first place.
18. HSE has many years of operating cost recovery regimes in the major hazard sectors. Many of the fears voiced now about FFI were voiced by industry when the earlier schemes were first introduced. However, HSE has maintained a constructive relationship with the major hazard sector which is both challenging and supportive where it needs to be. This is characterised

by a healthy debate about the nature and scope of HSE's interventions sitting alongside partnership work developing standards on key issues such as leadership. There is no reason why the same cannot be true outside of major hazards.

19. **Is the Board content to proceed on this basis?**

Interpretation of material breach and the role of the inspector's judgement

20. Consultees said that they were unclear about what might constitute a material breach that would lead to an invoice. Our proposed response to this concern has a number of elements.
21. Firstly, we propose to use the more familiar term (both legally and in everyday usage) "contravention" in the regulations whilst retaining the term "material breach" in guidance. We will then expand on what we mean by material breach in the guidance. Importantly, we propose to state in the regulations that contravention for the purposes of FFI will be interpreted in the light of such guidance as HSE may produce. The reference in law to the guidance should reassure stakeholders that inspectors will be bound to follow it. The guidance itself will illustrate the sorts of issues that are likely to be a material breach, without purporting to be an exhaustive list, and it will link these to levels of potential harm to reassure stakeholders that they will not be invoiced for trivial matters. We will test this guidance with a range of stakeholders before we finalise it.
22. Some consultees were not comfortable having the inspector's judgement as the basis for determining whether there has been a material breach, although they suggested no alternatives. Our proposed response to this is to be clear in guidance how inspectors go about forming these judgements.
23. The CD set out a process whereby the inspector decides what a material breach is, and further defined this as where an inspector felt that they needed to make a formal intervention through a letter, instant visit report, e-mail or notice. The CD referenced the Enforcement Policy Statement and the Enforcement Management Model (EMM) backed by management controls as the framework for ensuring that decisions were consistent and proportionate. It may be that some stakeholders did not reference the EMM or did not understand it when they did.
24. We propose to retain the current EMM as now, but to "translate" the document for an external audience and make it a central feature of the guidance on the regulations. This will sit next to the expanded guidance on material breach so that stakeholders can see how decisions are made generally, and then how this will be applied to the concept of material breach. We can emphasise with this approach one particularly important issue. That is, if the risks are not very high, then the factors that an inspector will take into account in the action he or she takes are what are called in EMM "duty holder factors" i.e. is the business generally compliant, does it have a positive attitude and is it providing generally good working conditions. Duty holders and their trade associations have told us consistently that they particularly value this discretion.

25. **Does the Board agree to this approach of developing guidance on material breach and inspector decision-making?**

The Trigger for FFI

26. Many consultees would prefer the trigger for FFI to be Enforcement Notices rather than letters. To support this they cite greater clarity of application, a better relationship between seriousness of breach and fee, an independent appeal process (though it would not be considering cost recovery per se) and greater transparency. Interestingly, some have said that this would overcome their concerns of reliance on inspector's judgement (or "opinion" in legal parlance) even though a Notice is no different to a letter in this respect.
27. There are several arguments against going down this route. HSE typically uses a letter to record formally with a duty holder a significant failure to comply with the law and, in general terms, what must be done to rectify it. It is at this level, as a matter of policy, that Ministers and HSE judge that the changes in transferring costs to where they are most appropriate, incentivising compliance and levelling the competitive playing field should begin to apply. Furthermore, if it was perceived, either by business or by inspectors, that a contravention could not be regarded as significant unless it resulted in an enforcement notice, there would inevitably be a pressure to serve more notices. The proportionality that comes from being able to use a wider variety of influencing and enforcement tools would be lost and this is something that business greatly values.
28. We will be clear in guidance about what constitutes a material breach (see paragraphs 20 – 24) to indicate that it is for significant health and safety failings and we propose to introduce an independent element to the disputes process (see paragraphs 45 – 47). Together these should satisfy some of the objections to our original proposal.
29. **We recommend retaining the trigger for FFI at letters, e-mails and instant visit reports where there has been a material breach – does the Board agree?**

Scope

*Local Authorities*

30. The position on LAs was not clear going in to the consultation. We have had comments from individual LAs, groups of LAs, LGA and from some business organisations. The majority are against inclusion. Even where they support the principle, such as the LGA, they do not want the scheme to be mandatory for them. Furthermore, those in favour, including LGA, say that they would not be in a position to implement it by next April. Finally, business groups have expressed strong opposition to LAs being included. Keeping LAs out of the scheme will mean that many low risk, small businesses will not be within scope of the scheme

31. **Does the Board agree to exclude LAs from scope of FFI?**

*Biological Agents*

32. The CD proposed that biological agents sites with containment level 3 and 4 laboratories (the highest risk) should not be subject to FFI, since the regulatory regime was to be streamlined with the introduction of the single regulatory framework (SRF). This would introduce a major hazard cost recovery regime so it did not make sense to introduce FFI only for it shortly to change.
33. Consultees were broadly content with this, but after the CD was issued the chances of a quick introduction of the SRF receded. The situation now is that either the SRF or legislative streamlining stopping short of the full SRF will be introduced within around two years. Both options provide an opportunity for introducing cost recovery as originally planned. We therefore recommend sticking with the proposal to exempt such sites from FFI.
34. After further analysis, we also recommend disapplying FFI to category 1 and 2 facilities as well. Biological agents work is regulated under a mix of legislation including COSHH, GMO (Contained Use) Regulations (in part made under the European Communities Act) and the Specified Animal Pathogens Order (entirely made under the Animal Health Act). This enables us to regulate for human health, animal health and risks to the environment. However, the Fees Regulations only allow us to recover costs for the first of these. So, work at a given site on one organism could well be subject to three sets of primary legislation only one of which is subject to FFI
35. In practice, this would be confusing for inspectors and duty holders. Increasingly, HSE applies a common set of containment and control standards to all pathogens and genetically modified organisms. If FFI applied, we would have to deconstruct this approach and be very clear what action we were taking in relation to a specific harm. This is further complicated by an existing funding arrangement with Defra for SAPO work. Where a single regulatory action had implications for both animal and human health we would have to agree with Defra and duty holders a way of ensuring that the latter were not charged twice.
36. **Does the Board agree that FFI should not apply to biological agent's category 1 - 4 facilities at this stage?**

*Licensed Asbestos Work*

37. The fee currently paid to HSE for a licence to undertake asbestos work under the Control of Asbestos Regulations includes an element for inspection and an element for assessment of the application. As a matter of law and policy, we need to avoid double charging. We also need to consider more fundamentally what type of cost recovery scheme should apply to licensed asbestos work. We therefore propose to disapply FFI to the licensable work of licensed asbestos contractors until we can identify a sustainable solution.

38. **Does the Board agree to disapply FFI to licensable asbestos work for the time being?**

#### Boreholes

39. The consultation did not suggest any change to the proposal to cost recovery for the assessment of onshore borehole notifications and verification inspections so we propose to proceed as set out in the CD. **Does the Board agree?**

#### Financial Impact and the Hourly Rate

40. Some consultees are concerned about the financial impact of FFI, particularly for SMEs. They feel that the costs, now estimated at £124 per hour, could be difficult for businesses struggling to survive in a harsh economic environment. Some have suggested that we should factor in an ability to pay or company size or that there should be a flat rate fee.
41. We are bound by Treasury rules to recover our full costs provided they are reasonably incurred. Similarly, the hourly rate reflects the cost base of the organisation, though we might expect it to reduce as we get smaller, rationalise the estate, and reduce corporate support. Linking the invoice to an ability to pay would divorce the amount recovered from the effort HSE expends, and introduce a criterion that was open to irresolvable argument. So too would a flat rate fee, given that an investigation or inspection can range from half an hour to many hours.
42. There are two fundamental factors that will limit the financial impact of FFI. The first is the scope of HSE's interventions. There are approximately 2.5 million VAT and/or PAYE based enterprises in the UK. Of these 1.5 million are regulated by LAs and therefore are out of scope of FFI. Given HSE's plans for proactive inspections and estimates of reactive investigations, the businesses potentially affected by FFI (the number actually affected will depend on their compliance) compared to the total population of businesses is likely to be around 1% or less of all UK enterprises.
43. The second factor is the way in which businesses manage health and safety. If they comply with the law, they incur no cost. If they rectify breaches quickly, their costs will be lower as a result.
44. **Does the Board agree that the basis of cost recovery should be an hourly rate multiplied by the time spent and that it should be applied universally?**

#### Disputes

45. The CD set out a two-stage disputes process, both internal to HSE. However, there was a strongly held view that a disputes process without input independent of HSE is not credible. Consultees commonly used the phrase "judge and jury" to describe HSE on this point.

46. We therefore propose to introduce a disputes process that has independent input. We propose a staged process whereby a business can complain about an invoice in the first instance to a senior manager in HSE. If their complaint is not upheld at that point, they have can ask that their case is considered by a disputes panel. This panel would consist of senior HSE staff sitting alongside an external business representative. Depending on your decision, we will publish more detailed guidance on this as part of the general guidance that will explain how FFI operates. .
47. **Does the Board agree that the disputes process should have independent input?**

### **Action**

48. The Board is asked to agree:
- a) lines to take on the risk that FFI will shift HSE's priorities away from risk and towards revenue generation (paragraphs 9 - 14)
  - b) lines to take on the risk that HSE's relationship with business will deteriorate because of FFI (paragraphs 15 - 19);
  - c) we continue to rely on an inspector's judgement as the basis for determining a material breach and make a simple guide to EMM a feature of our guidance on the regulations alongside a more detailed description of what constitutes a material breach to assure stakeholders about the rigour of the decision making process (paragraphs 20 - 25);
  - d) we should retain the trigger for FFI as a formal regulatory intervention that leads to a letter, e-mail and instant visit report (paragraphs 26 - 29);
  - e) LAs should remain out of scope (paragraphs 30 - 31);
  - f) we should disapply FFI to biological agent's category 1 - 4 facilities at this stage (paragraphs 32 - 36);
  - g) we should disapply FFI, for a limited period to licensable asbestos work (paragraphs 37 - 38);
  - h) we should cost recover for assessment of onshore borehole notifications and verification inspections (paragraph 39);
  - i) the basis of cost recovery is appropriate, and that it should be universally applied (paragraphs 40 - 44);
  - j) we should include independent input to the final stage of the dispute process (paragraphs 45 - 47).

