eef The manufacturers' organisation

In partnership with: arco Experts in Safety

# MAKING HEALTH AND SAFETY WORK FOR UK BUSINESS

## MANUFACTURERS' CONCERNS IN A POST-BREXIT WORLD

# CONTENTS

# 1 EXECUTIVE SUMMARY

UK manufacturers need regulatory stability to plan for the future and invest. This requires certainty and advance knowledge of any changes they will face to enable them to prepare.

The only credible way forward at this time is for the UK to continue to adopt the worker protection and product safety laws of the European Union, until such time as the UK has a new trade agreement with the EU. Transition beyond 2019 will also need to maintain regulatory stability as well as minimise risks of regulatory divergence. This is especially important for UK businesses supplying or receiving goods and services from the EU.

**In the context of this report there are four key EU or Brexit related areas:-**

- It is vitally important for the UK through the British Standards Institution (BSi) to be part of any European (as opposed to EU) standards setting group post Brexit. The European Standards Organisations and the European Standardisation system are not owned by the European Union. As standards will be key in underpinning future free trade agreements this is essential to support trade in the UK, across Europe and globally.
- It is also important for the UK to still be able to work within the framework of EU product safety legislation so that we can continue to trade without the risk of technical barriers to trade being raised. This would enable the UK to continue to participate in developing 'harmonised product standards' (covering the majority of manufactured goods traded within the Europe Union) and avoid the unnecessary development of multiple standards.
- Clearly there are legitimate concerns about substandard imports of Personal Protective Equipment (PPE) into the UK which are used in the workplace. It is a real concern, especially the lack of market surveillance. Whist we welcome publication of the recent government strategy[1] for strengthening Product Safety it does not really address how defective equipment destined for the workplace can be identified at an earlier stage in the supply process.
- After transition, Brexit will present an opportunity for the UK to reconsider some of the more prescriptive elements of workplace Health and Safety legislation which have arisen out of EU directives. Both the Artificial Optical Radiation (AOR) and Electromagnetic Fields (EMF) directives are good examples of hazard based rather than risk based legislation and could be early candidates for review.

**Domestically there are two matters worthy of further discussion:-**

- Is Fee for Intervention (FFI) still viable? We have a cost recovery scheme, where the costs of operating the scheme significantly exceed the revenue generated and has led to strained relationships with the manufacturing sector. Is it not time to consider and pursue other more acceptable avenues of cost recovery?
- Health and Safety fines are considerably higher, but it is debatable whether this is the best way to improve H&S standards in the workplace? Let's direct the money in a more constructive way by getting the courts to make wider use of remedial orders and ensure that money is used to actually improve health and safety management and workplace conditions.

[1]Strengthening National Capacity for Product Safety – Strategy for 2018-2020 (2018), BEIS Office for Product Safety & Standards





# 2 INTRODUCTION

This report summarises the responses from EEF's fifth survey of health and safety undertaken in December 2017 and an earlier survey in 2015 on manufacturing industry attitudes towards and responses to the Health and Safety Executives introduction of Fee for Intervention (FFI). A total of 170 responses were received for the 2015 FFI survey and 144 for the 2017 Health and Safety survey. Almost half the responses were received from companies employing less than 100 employees.

Those who participated in the surveys were asked to report their views on amongst other issues, the impact of FFI, on the way they manage health and safety, their relationship with HSE, the cost of FFI, action taken in response to the increase in fines for health and safety breaches, and levels of senior management involvement in health and safety and what drives it. The earlier 2015 survey focuses on FFI only and the results from this original survey are compared and contrasted with the 2017 survey results. There are messages here for HSE in terms of rebuilding their relationship with those they regulate.

To a large extent the context for the later 2017 study has moved on from FFI and to some extent from the Health and Safety sentencing guidelines. It is now clearly dominated by the uncertainty surrounding the UK's exit from the European Union and the impact that will have on UK business. There may be opportunities post-Brexit to revisit the UK Health and safety regulatory acquis and reconsider those simplification, consolidation, goal-setting and future-proofing opportunities which were discussed, but not implemented by the EU Commission. There are implications for selling into the single market without a transitional agreement and the impact that being outside Europe will have on UK notification bodies. This could clearly have an impact on product safety regimes as they stand and members are no doubt contemplating the implications of Brexit for their own businesses.

Whilst the Government has stated that they would not wish to see any reduction in worker protection, Brexit does provide an opportunity to look again at the legal architecture for occupational health and safety to determine if it remains fit for purpose or could be reformed to deliver the same high standards of worker protection but in a way which makes it easier for business (especially SME's) to meet health and safety standards and at the same time protect  a greater number of people at work. Clearly the EEF would support such a move, provided that worker protection was not compromised.

# 3 KEY FINDINGS

### Health and safety and Brexit

– The clear message for both 'worker protection' and 'product safety' was that there should be no rapid change post Brexit to the UK regulatory acquis, but that the legal framework would benefit from a review post Brexit to confirm it was still fit for purpose. There was no appetite to revert to the pre EU legal framework for worker protection or product safety.
– The desire to review health and safety legislation for both product safety and worker protection was stronger in companies with more than 100 employees. Organisations employing less than 100 were more supportive of no change and continuing with the status quo.