### **Paper clearance**

49. Paper cleared by Geoffrey Podger.

**HSE Consultation on Extension of Cost Recovery**

**Summary of responses**

**November 2011**

## **Summary of responses to public consultation on extension of cost recovery**

### **Background**

The public consultation on the HSE proposals for extending cost recovery ran for 12 weeks from 22 July to 14 October 2011. Despite the official closure of the online response system on 14 October, email and paper responses continued to be received and considered until 28 October 2011.

### **Key themes that emerged from consultation responses:**

The responses received via the consultation questionnaire and narrative responses were analysed and 7 key themes emerged from the responses that were received. These were common to those who supported the proposal in principle and though that the risks were manageable and those against that thought they were not.

The themes raised by the majority of consultees were that the proposed scheme:

- May incentivise HSE to distort its priorities in favour of maximising receipts;
- May harm the existing constructive relationship between HSE and business;
- Inadequately defines material breach and relies too much on inspector's opinion;
- Should be triggered by the service of an enforcement notice rather than a letter;
- May have an adverse impact on struggling businesses, particularly SMEs;
- Does not have an adequate disputes process;
- Should not mandate local authorities to recover costs.

### **Responses and how they were analysed**

The online consultation document had 11 391 downloads and the associated impact assessment had 3 128 downloads.

A total of 296 responses were received.

247 of these responses were by completion of the consultation questionnaire, either via the online system or emailing the completed questionnaire to HSE. These responses were collated and have been used to generate the numeric data that appears in the remainder of the document.

49 responses were received in a narrative format that did not directly correlate with the questions posed in the consultation questionnaire. Rather than reinterpreting these responses and try to align them with the consultation questionnaire these responses were instead excluded from the numeric data that appears in the remainder of the document. The comments made and the issues raised in narrative responses were considered and given the same weighting of importance as responses that were received using the consultation questionnaire format.

## **Structure of this summary document**

This document presents a summary of the responses received to each question posed in the consultation document. Each question has two graphs corresponding to the responses received via the consultation questionnaire. Although the numeric data presented in the graphs relates only to responses received using the questionnaire format the brief summary at the conclusion of each page considers responses received both via the consultation questionnaire and from narrative responses received via other means.

The uppermost graph on each page gives the overall responses received to the question. The total for all responses equals 100% (and represents the 247 responses received in the consultation questionnaire format). The lower graph details the industrial sector to which respondents belong and indicates how that industrial sector responded to the question. The total for each industrial sector is equal to 100%.

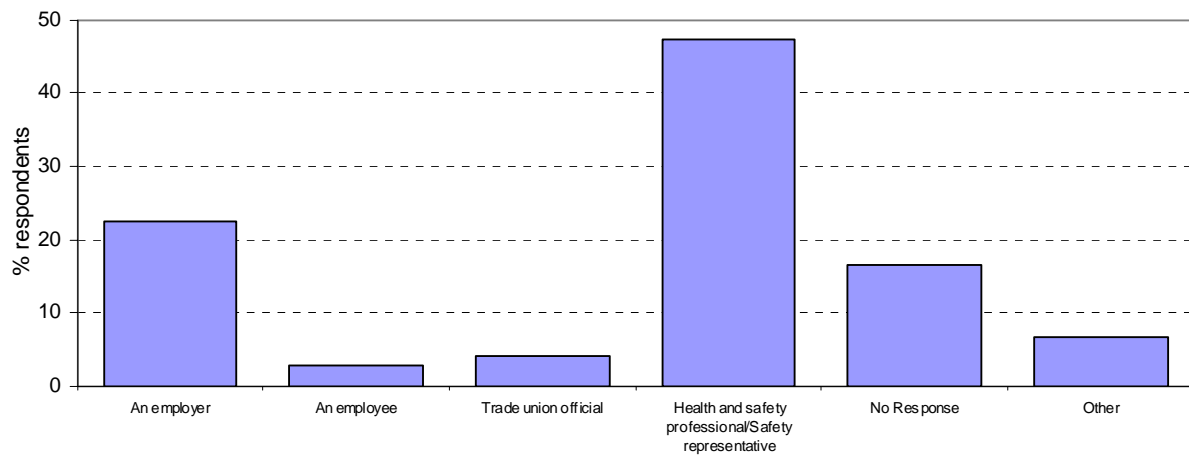
As the data provided are incomplete it has not been possible to add weighting to the responses received. For the purposes of analysing the numeric data each response was considered a single entity irrespective of the size of organisation or membership that the responder represents. During the qualitative analysis of both the narrative responses and questionnaire comments a degree of weighting was added where it was known that the responder represented a large organisation or membership. This information was used to assist with the elucidation of the 7 themes that emerged from consultation.

## Responses received

Of the 296 responses received the greatest percentage of responses was from “Industry” (25%) and Local Government (23%). The complete breakdown of respondents by sector is contained in Figure 1.

Sector	Number of responses	% of responses
Academic	4	1
Charity	9	3
Consultancy	26	9
Industry	73	25
Local government	67	23
Member of the public	9	3
National government	5	2
Non-departmental public body	13	4
Non-governmental organisation	7	2
Other	24	8
Pressure group	0	0
Trade association	46	16
Trade union	13	4
Total	296	100

**Figure 1 Consultation responses received by industrial sector.**



**Figure 2 Consultation responses received by capacity of respondent.**

Respondents identifying themselves as “Health and Safety professionals/Safety Representatives” or “employers” were the greatest proportion of responses to the consultation (46% and 23% of responses respectively).

Question 2: Were you clear about how the cost recovery proposals would operate?

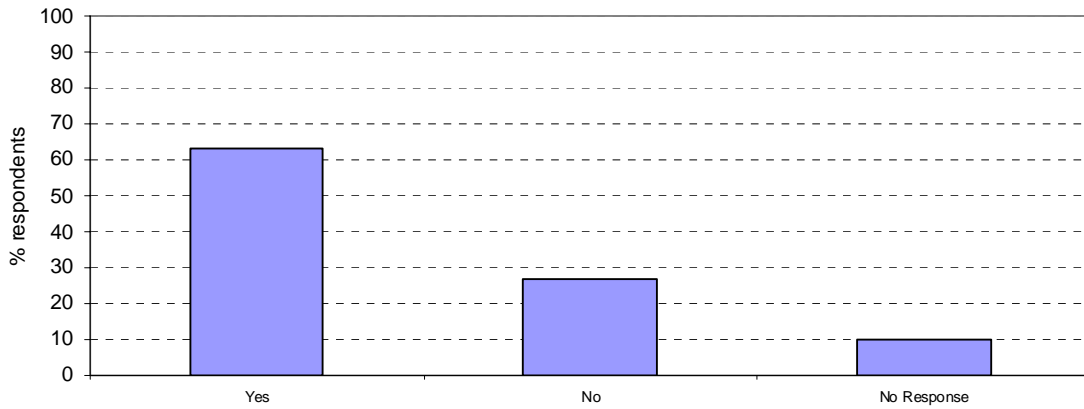


Figure 3. Responses received to Question 2.

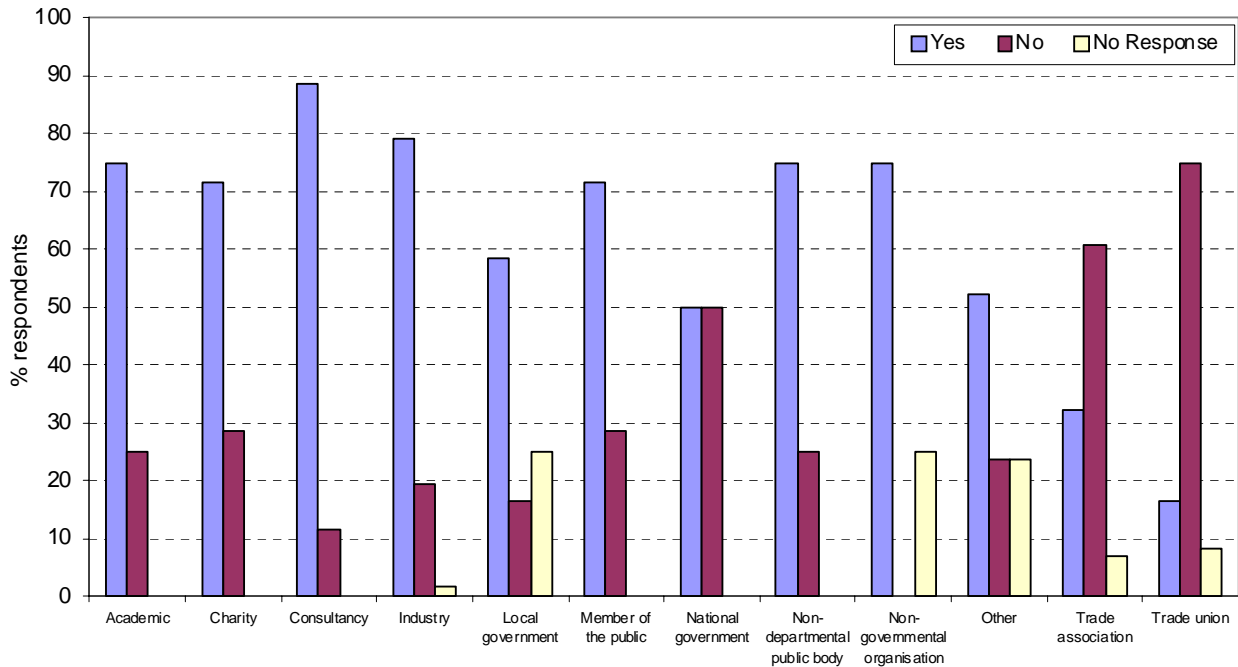


Figure 4. Responses received to Question 2 by industrial sector to which the respondent belongs.

63% of respondents stated that they were clear on how the cost recovery proposals would operate. Of those stating that the proposals were not clear most expressed reservations on how the cost recovery would operate in practice.

Respondents stating that the proposals were not clear most often cited a lack of detail in the proposals and sought further clarification either on the definition of material breach - and how this will be determined by an inspector - or how the disputes process would operate.

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

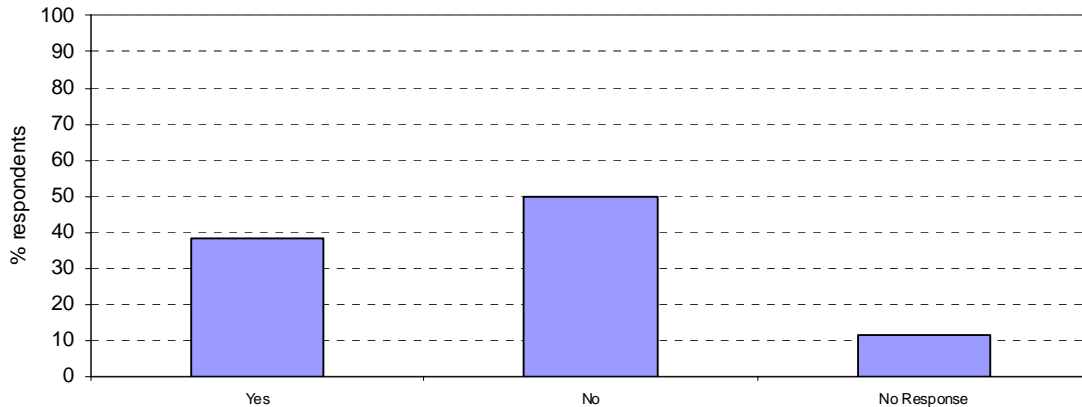


Figure 5. Responses received to Question 3.

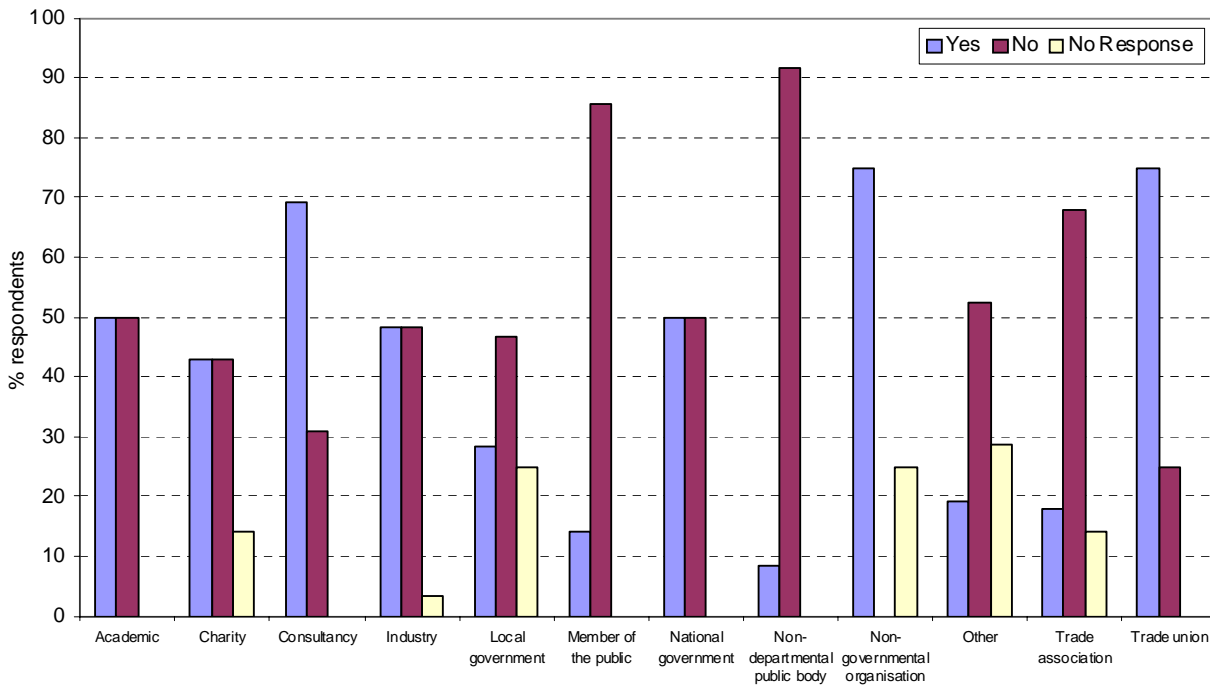


Figure 6. Responses received to Question 3 by industrial sector to which the respondent belongs. 38% of respondents agreed with the extent of the regulatory activity for which HSE would recover its costs. However 50% of respondents did not agree. Of those that did not agree “non departmental government bodies” expressed this opinion on the basis that publicly funded organisations should be exempt from cost recovery.

Other respondents who did not agree (including many from trade associations and professional bodies) stated that fee for intervention should apply only where an inspector serves an Improvement Notice or Prohibition Notice. Numerous respondents noted that they could not agree with the extent of the activity for which fee for intervention will apply until they had a clearer understanding of material breach and how the inspector forms their opinion of whether there has been a material breach.

## Annex 1

Respondents who stated that did not agree with the principle of cost recovery tended to respond that they did not agree with the extent of regulatory activity to which it would apply.

Question 4: Do you agree with the proposals for when costs would be incurred?

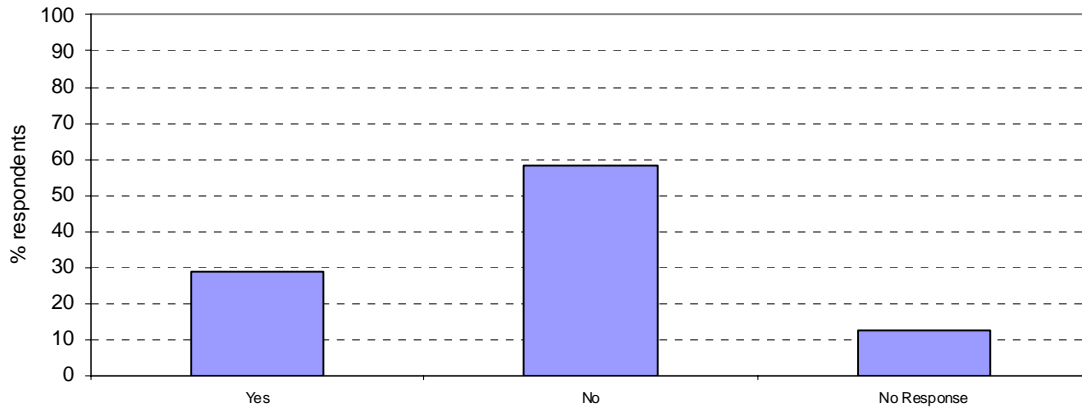


Figure 7. Responses received to Question 4.

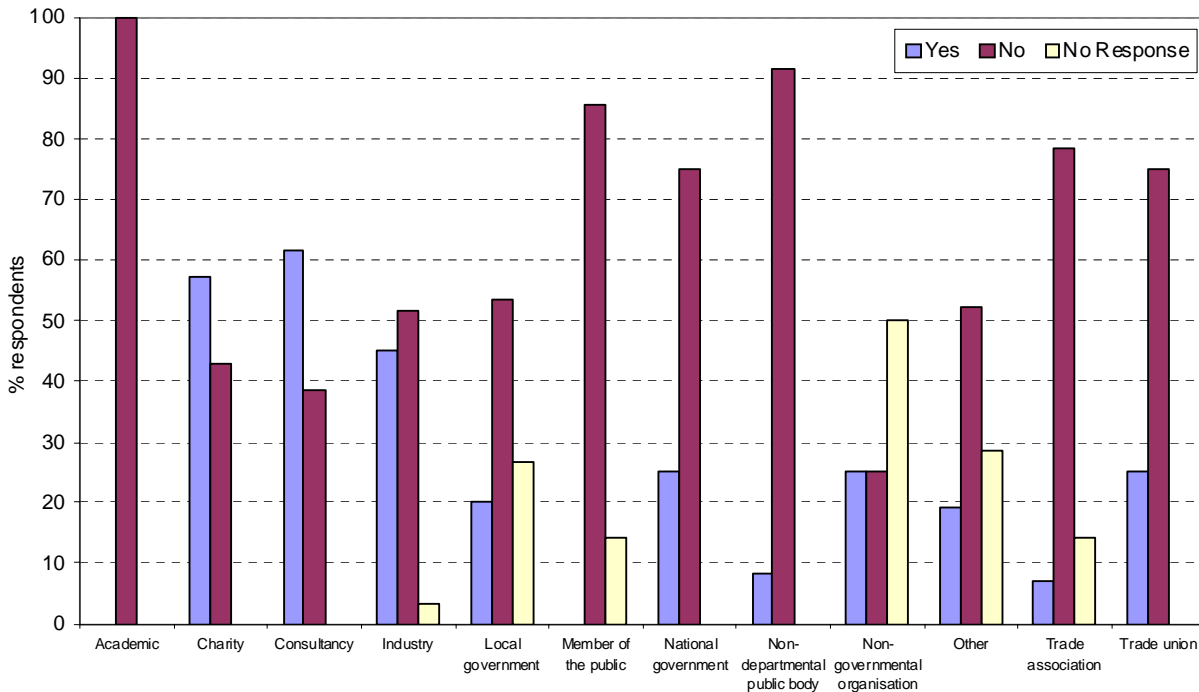


Figure 8. Responses received to Question 4 by industrial sector to which the respondent belongs.

29% of respondents agreed with when costs would be recovered, 58% did not agree.

The vast majority of respondents that did not agree with when costs would be incurred for one of two reasons. Either they were of the opinion that fee for intervention should only apply when an improvement or prohibition notice has been served or that the definition of material breach was unclear. The specific concerns expressed regarding material breach was that it relies on the opinion and discretion of the inspector which in turn could lead to inconsistency in regulatory approach. Concern was also expressed that if identifying material breach is at the discretion of the inspector this could drive inspector behaviour towards maximising HSE income rather than targeting serious breaches of health and safety law.

13% of respondents offered no response to this question.

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

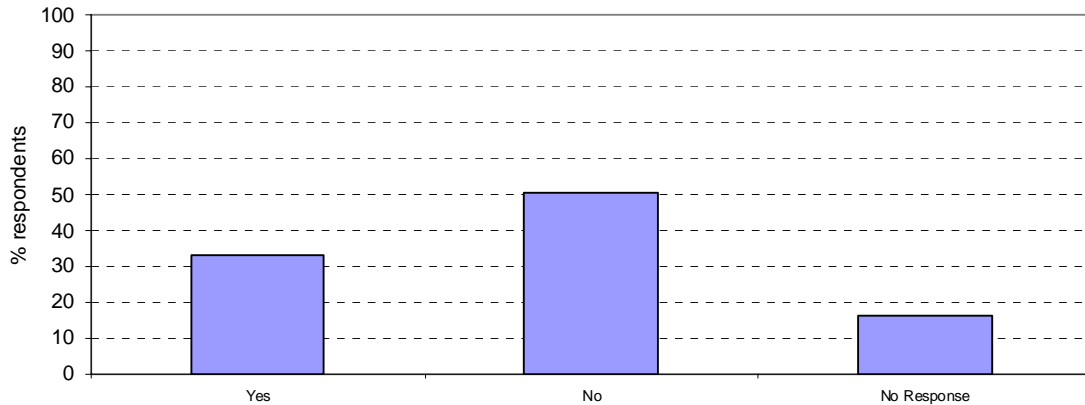


Figure 9. Responses received to Question 5.