### Fee for Intervention (FFI)

– Fee for intervention has had a negative impact upon the relationship between employers and HSE. Employers generally have a less favourable view of HSE after the introduction of FFI.
– Fewer companies are likely to invite inspectors into their businesses or ask HSE for advice because of FFI. These views are shared by companies irrespective of whether they have received a regulatory visit or Notice of Contravention (NOC).
– Most respondents believe that FFI has a no or little impact on the way they manage safety and has not improved health and safety standards.
– Companies are supportive of some form of cost recovery for HSE where companies are breaking the law.
– Most respondents feel that HSE should consider alternative mechanisms for recovering costs, and over 50% of respondents said they would pay for HSE advice.

### Changes to the level of fines under the 2016 Health and Safety sentencing guidelines

On 1st February 2016 a new sentencing framework was introduced, the result has been some eye watering fines for those convicted of health and safety breaches. EEF have asked their members what action they had taken in response to the new guidelines and the risk of larger fines.

– Just over two-fifths of respondents had taken no action following introduction of the H&S sentencing guidelines.
– Of those who had taken action
  - Just over two-thirds (68%) had reviewed all their Health and Safety policies and procedures.
  - Almost two-thirds (63%) of company directors said that they were taking an active interest in H&S management.
  - Just over a fifth (21%) said they were more likely to defend court cases.

### How are companies managing health and safety?

Companies were asked about senior management involvement in health and safety and what drives senior management involvement. The headline responses are:

– Senior managers have become significantly less engaged in key measures of health and safety leadership since 2012, bucking year on year improvements in senior management engagement between 2005 and 2012.
– Almost a third of respondents said that they had not seen an increase in senior management involvement since 2012.





# 4 KEY MESSAGES FOR POLICY MAKERS

### Health and safety and Brexit

EEF do not want to see wholescale change to the Health and Safety regulatory landscape the moment we leave the European Union. The government's current approach of grandfathering existing EU worker protection and product safety legislative requirements into UK law for the foreseeable future is the right one.

However that's not the end of the story. As the nature of the new relationship with the EU unfolds post the negotiation phase, we think it is appropriate to review the Health and Safety acquis to see if there is an opportunity to produce better regulation. If the UK government decided to make changes to our domestic legislation earlier then this is likely to be extremely disruptive and costly to business. This is something our members do not support, especially SMEs.

In terms of product safety legislation, manufacturers tell us that the UK must play a continued role in European Standard setting and that they can continue making products to the requirements set within the European standards environment. . They do not want different standards to apply to the production and acceptability of UK manufactured goods, and that the UK continues to support the principle of a single national standard model. Ideally we want to see government supporting the development of more common ISO technical standards allowing UK products to be exported more readily on a global stage. We need to protect the vital role of the UK standards bodies and the UK notification bodies and welcome the governments support for BSi. It is imperative that the role and work of the UK notification bodies can continue and remains valid within Europe after Brexit.

Irrespective of whether the UK is in or out of the EU, there is a significant issue with unsafe products supplied to the UK for use at work. The current system for market surveillance does not work. If we want to be serious about protecting the Health and safety of those at work then the government and its Office for Product Safety and Standards needs to implement and invest in a much more proactive market surveillance regime.

### Fee for Intervention

Fee for Intervention (FFI) is not working. Far from being a commercial "cost recovery" scheme, FFI, in fact, has run at a loss since the very first year and even with the latest fee increase there is insufficient income generated to cover the rising costs of administering the scheme. We must not forget that the Treasury still decide what proportion of the annual FFI revenue can be used by HSE towards its operating costs and what has to be handed over to Treasury.

Given the published FFI accounting information in HSE annual reports one has to question whether the FFI scheme has fulfilled its original objectives of (i) changing the way that companies manage health and safety (ii) improving GB health and safety standards thereby justifying the reasons given at the time for its introduction. We do not think FFI should result in an indirect tax on industry or a mechanism for generating additional revenue for the Treasury.

HSE's historical role has been one of adviser, regulator and enforcer. FFI has impacted on this relationship with business in a detrimental way in that HSE is largely now only perceived as an enforcer. Our survey showed that FFI has had a negative impact upon the relationship between employers and HSE, fewer companies are likely to invite HSE inspectors into their businesses and fewer companies are likely to ask HSE for advice in case they receive a Notice of Contravention (NOC). One EEF focus group multi-national put it this way, 'we can't have grown-up conversations with HSE inspectors these days'. This cannot be a healthy relationship if the UK wants to continue to develop a positive safety culture through its interaction with duty-holders.

Over half our survey respondents agreed that HSE should be able to cover its costs if they find health and safety breaches, but the overall sentiment is that FFI is not the best way to achieve this.

'Material' breaches have historically been dealt with by regulators through the issue of enforcement notices. EEF consider that cost recovery should only apply where the 'material' breach leads to the issue of an improvement or prohibition notice or where as a result of a visit or investigation legal proceedings are implemented. There are clear enforcement notice appeals processes which duty holders can follow and this could also be linked to any disputes process regarding the recovery of costs. This would provide a sensible, less confusing approach.

Our preferred approach is for HSE to carry out an independent review of the effectiveness of a variety of different cost recovery models by working with industry. Most survey respondents felt that HSE should have an alternative commercial mechanism for recovering costs, and over 50% of respondents said they would pay for HSE advice from HSE inspectors. This would allow agreement to be achieved between industry and the regulator on the best way to achieve compliance. HSE opinions still carry considerable weight and authority and would be respected by industry. It would allow grown-up discussions to take place again between industry and the regulator and rebuild trust.