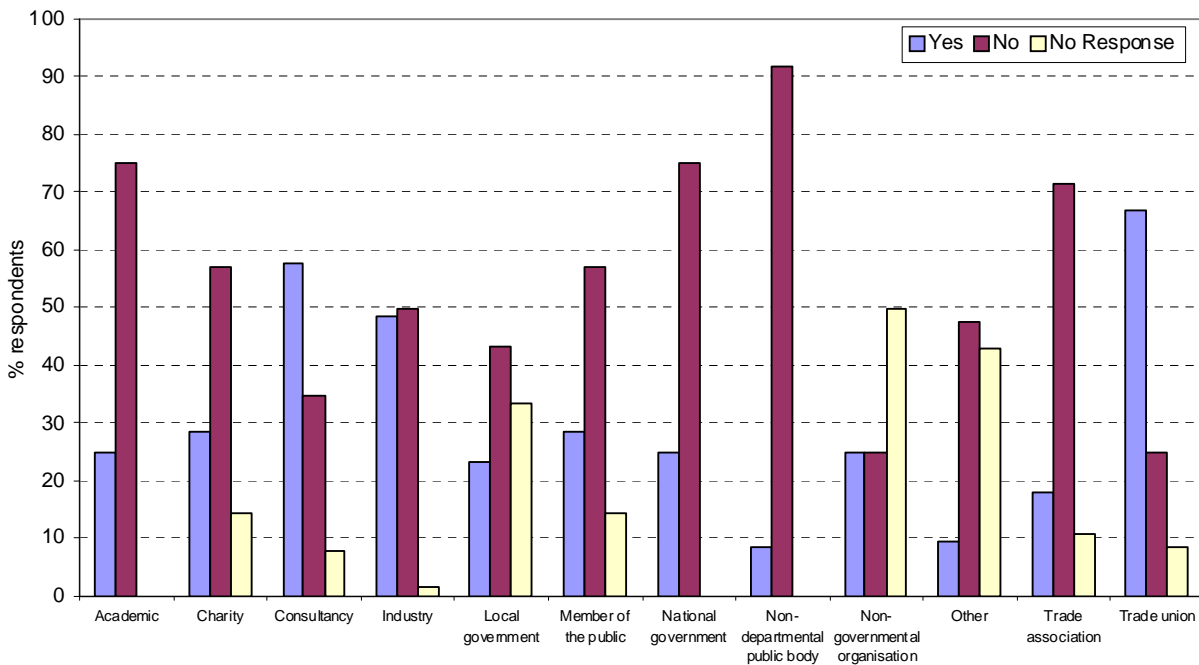


Figure 10. Responses received to Question 5 by industrial sector to which the respondent belongs 33% of respondents agreed with the model used to set the hourly rate, 51% did not agree.

Virtually all responses that disagreed with the rate setting model stated that the rate was too high. This may have been due to a lack of clarity in the consultation document as many responders understood the rate to solely relate to the salary of the inspector undertaking the work rather than the rate being composed of numerous components representing the full cost of regulation not just inspector salary. Many responses from industry and trade associations express the view that the cost recovery rate should relate to the size of the organisation being regulated. There was also clear direction that HSE must ensure that work is managed to ensure costs do not unduly escalate.

16% of respondents offered no response to this question.

## Annex 1

Question 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 it's intervention approaches?

This question sought narrative responses from consultees but relatively few responses were received.

The Confederation of British Industry responded that HSE must "*demonstrate that revenue raising is not – and will not become – a factor in directing HSE work*" and went on to say that "*having a means of comparison, against which behaviour under any new charging regime could be assess, would provide and important element of transparency. This will be crucial if employers are to trust a new process.*"

The Chartered Institute of Waste Management suggested "*there is a "cap" on the length of investigation or scale of charges upfront for transparency. This would at least give the company an idea of what the costs may add up to*" and requested that "*inspections are risk based and proportionate and that some mechanism is put in place to insure this*".

Comments from the Trades Union Congress cited that HSE should "*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.*"

The Freight Transport Association were of the opinion that "*HSE should record, publish and review the number of cost recovery and intervention disputes that have been logged and upheld...and take the appropriate action should these numbers increase*".

Annex 1

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

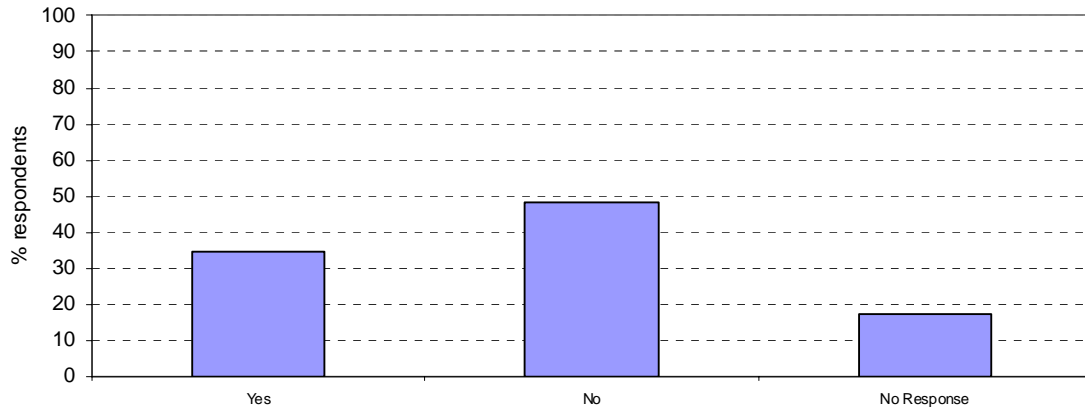


Figure 11. Responses received to Question 7.

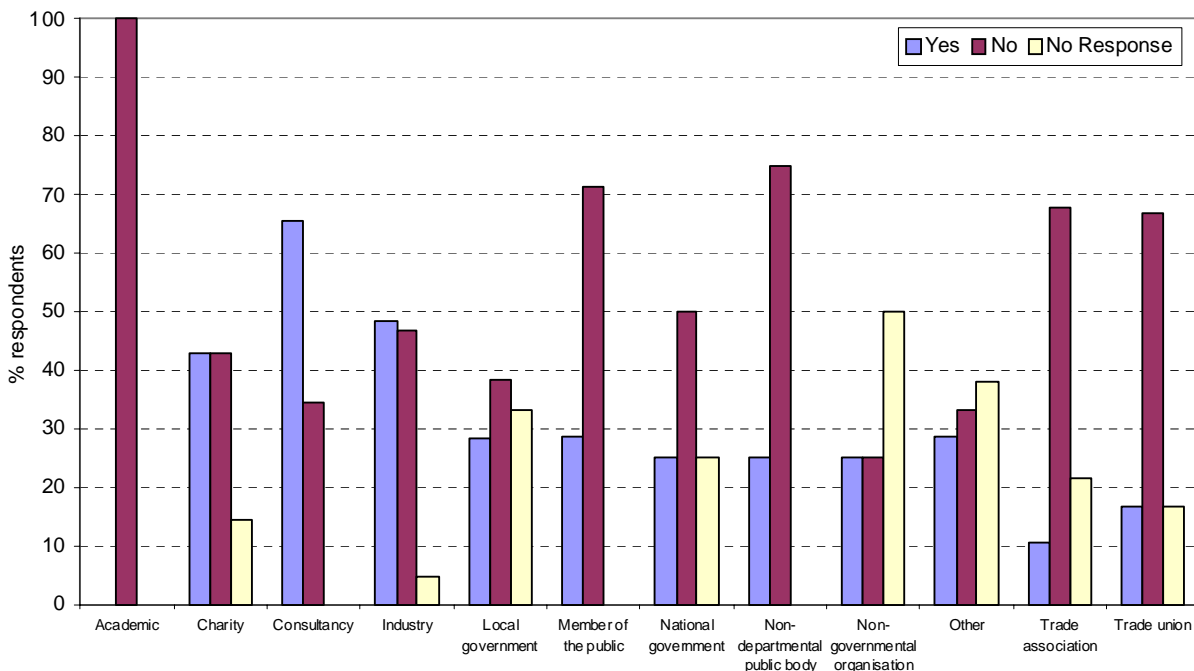


Figure 12. Responses received to Question 7 by industrial sector to which the respondent belongs.

33% of respondents agreed with the proposed queries and disputes procedure, 48% did not agree.

Virtually all responses that did not agree with the disputes proposal expressed the view that there should be at least some degree of independence to the disputes process. Some responders suggested that the existing employment tribunals could be used to adjudicate disputes while others suggested representatives from industry could convene a disputes panel. There was acceptance that the disputes process should be robust but respondents stated that the process must be both fair and equitable. Input from impartial individuals independent of HSE would help to ensure this.

17% of respondents offered no response to this question.

Question 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?

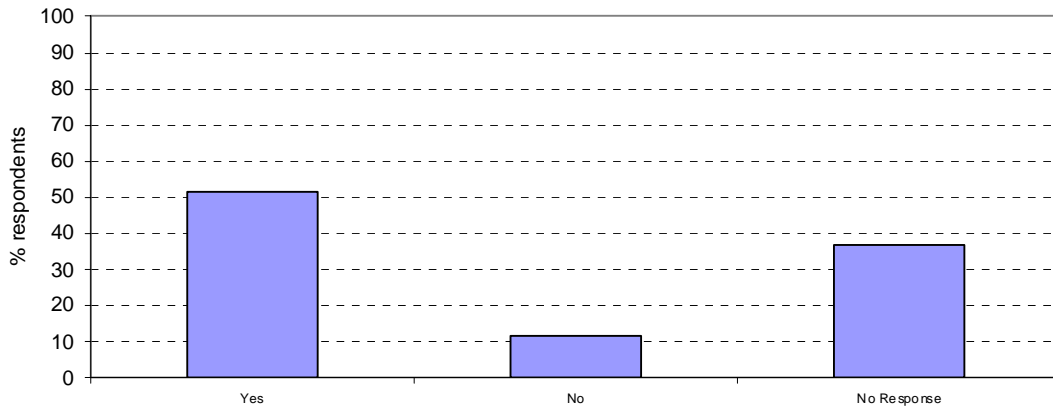


Figure 13. Responses received to Question 8.