### H&S Sentencing guidelines

Too much emphasis is placed in the H&S sentencing guidelines on fines and the level of fines. Fines are a blunt tool and as our survey shows is not currently changing company behaviours and improving the management of health and safety. Money collected through fines and collected by the Treasury is not used or invested in improving the health and safety system.

We want the government and the sentencing council to place much more emphasis instead on courts issuing 'remedial orders' and/or 'publicity' orders. We believe that this would change behaviours and bring about lasting improvements to health and safety management systems and practices. Remedial orders could require companies to make lasting improvements to their health and safety management systems and practices 'audited' by an accredited organisation acceptable to the courts (at the companies expense).

### Health and safety management

We know that there is a considerable amount of evidence that growing senior management involvement in health and safety achieves better outcomes. EEF recognizes the importance of actively, systematically and effectively managing health and safety from an ethical, cost, performance and Corporate Social Responsibility perspective.

It is important that the Government and HSE regularly promote key messages around the importance of Health and safety leadership and engage not just with the directors of FTSE 100 companies, but also the SMEs who employ over 90% of those at work in the UK. EEF will continue to engage with the HSE and its 'Helping Great Britain work well' strategy by endorsing messages around health and safety leadership in the Manufacturing Sector.





# 5 HEALTH AND SAFETY AND BREXIT

### Introduction

It is essential for the UK Government to set out a clear agenda for the development of a new relationship with the EU in the area of worker safety and product safety.

The task of extricating the UK from EU regulation and legislation will be long and complex. The Government need to ensure regulatory stability and avoid short-term overnight changes to the way business, labour and product markets are regulated.

Prior to the referendum, EEF said in the event of Brexit that UK should retain most if not all, of the main legislative instruments in the area of health and safety law. This is still our position.

However, we also supported the EU Commissions Health and Safety legislative review (part of the EU's Regulatory Fitness and Performance Programme (REFIT programme) in reviewing whether regulations could be removed, or consolidated and whether the existing EU H&S acquis was still fit for purpose. Our view was that there were considerable opportunities to create a much more simplified health and safety goal setting and future proof legal framework which consolidated existing requirements, removed duplication, made it easier for SME's to meet their legal obligations and at as a consequence enabled more workers to be protected.

Export of goods from the UK are subject to rules around product standards, many of which will have been established jointly by the EU. UK goods exports should continue to meet these mutually agreed and recognised product standards, e.g. Machinery Directive, to support ease of movement of goods across the region.

UK law in this area is intrinsically interwoven with EU law. It is essential that businesses see a clear roadmap for how the process of disentanglement will be managed. We know that once processes have been embedded within industry, removing or changing them is a long and difficult process.

Substantive differences in national regulations may add to business costs, introduce uncertainty and could discourage companies from trading or expanding abroad. We would not want the UK government to jeopardise existing safety standards to confer a UK trading advantage unless there is a proven equivalent alternative.

In the event of a no-deal Brexit UK manufacturing also need clarity on post Brexit health and safety arrangements perhaps through publication of the government's technical notices which are designed to prepare the UK for the possibility of such an outcome. The government published its technical notice on Workplace Rights (which includes the health and safety of workers) on 23rd August 2018.[2]

### Worker protection regulatory landscape

The UK has always been a trailblazer in health and safety worker protection and the UK have an international reputation for reducing work-related injuries and have one of the best health and safety records in Europe. UK has always applied a risk-based health and safety system, (including laws derived from EU directives), because it's been found to be successful and fit for purpose by several independent reviews. It is respected and imitated across the world.

In the UK government white paper on the 'Future relationship between the United Kingdom and the European Union[3], it refers to the UK's health and safety record as being one of the strongest in Europe and that given this strong record proposed that the UK and the EU commit to the non-regression of health and safety standards, i.e. the status quo. The UK government it would seem have decided not to jeopardise existing safety standards to confer a UK trading advantage, perhaps because there is no proven alternative.

Although there is a perceived burden of EU regulation and "excessive red tape", members of EEF's Health and Safety leadership group have said that once they as employers have embraced a new piece of legislation, become familiar with it and dealt with uncertainty over its practical interpretation that further change becomes more problematic and costly than the status quo. They are not, except at the margins, supportive of fundamental change. One processes have been embedded within industry, removing or changing them is a long and difficult process. Differences in national regulations between the EU and the UK are likely to add to business costs, introduce uncertainty and could discourage companies from trading or expanding abroad.

[2]Workplace rights if there's no Brexit deal, BEIS, 23rd August 2018
[3]The future relationship between the United Kingdom and the European Union – HM Government Cm 9593 (July 2018)

Our survey respondents were asked what they wanted the post-Brexit worker protection regulatory landscape to look like. See Chart 1.

Respondents were asked what their preferred worker protection option post Brexit would look like.

Just over two fifths (42%) of survey respondents did not want any change post Brexit whereas just over half (54%) preferred no initial change but a review of all health and safety legislation after the UK has left the EU. Very few (less than 3%) wished to revert back to the pre EU regime.

Looking at the survey response by company size, this shows more differences. Chart 2 shows that just over half (53%) of companies with less than 100 employees preferred no change to the regulatory regime, but that medium sized (67%) and larger (55%) companies were more supportive of reviewing worker protection regulations post Brexit.

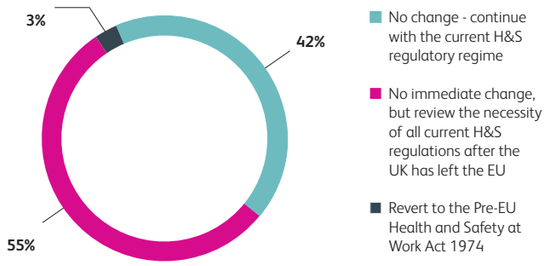
Perhaps companies employing less than a 100 employees preferred no change, because they saw any change as placing a further burden on their business having to implement a new regulatory regime.

Medium and large companies were keener on legislative review with response of 67% and 55% respectively. Larger companies are perhaps more likely to see Brexit as an opportunity to simplify the system and reduce health and safety burdens in the future.

There are some areas where EEF members would welcome a review of existing UK requirements, especially for more recent directives, where the level of risk is considered to be less significant, and where the health and safety benefits are more questionable. EEF's message to Government is to adopt all the health and safety directives from Europe when we leave and review them later. However, if we look at the Control of Electromagnetic Fields at Work Regulations then their scope should be limited to higher frequency fields which cover higher risk. Risks from exposure to lower frequency fields are questionable. These regulations should be a candidate for early review. Another candidate would be the Control of Artificial Optical Radiation at Work regulations Directive. Apart from lasers and a handful of other processes, which are well-regulated anyway, the risks from artificial optical radiation are not considered to be

## Chart 1 – Industry want to retain existing EU worker protection directives/regulations

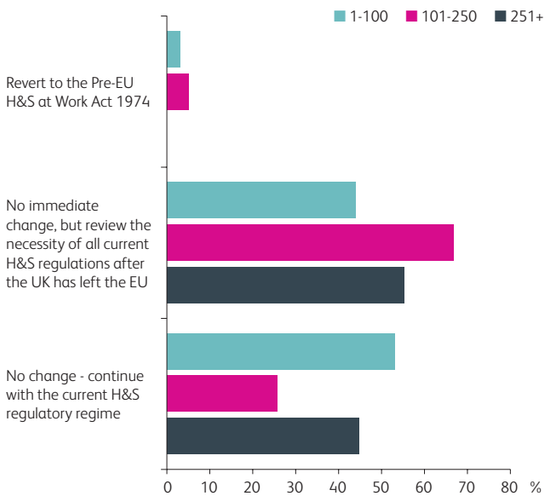
% of companies who want to continue to meet the EU worker protection regulatory regime post Brexit




Source: EEF Health and Safety Survey 2017

## Chart 2 – Larger companies favour post Brexit review of worker protection legislation

% of companies who want to continue to meet the EU worker protection regulatory regime post Brexit




Source: EEF Health and Safety Survey 2017





significant. Then there's the Display Screen Equipment Regulations, which are hopelessly out of date, as they do not cover smartphones or tablets, and that should be brought up to date.

EEF members are positive about the opportunities for a more flexible approach to regulation. Flexibility provides opportunities to move more quickly in modifying regulations. This includes legislation dealing with particular types of workers, for instance, developing risk assessments on the basis of particular needs. We'd like to see a risk assessment approach based on worker capability. At the moment we have risk assessments for new and expectant mothers and young workers, but, depending on the circumstances, there might be no difference between their capability and anyone else's. So we would like to see a system of generic risk assessments that could be tailored or adapted to cater for individuals specific capabilities, for instance for workers with MSDs. Perhaps existing legislation could be simplified by covering different groups of workers by talking about individual capability.

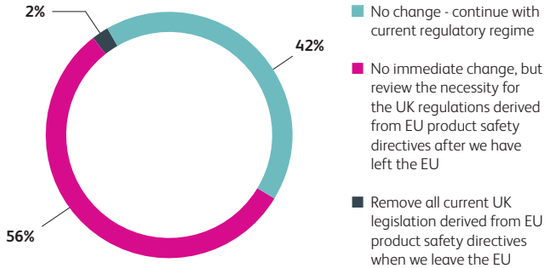
In the longer-term EEF believe that the focus should be toward a more flexible approach to regulation. There is an opportunity to implement a 'domestic' health and safety framework which remains 'fit for purpose', retains worker protection standards and makes it easier for SME's to comply. We should be prepared to examine what we already have, and what, given the choice, we might wish to change.

### 'Product safety' regulatory landscape

There are a number of EU 'Product Safety' Directives, e.g. the Machinery Directive) and EU 'Product Safety' Regulations, e.g. Regulation (EU) 2016/425 on Personal Protective Equipment (PPE) which impact UK manufacturers. They have two key features (1) raising health and safety standards through essential requirements and/or CEN/CENELEC technical product standards and (2) creating a level playing field when it comes to EU trade.

## Chart 3 – Industry want to continue manufacturing to EU Product Safety Directives/regulations

% of companies who want to continue to meet the EU Product safety regulatory regime post Brexit




Source: EEF Health and Safety Survey 2017

Our survey respondents were asked what they wanted the post Brexit product safety regulatory landscape to look like. See Chart 3.