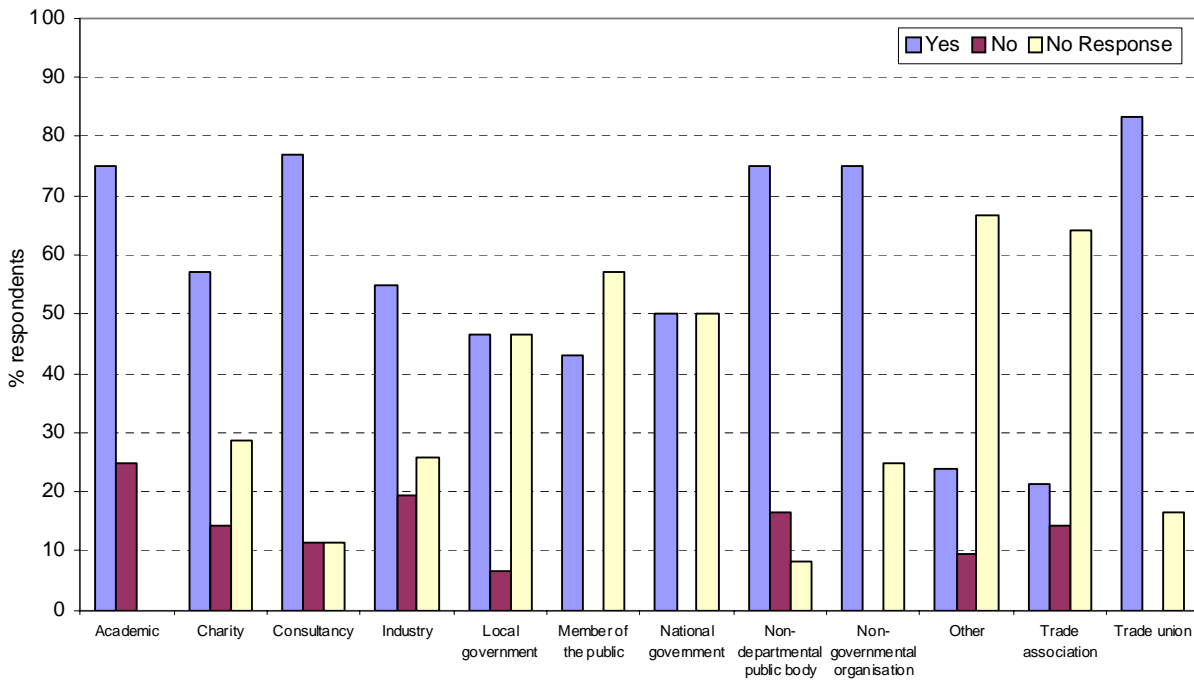


Figure 14. Responses received to Question 8 by industrial sector to which the respondent belongs.

51% of respondents agreed that high containment laboratories should be exempt from fee for intervention for a short interim period until the single regulatory framework (SRF) is implemented. Those that did not agree (12%) either commented that they had no strong views on the issue or stated that there should be no exceptions and that if introduced cost recovery should apply universally without exception.

38% of respondents offered no response to this question.

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

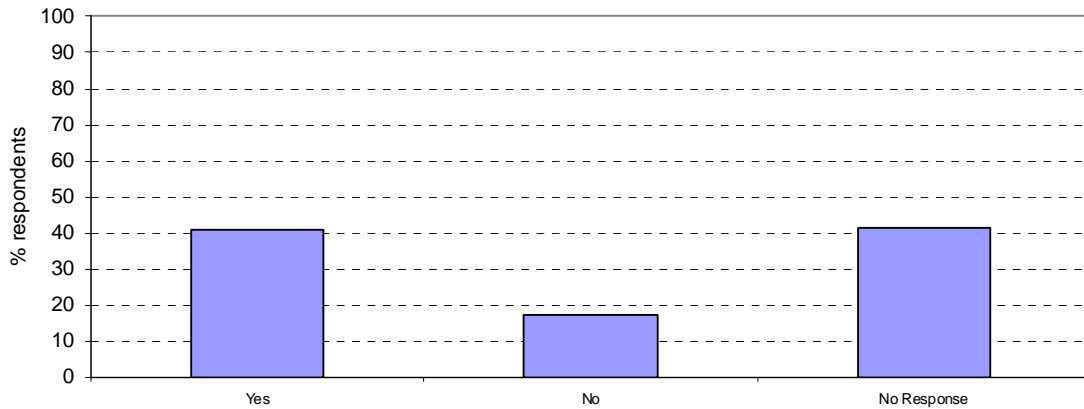


Figure 15. Responses received to Question 9.

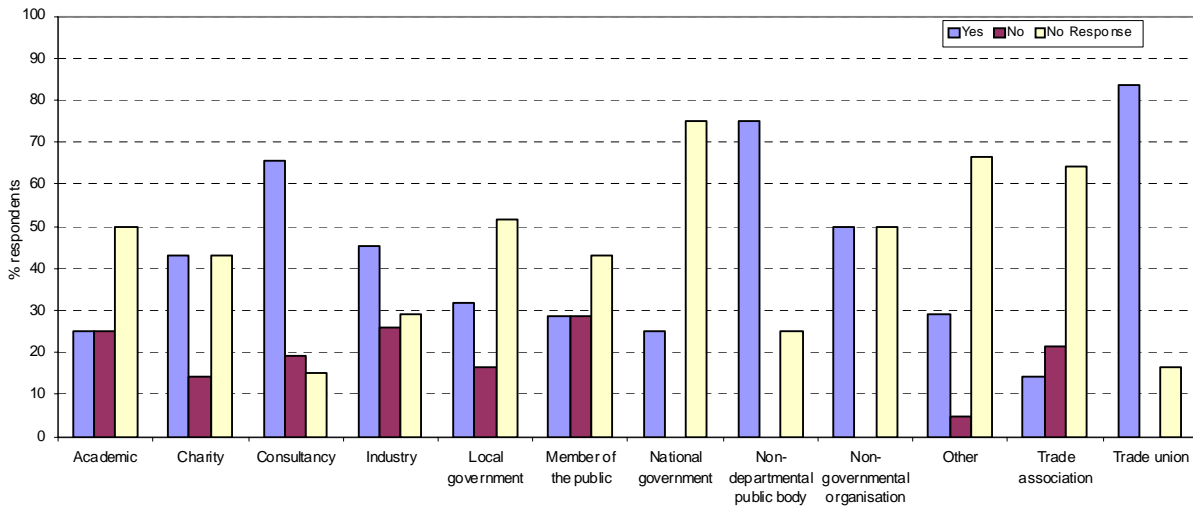


Figure 16. Responses received to Question 9 by industrial sector to which the respondent belongs.

41% of respondents agreed that HSE should recover full costs in relation to Boreholes. 17% responded that they did not agree with the proposal citing that either they did not understand the rationale for taking a different approach in relation to Boreholes or that costs should only be recovered where there has been material breach.

42% of respondents offered no response to this question.

Annex 1

Question 10a: Do the assumptions made in the impact assessment look reasonable in relation to the estimates made for familiarisation costs?

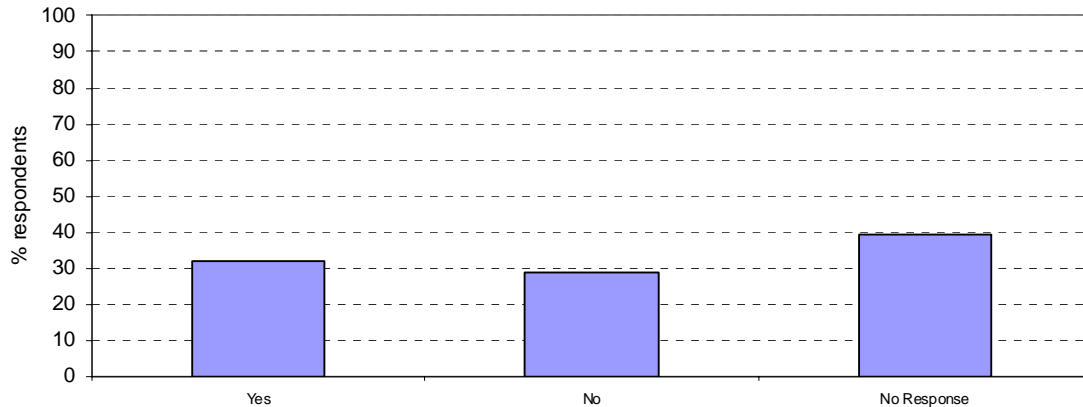


Figure 17. Responses received to Question 10.

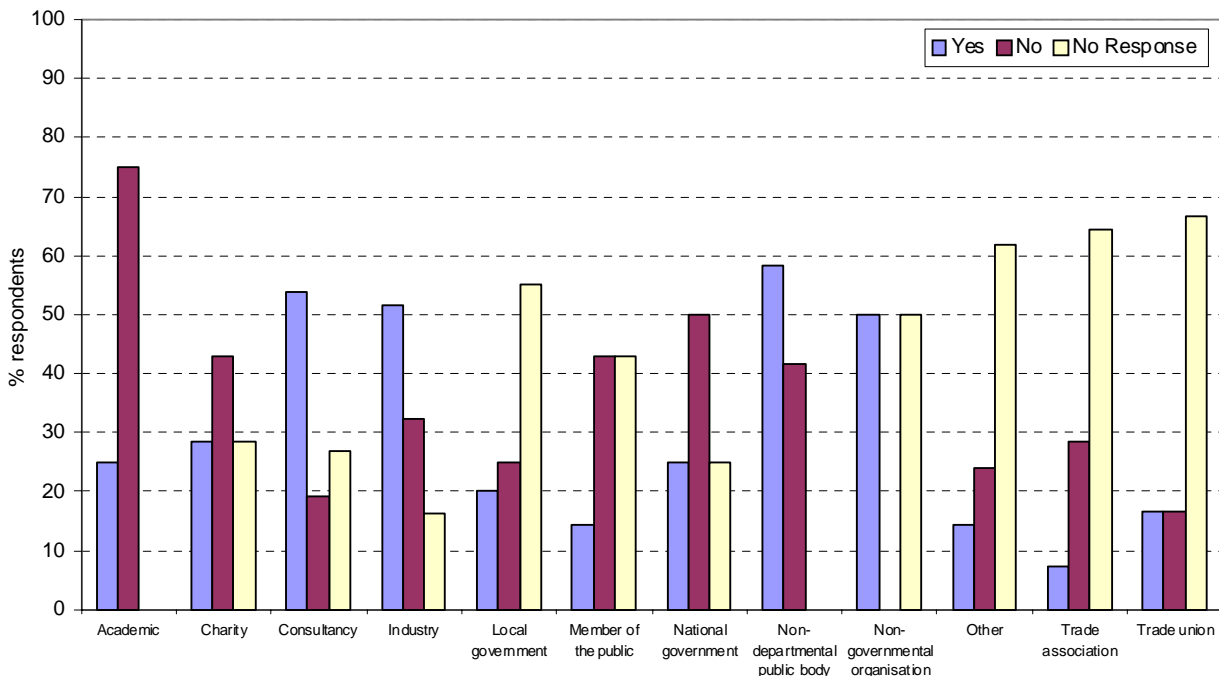


Figure 18. Responses received to Question 10 by industrial sector to which the respondent belongs.