Just over two fifths (42%) of survey respondents did not want any change post Brexit whereas just over half (56%) wanted no immediate change to the legal landscape but wanted to see a subsequent review of all health and safety product regulation post Brexit. Focus group feedback from EEF members said they were not adverse to change if it was of benefit to industry, but also said that they did not want to be in a position of having to manufacture products to different technical standards for different countries. They did not want to see a separate environment for standards in the UK which would be different to the technical requirements of European bodies such as CEN/CENELEC.

## Chart 4 – Larger companies favour post Brexit review of product safety legislation

% of companies who want to continue to meet the EU Product safety regulatory regime post Brexit, by company size


Source: EEF Health and Safety Survey 2017

If we look at the survey response by company size, this shows greater variation in response. Chart 4 shows that just over half (52%)of companies with less than 100 employees preferred no change to the regulatory regime, but that medium sized (68%) and larger (59%) companies were more in favour of reviewing the regulations post Brexit.

We suspect that the smaller companies prefer a 'better the devil you know' scenario rather than having to deal with a changing regulatory framework, which they might consider as a burden. Where larger companies possibly feel they have the capacity to deal with change which will ultimately lead to a simplified system and reduced burdens in the future. Not with[redacted]ding any impact that might have on the ability of firms to sell into the single market.

### Product Testing

The requirements for product testing of manufactured and supplied goods into the EU market varies between different EU product Directives and Regulations. Some products can only be given a CE mark if they are tested via a rigorous third-party accredited testing laboratory process, others via declaration to CEN/CENELEC product standards (type approval) or in other cases manufacturers/suppliers/importers/distributors can simply self-declare that they meet the safety requirements of the relevant Directive or Regulation.

This does cause problems in the market place. Where it is possible to self-declare and fix a CE mark to a product, this allows unscrupulous suppliers to sell defective products. Where these products are used to provide worker protection then it can be a case of 'buyer' beware.

Clearly the lack of market surveillance in the UK (and in the EU generally) exacerbates the problem.

### Registered Safety Supplier (RSS) scheme

The BSIF (British Safety Industry Federation) recognized in the case of Personal Protective Equipment (PPE) that the quantity of non-approved product being sold into the UK was on the increase. They found that a number of items which claimed CE approvals had not been appropriately certified or even worse were in fact counterfeits of existing products, putting lives at risk.

To help combat this, the BSIF created the Registered Safety Supplier (RSS) scheme. Companies displaying the scheme's logo sign a binding declaration that the safety equipment they offer is correctly tested and certified to meet the appropriate European standards, fully complies with the PPE regulations and is appropriately CE marked.

All Registered Safety Suppliers are independently audited to confirm compliance with the scheme's requirements.





### 'Be Sure' campaign

The 'Be Sure' campaign is also addressing the issue of non-compliant Personal Protective Equipment (PPE) in the UK marketplace. This highlights the fact that despite PPE having the required EU type approval and CE mark, recent tests indicated that some of the products assumed to be safe, may not actually be fit for purpose.

There appears to be procedural weaknesses within the EU type approval and CE marking process for PPE products. These weaknesses allow less reputable manufacturers or importers to gain CE certification for products they wish to market and then subsequently make 'material' changes to the product. These changes may impact a product's safety performance, but further testing may not be conducted or required as the CE certificate is already available for the original product specification.

Category 2 and 3 items of PPE must follow an EU type approval and carry the 'CE mark' to prove certification, whereas category 1 or minimal risk PPE are self-certified and CE marked by the manufacturer after they have assessed the product against the essential health and safety requirements of the PPE regulations.

There is no 'third party' monitoring process for category 1 or 2 PPE and it is up to the manufacturer to ensure the product continues to conform to the standards.

### Notified bodies

The UK structure for CE marking and product certification operates within an EU-wide system.

Currently, an organisation established in the UK to issue product certification is assessed by the United Kingdom Accreditation Service (UKAS), who propose it to the Government department for Business, Energy and Industrial Strategy (BEIS). BEIS in turn notify the European Commission and, if no other member states raise an objection, it becomes a 'Notified Body', authorised to award the CE mark and issue certificates to EN standards.

Once the UK are no longer in the EU this system will cease to operate, and while existing certificates will continue to be valid until they expire, UK Notified Bodies will not be able to award new CE marks for products to be sold in Europe.

EEF would like to see a Mutual Recognition Agreement (MRA) to be in place on the day we leave the EU. This would allow the 'notification' process via UKAS and BEIS to be maintained, and certification work carried out by Notified Bodies based in the UK to continue to be valid for products to be sold throughout the EU. The precedent for MRA's already exist with countries outside the EU such as Canada and Switzerland. They allow two countries to recognise each other's conformity assessments of testing and certification.

### What is market surveillance?

The term "market surveillance" applies to the actions of regulatory authorities to ensure that products being made available on the market or put into use for the first time, meet the requirements of the relevant Directives / Regulations and do not endanger health, safety or any other public interest specified by these legal instruments.

Market surveillance is vital to ensure that all players - manufacturers, standards bodies, notified bodies - shoulder their responsibilities. Its overarching aim is to protect the end-users of products - in this case, workers. Equipment has to meet the essential safety requirements set by the directives and put into practice by European technical standards. Where PPE is concerned, this may literally be a matter of life and death, because they are all that stands between the user and injury or ill-health.

Most market surveillance on the UK is the responsibility of Local Authority Trading Standards Departments (Consumer Safety) or the Health and Safety Executive (Workplace Safety). In reality very little market surveillance is pro-active, most is reactive when issues are brought to the attention of the regulatory authority.

As a consequence there are many products on the market which probably do not meet EU requirements, yet still display

the CE mark. This is a significant 'procurement' problem for many manufacturing companies. Companies with greater resources can ensure that they only use reputable third-party suppliers, whereas for smaller SME's this is more problematic and cost may drive procurement practices.

Currently the UK's competent authorities for market surveillance of product safety are under increasing pressure due to reduced budgets and this may be exploited by less reputable manufacturers. Brexit or no Brexit market surveillance needs to be given a higher priority by the UK government to prevent unsafe products reaching the end users, potentially resulting in injury or ill-health.

### What should manufacturer's do?

Identifying product compliance is difficult for the user. The responsibility falls to the manufacturer, who may not have the resources in place to ensure regular testing. Anyone responsible for procurement of equipment should follow these steps:

- Ask your suppliers for a declaration of conformity that shows original certification for the product you are purchasing.
- Ask your suppliers to define their process for sample testing to ensure safety products continue to meet the required standards.
- Ask your suppliers to define their process of quality assurance at the manufacturing facility to ensure the products are being manufactured as they were originally certified.
- Always buy from a trusted source.
- Ensure your suppliers (in the case of PPE) are members of the BSiF Registered Safety Supplier Scheme.

### Future role of BSi

If EEF members want the existing EU Product safety regulatory regime to continue post Brexit it is important that BSI continues to have a key role as part of the CEN/CENELEC 'harmonized' technical product standards process.

EEF support the BSis 'Brexit and standards position paper'[4] which is for BSi to remain a full member of the European Standards Organizations on the basis of the following principles: -

- Standards provide a passport to trade.
- The European standards system has simplified the market structure in Europe through the use of the single national standard model across 34 countries in the region.
- The European standards system is neither owned by nor is it an agency of the European Union.
- The UK has significant influence in the development of European standards.
- Maintaining full UK membership of CEN and CENELEC is important to the success of business in Europe post-Brexit.
- Maintaining full CEN and CENELEC membership also brings benefits to consumers and other public interest groups.
- BSi must therefore continue as a full member of CEN and CENELEC post-Brexit.
- Standards will provide a key element underpinning future free trade agreements between the UK and non-EU countries.

The good news is that the UK government white paper on the 'Future relationship between the United Kingdom and the European Union'[5] clearly endorses BSI's position to continue its role in CEN and CENELEC post-Brexit. It is also endorsed by Rt Hon.Greg Clark MP, Secretary of State for Business, Energy and Industrial Strategy.

### Leaving the EU Single Market

For the manufacturing sector, the EU Single Market and the Customs Union have been the most important facilitators of 'frictionless' trade with the EU in a uniform and single regulatory environment. Moving out of this arrangement without an agreement…will incur significant costs for manufacturing businesses in the form of proving the UK origin of products, levying of tariffs, documentation and customs checks, especially across complex cross border supply chains.

In order to maintain certainty manufacturing industry we need the government to retain some key trading conditions such as:

- the ability to participate in developing 'harmonised product standards' to demonstrate compliance with regulation. They provide a clear and predictable framework for manufacturers so products can be sold freely in the EU.
- continued adoption of European standards and technical requirements and ensuring the participation of UK experts in their development to enable compliance with EU harmonised regulatory regimes will be important.
- Access to the principle of mutual recognition guaranteeing that any product lawfully sold in one EU country can be sold in another.

[4]Brexit and standards position statement, BSI (February 2018)
[5]The future relationship between the United Kingdom and the European Union, Cm 9593





# 6 FEE FOR INTERVENTION (FFI)

The Health and Safety Executive's (HSE) Fee for Intervention (FFI) scheme was introduced on 1st October 2012. It applies to those activities where HSE are the Enforcing Authority. Work activities where health and safety legislation is enforced by Local Authority inspectors are currently exempt.

FFI is a 'cost recovery' mechanism for reclaiming costs back from business for the time taken by HSE identifying 'material breaches' of health and safety' legislation, helping business put it right and investigating and taking enforcement action.

When an inspector has identified a material breach they will issue a Notice of Contravention (NOC), stating the breach, their reasons for forming their opinion, and that a fee will be payable. If they offer advice where no breach has been identified then no fee will be payable. Charges are made based upon a flat rate per hour (currently £129), with specialist inspectors being charged at a higher rate than field inspectors.

Clearly, FFI has a significant impact on EEF members as manufacturing operations often involve higher risk activities, are in the HSE enforced sectors and are therefore more likely to be inspected.

The original intention of FFI was to enable HSE to recover costs incurred in assisting employers rectify breaches of health and safety law, and encourage employers to better manage health and safety risks in their workplace and therefore not breach the law. When FFI was introduced it provided an opportunity for HSE to meet some of the shortfall in its funding from Central Government. The early revenue targets from the HSE impact assessment[6] estimated cost recovery from business at approximately £43.6 million per year. Back in 2012 HSE predicted setup costs of £740k and operational costs of £380k per annum thereafter. By the time FFI was introduced in 2012 however projected revenue targets were set more realistically. See Table 1.

However as Table 1 shows FFI has run at a loss since the very first year and even with the latest fee increase (to £129 per hour from the initial fee of £124 per hour) there is insufficient income generated to cover the rising costs of administering the scheme. It does mean however that HSE can currently retain all its FFI income as income does not exceed the Treasury income cap.