32% of respondents agreed that the familiarisation costs in the impact assessment looked reasonable. Of the 29% of respondents that did not agree there was little consensus on whether the cost of familiarisation the impact assessment were too low or too high. Most respondents that did not agree with the familiarisation costs stated they “*did not know what the true costs would be*”.

39% of respondents offered no response to this question.

Question 10b: Do the assumptions made in the impact assessment look reasonable in relation to the estimates made for costs of processing invoices?

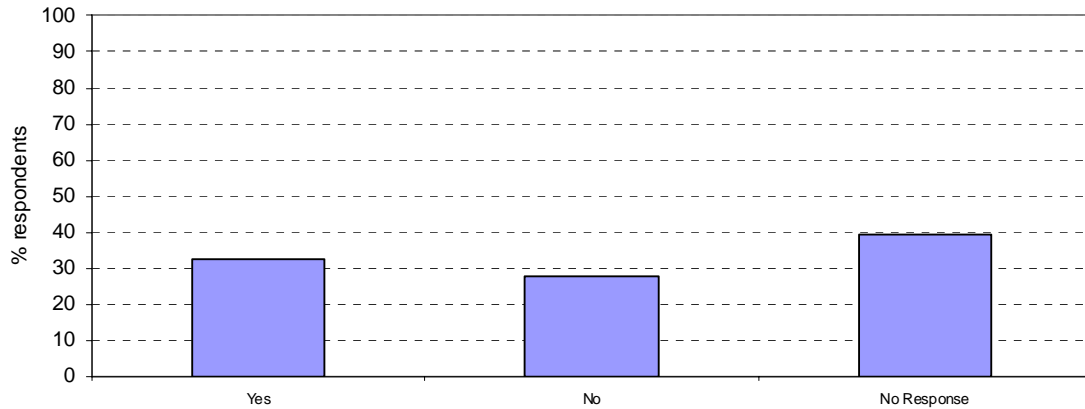


Figure 19. Responses received to Question 10b.

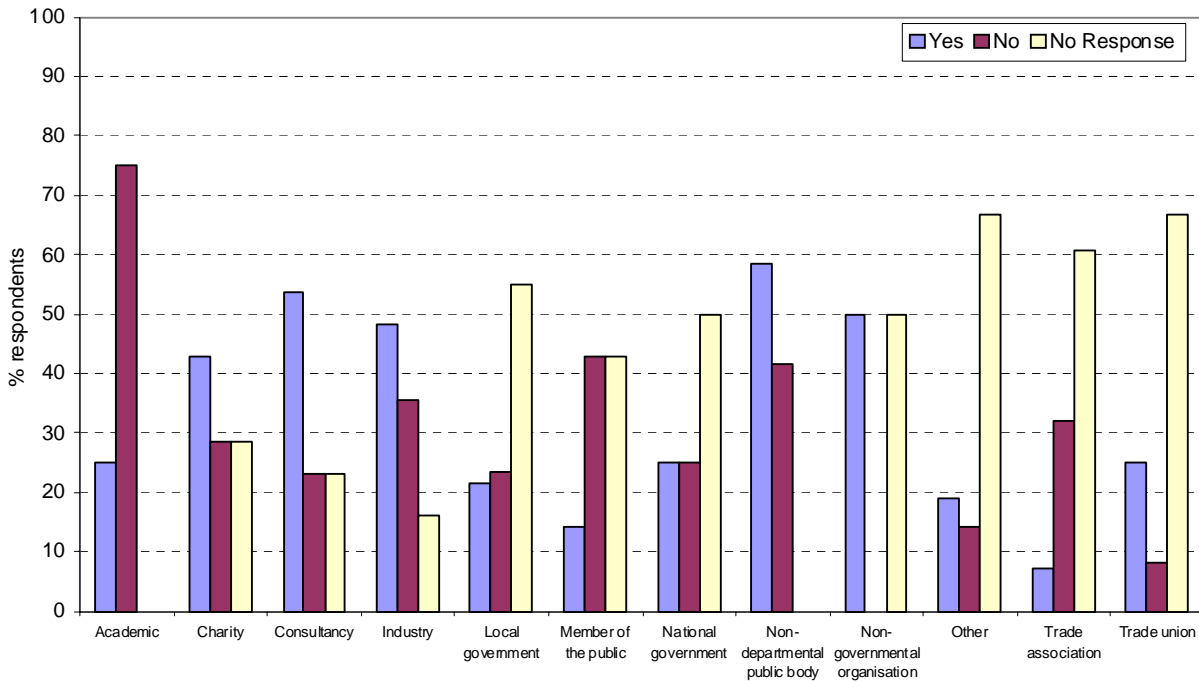


Figure 20. Responses received to Question 11 by industrial sector to which the respondent belongs.

33% of respondents agreed that the estimated costs for processing invoices as outlined in the impact assessment looked reasonable. Of the 28% of respondents that did not agree there was little consensus on whether the cost of were too low or too high. Most respondents that did not agree with the familiarisation costs stated they did not know what the true costs would be or could not find reference to these costs in the impact assessment.

39% of respondents offered no response to this question.

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

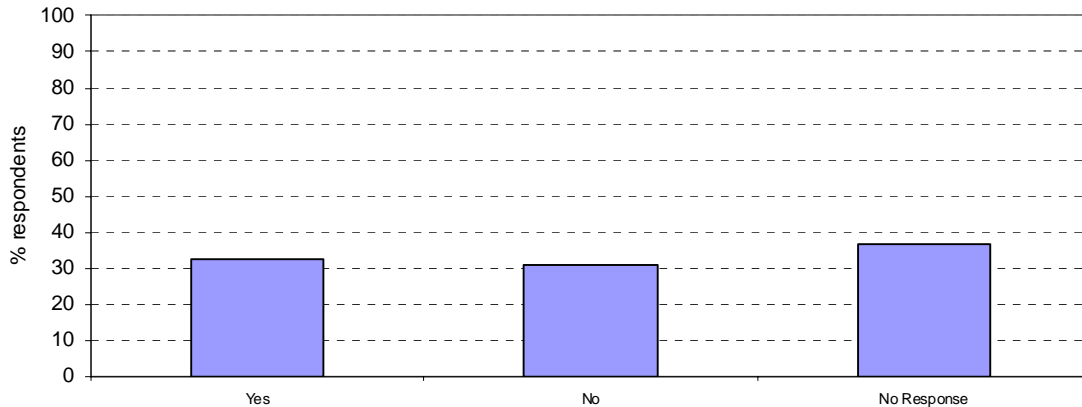


Figure 21. Responses received to Question 11.

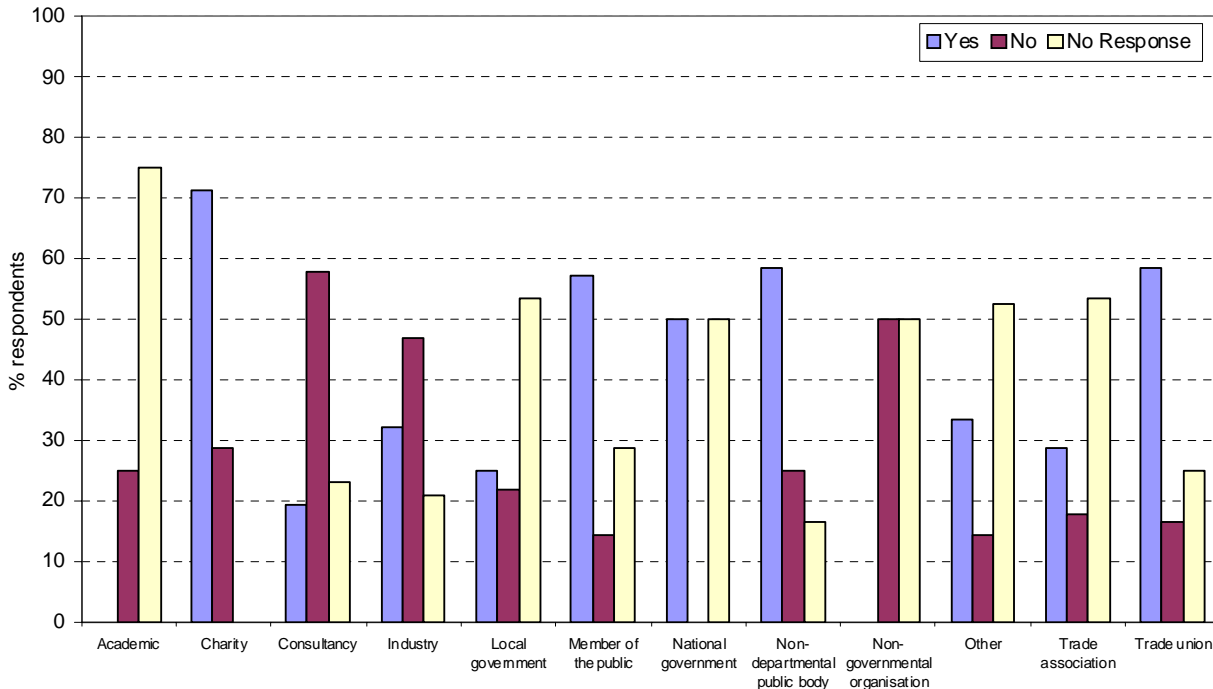


Figure 22. Responses received to Question 11 by industrial sector to which the respondent belongs.