To determine the impact of FFI on its members, EEF undertook an initial study in 2015, looking at the period from its introduction on 1st October 2012 to 30th

### Table 1 - FFI costs exceed income

FFI income and cost by HSE financial year[7,8]

| Fee for Intervention (FFI) | 2012 - 2013 | 2013 - 2014 | 2014 - 2015 | 2015 - 2016 | 2016 - 2017 | 2017 - 2018 |
|---|---|---|---|---|---|---|
| Projected FFI Income £'000 | 31,000 | 37,000 | 39,000 | N/K | N/K | N/K |
| Target FFI income £'000 | 10,000 | 17,000 | 23,000 | N/K | N/K | N/K |
| FFI Income £'000 | 2,836 | 8,706 | 10,150 | 14,706 | 14,925 | 15,052 |
| FFI Cost £'000 | 2,730 | 9,873 | 11,943 | 17,448 | 16,636 | 16,957 |
| FFI Surplus/(deficit) £'000 | 106 | (1,167) | (1,793) | (2,742) | (1,711) | (1,905) |
| Treasury HSE Income Cap £'000 | 10,000 | 17,000 | 23,000 | 11,000 | 17,000 | N/K |
| Realised FFI Treasury Income £'000 | 0 | 0 | 0 | 3706 | 0 | N/K |

Source: HSE annual reports, https://www.healthandsafetyatwork.com/fees-skimmed-treasury

[6]Impact Assessment for the proposed replacement of the Health and Safety (Fees) Regulations 2010 – HSE (2011)
[7]HSE annual Reports
[8]https://www.healthandsafetyatwork.com/fees-skimmed-treasury

September 2015 (the first three years of operation). This study was followed up in EEF's December 2017 H&S survey for the period covering 1st October 2012 to 30th September 2017 (the first five years of operation).

Some of the data from the two survey time periods is not directly comparable because it relates to over lapping time periods, two separate survey cohorts and the fact that some of the data on numbers of FFI invoices issued and the value of those invoices may be double-counted.

### Frequency of Regulatory inspections

Chart 5 indicates during both survey periods 2012-2015 and 2012-2017 that EEF survey respondents were receiving more frequent visits from HSE inspectors than they had before FFI was introduced.

When respondents were asked in 2015 about the frequency of visits made by an HSE inspector since 1st October 2012, just over two-fifths (40%) of respondents had been visited between two and five times, just over quarter (26%) had been visited once whereas a fifth (21%) of respondents had not received any visits. See Chart 6. The 2015 FFI survey revealed that almost two-thirds (61%) HSE inspector's visits were planned inspections and that a third (35%) were as a result of an incident. This would appear to show that some EEF manufacturing companies started to receive more frequent visits from HSE after FFI was introduced, but his could simply be a reflection of the number of 'material breaches' identified requiring resolution or because investigations were particularly complex in specific workplaces.

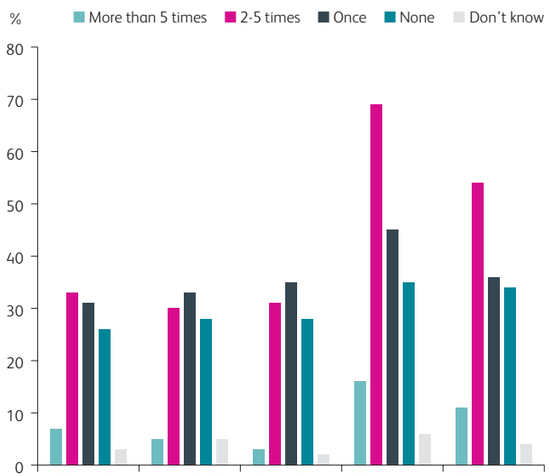
### Number of FFI Invoices issued

When companies were asked how many FFI invoices they had received over the two survey periods we obtained two different sets of results (see Chart 7) as would be expected from two different survey cohorts. What this seems to show is that in both survey periods most of our respondents did not receive a FFI invoice. Over the 5 year time frame Chart 6 indicates that three-quarters (75%) of respondents did not receive FFI notices.

We do not know whether this picture accurately reflects what is happening on the ground. We know from official HSE data[9] that approximately 8440 invoices were issued

## Chart 5 – Some companies received more visits after FFI introduced

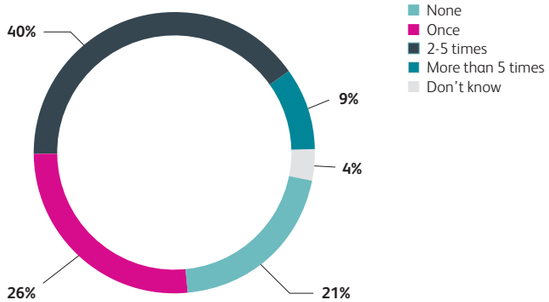
Number of HSE inspector visits for each survey respondent for each time period




FFI Survey 1 (1/10/12 to 30/09/15; FFI Survey 2 (1/10/12 to 30/09/17)
Source: EEF Health and Safety Surveys, 2008, 2009, 2012, 2015 & 2017

## Chart 6 – Two-fifths of companies visited by HSE between 2 and 5 times

% breakdown of the number of occasion's companies received HSE visits




Source: EEF 2015 FFI survey

[9]http://www.hse.gov.uk/fee-for-intervention/assets/docs/ffi-nvoice-information.pdf, accessed on 24/08/2018.





to the manufacturing sector between 01/10/16 and 30/09/17, but we don't know how this relates to the number of planned inspections to manufacturers over the same time period. We also know that apart from the construction sector the manufacturing industry receives the greatest share of FFI invoices. FFI has raised approximately £60.7m[10] during the first 5 years of its operation and manufacturing sector invoices accounted for approx. £21.7m[11] or just over one-third (36%) of the total FFI revenue. HSE figures reveal that the manufacturing sector is being hit the hardest, generating high 5 figure sums for the HSE each month.