32% of responders stated that there were additional costs or benefits not detailed in the impact assessment. These respondents identified two main costs that had not been identified: the cost to HSE in terms of the damage done to the relationship that HSE has with the duty holders it regulates and the cost to the integrity of HSE if fee for intervention was perceived to distort HSE’s priorities away from improving health and safety standards in favour of maximising income generation.

Only one benefit was identified which was that the introduction of fee for intervention could act as an incentive for non compliant businesses to encourage improvements in health and safety standards

37% of respondents offered no response to this question.

Annex 1

Q12 The impact assessment details risks and uncertainties. Which of these are most likely to be realised?

This question is addressed in the cost recovery impact assessment.

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

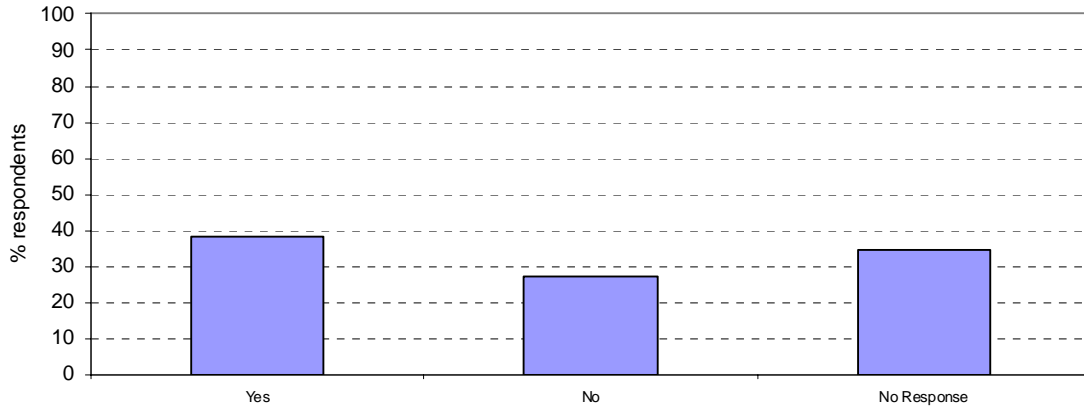


Figure 23. Responses received to Question13.

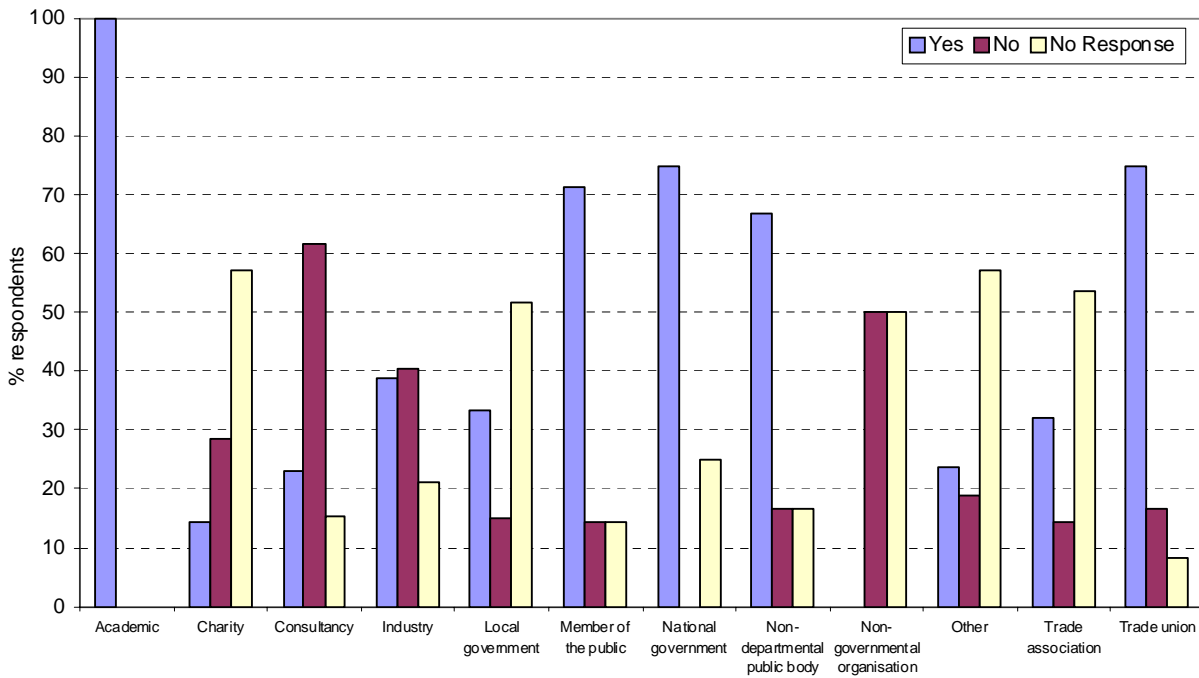


Figure 24. Responses received to Question 13 by industrial sector to which the respondent belongs.

38% of respondents stated that there were additional risks or uncertainties. These respondents identified the risk that some businesses may cease to operate or be unable to deliver the service expected of them due to the additional financial pressure that fee for intervention could introduce. These respondents also reaffirmed the concern that there was a risk to the reputation of HSE if it was perceived that HSE was trying to maximise income instead of increase health and safety standards which would in turn damage the relationship that HSE has with the duty holders it regulates.

## Annex 1

37% of respondents offered no response to this question.

Annex 1

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

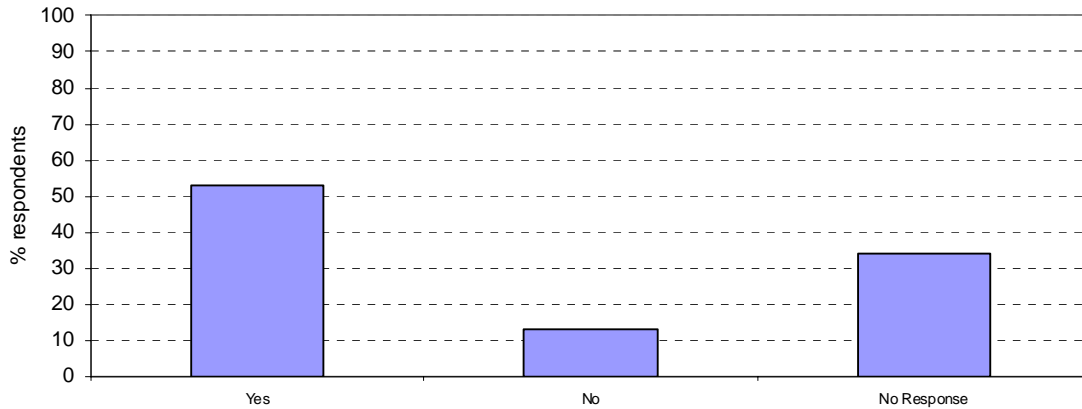


Figure 25. Responses received to Question 14.

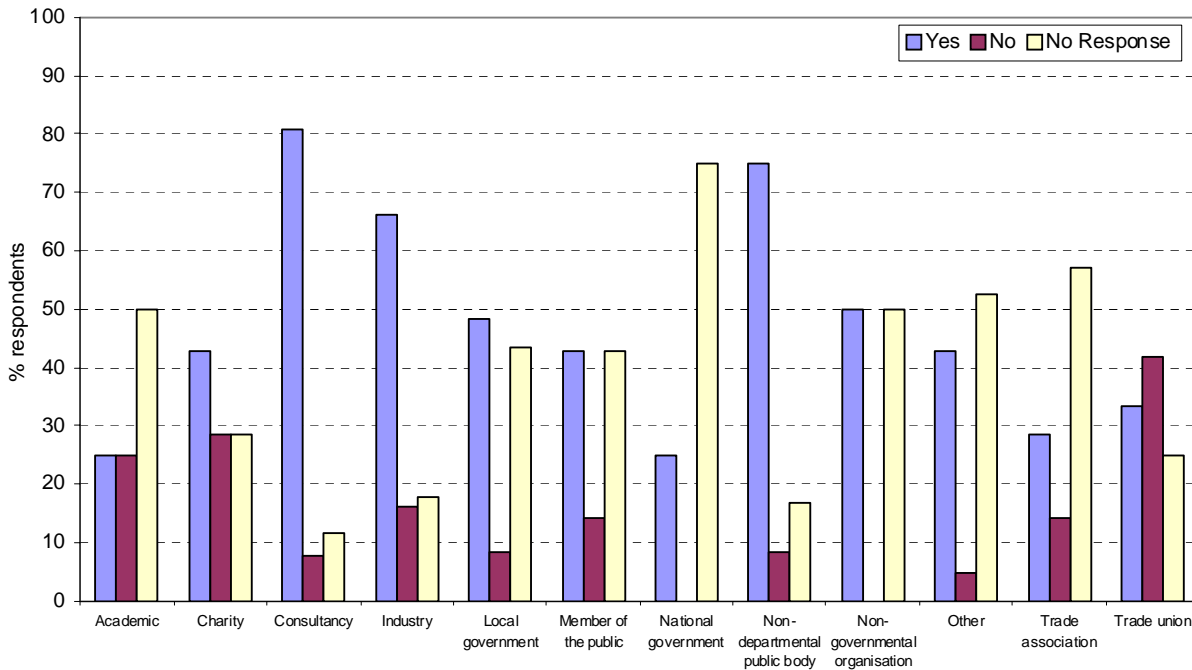


Figure 26. Responses received to Question 14 by industrial sector to which the respondent belongs.

53% of respondents stated that they were satisfied with the conclusions of the equality impact assessment.

Of the 13% of respondents that were not satisfied with the conclusions of the Equality Impact Assessment there was no overall consensus. Some expressed concern that fee for intervention would impact upon female workers if HSE focused work towards addressing injuries at the expense of regulating ill health "... occupational illnesses which are more prevalent in areas where there are more women workers will be subject to even less enforcement action". Concern was expressed that fee for intervention would disproportionately affect small business. While this is a genuine concern it is not an equality issue relating to the impact assessment.

34% of respondents offered no response to this question.

Annex 1

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

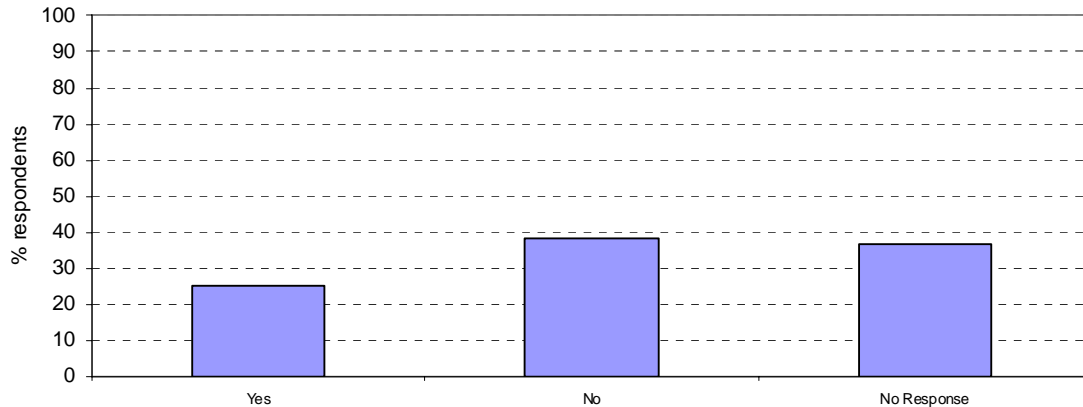


Figure 27. Responses received to Question 15.

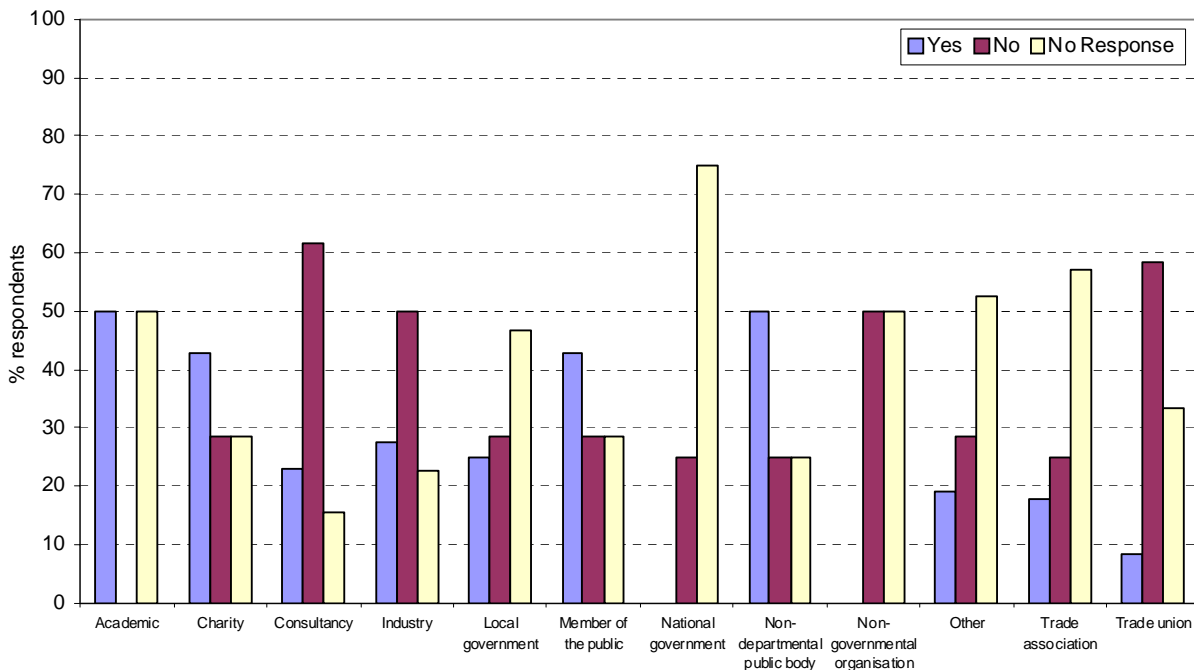


Figure 28. Responses received to Question 15 by industrial sector to which the respondent belongs.

38% of respondents stated that there were no additional factors that should be taken into account in the impact assessment.

Of the 25% of respondents that stated there were additional factors that should be taken into account the majority cited the impact on rural communities. These comments arose from the misunderstanding that fee for intervention would be charged for travelling time thus duty holders in rural areas (more distant from HSE offices) would face greater costs than those in close proximity to HSE offices. The fee for intervention rate will not be applied to the time HSE staff spend travelling. Others stated that RIDDOR reporting rates could decrease if duty holders anticipate that reporting incident could lead to an HSE investigation which could incur costs under fee for intervention.

27% of respondents offered no response to this question.

## Annex 1

Question 16: Do you have any specific comments on cost recovery not covered by the questions in the consultation questionnaire?

This question sought narrative responses that consultees felt had not been addressed by the responses given to the previous question set.

A diverse range of comments were received and most correlated with the responses given to the questions posed in the consultation questionnaire.

The majority of narrative responses commented on the proposed disputes process. The Federation of Small Business responded that the *“system outlined... will not be sufficient to give businesses confidence that this is fair and transparent”*. The Freight Transport Association responded specifically on the issues of independence *“[The FTA] do not believe that the proposed disputes process is sufficiently independent to be viewed as fair or transparent”*. This issue was also raised by the Trades Union Congress *“TUC 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”*. Also raising this as a matter of concern the Chartered Institute of Wastes Management suggested how the disputes process could be improved *“Either the appeals procedures is completely transparent or that there is the possibility of third party mediation if the company still disputes the charges”*. The Confederation of British Industry (CBI) made a similar suggestion stating that an *“external stage must be added to the new regime”*.

Numerous respondents commented that the extension of cost recovery would alter the relationship that HSE currently has with the duty holders it regulates. Some stated that duty holders may be reluctant to contact HSE for advice or to report an incident if they felt that doing so would lead to an intervention which incurred a cost to their business. The CBI expressed concern about the *“potential cost of an intervention this will deter some companies from seeking advice”*. Similarly the British Chambers of Commerce (BCC) commented *“Businesses could be less willing to engage HSE inspectors for fear of being fined, which could directly undermine the working relationship that business should have with HSE”*.

The relationship between HSE inspectors and duty holders was raised as a point of consideration by the CBI *“members are positive about the relationship that employers have with inspectors, which they value... introducing charging there will [be] an inevitable – if unintended – shift in this relationship”*, The Forum of Private Business responded with a similar point but expressed concern that fee for intervention may have the *“unintended consequence of undermining the confidence of business in health and safety inspectors”*.

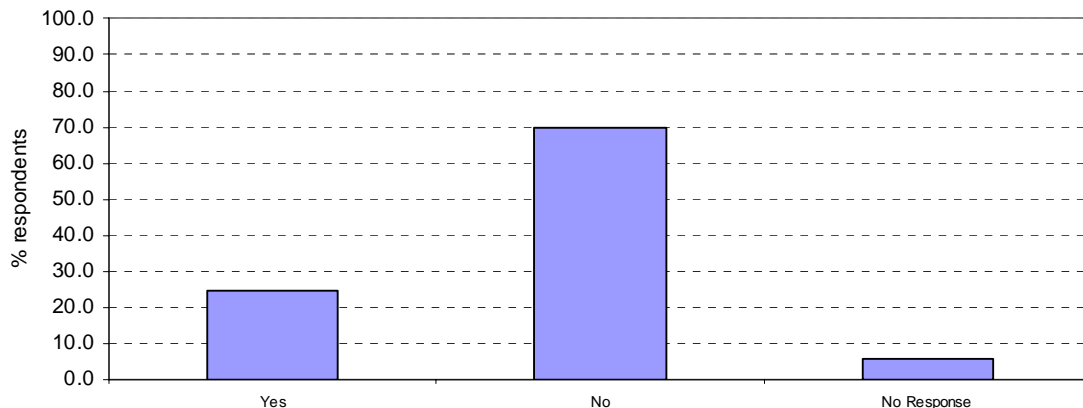
Other consultees responded that they were of the opinion that the extension of cost recovery would alter the work priorities of HSE. Similar views were expressed by other respondents amongst them The Engineering Employers Federation (EEF) and the BCC. The Institute of Directors commented that *“[Cost recovery] will invariably drive the enforcement activities of the Health and Safety Executive’s inspectors”* and noted that *“businesses being pursued are likely to be otherwise law-abiding, profitable businesses from whom the Health and Safety Executive believes it can realistically recover cost”*. The British Retail Consortium (BRC) also raised this matter but offered a possible solution of how this risk could be mitigated. *“There must be assurances that adequate funding will be provided to enforcers regardless of money generated by cost recovery to avoid a situation where more interventions are required to make up any short fall in funding”*.

## Annex 1

Many consultees sought clarification on the definition of material breach. The CBI noted that there was *“considerable confusion amongst employers about the exact nature of a material breach and therefore what could incur costs”*. A similar view was shared by amongst others the EEF and the UK Contractors Group. The CIWM observed that *“individual inspectors will still have their own views. We have concerns about how a consistent approach will be fostered under this proposal”*.

The periodicity of invoicing was a matter for comment by responders with several stating that a payment period of 30 days was too short and that HSE should consider extending this period. The FTA commented that *“most organisations accounting procedures are set up for 90-day payment period.....Duty holders should be expected to pay in 90 days rather than 30”*. The BRC also expressed similar reservations over the 30 day payment period.

Question 17: Would your Local Authority wish to have a legal duty (non-discretionary) to operate a fee for intervention cost recovery scheme?



**Figure 29. Responses received to Question 17 LA duty to cost recover**

Of the 55 responses received consultees identifying themselves as representing the views of their Local Authority 25% of stated that they would wish to have the duty to operate a fee for intervention cost recovery scheme.

70% of those responding on behalf of their Local Authorities stated that they would not wish to have the duty to operate a fee for intervention cost recovery scheme.

Of the 25% that did wish the legal duty to operate a fee for intervention cost recovery scheme there was no consensus on the rationale. Some stated that it would be unfair on HSE regulated duty holders if their local authority regulated competitors were exempt from fee for intervention. Others held the view that introducing fee for intervention to the local authority enforced sectors would improve health and safety standards and remove the competitive advantage gained by those who chose to operate in material breach of health and safety the law.

Comments from those that did not wish the legal duty highlighted the role that Local Authority regulators have in supporting and encouraging business to locate to and operate in their regions. They were of the opinion that cost recovery would be at odds with their functions supporting and encouraging businesses.

Numerous responses from both industry and trade associations stated their disappointment that their views were not sought on whether Local Authorities should have the duty to cost recover. All respondents that raised this issue stated that they would not wish to see Local Authorities given the duty or power to cost recover for their activities.