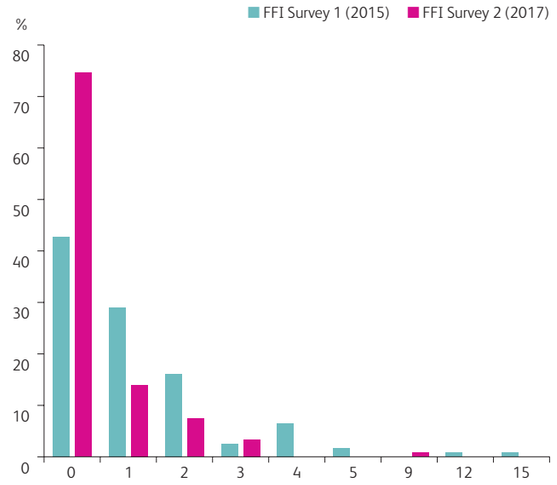
In terms of the outcomes from these visits reported in 2015 survey, just under a half (42%) resulted in Notice of Contravention (NOC) with 51% resulting in no NOC. The overwhelming proportion did not query their notices (90%). Only 7 respondents did query the NOC and the two equal top reasons, were they were not expecting the invoice or it was felt to be unfair or not justified. Only one respondent answered the question on the outcome with a specific outcome and they indicated the notice had been withdrawn. The main reasons for not querying the invoice were stated as easier to pay than appeal (35%), the NOC was legitimate (33%) and thirdly to prevent further HSE visits (9%). To support the previous responses some 58% of respondents suggested the breaches identified were legitimate. As result 92% of those who received an NOC did not query the breaches of legislation identified by the inspector.

### Cost of FFI Invoices issued

If we look at the results from the second FFI survey in Chart 7 this shows that the mean value of the single largest FFI invoice received by our survey respondents was around £1233, but that this varied between £250 and £6000. We realise that the mean can be skewed by large invoice cost outliers. It is clear that invoice costs were dependent on the number and complexity of material breaches which inspectors found during their visits as well as time spent. The median cost of around £800 per invoice from FFI survey 1 is also higher than the mean £576 invoice cost calculated from HSE data for the wider manufacturing sector in the 01/10/16 and 30/09/17 time period.

## Chart 7 – More companies do not receive FFI invoices

% breakdown of FFI invoices received by companies




FFI Survey 1 (1/10/12 to 30/09/15; FFI Survey 2 (1/10/12 to 30/09/17)
Source: EEF 2015 FFI survey & EEF 2017 H&S survey

## Table 2 – Median FFI invoice cost around £800

Breakdown of Mean, Median, Minimum and Maximum FFI invoice costs

| Fee for Intervention (FFI) | FFI Survey 1 (2015) | FFI Survey 2 (2017) | FFI Survey 1 (2015) | FFI Survey 2 (2017) |
|---|---|---|---|---|
| | Total Cost of Invoices over the Survey period | | Cost of Single largest invoice during the survey period | |
| Mean | £8,210 | £1,811 | £1,814 | £1,233 |
| Median | £1,400 | £1,057 | £843 | £800 |
| Minimum | £125 | £400 | £125 | £250 |
| Maximum | £181,234 | £12,000 | £17,394 | £6,000 |

FFI Survey 1 (1/10/12 to 30/09/15; FFI Survey 2 (1/10/12 to 30/09/17)
Source: EEF 2015 FFI survey & EEF 2017 H&S survey

[10]http://www.hse.gov.uk/fee-for-intervention/assets/docs/ffi-nvoice-information.pdf, accessed on 24/08/2018.
[11]http://www.hse.gov.uk/fee-for-intervention/assets/docs/ffi-nvoice-information.pdf, accessed on 24/08/2018.

## Impressions of HSE following the introduction of FFI

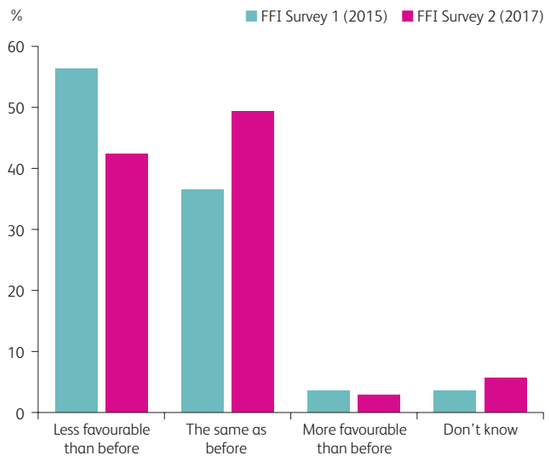
At the time of the 2015 survey respondents suggested that their overall impression of HSE was fairly positive with just over five-sixths (86%) feeling favourable or neutral with only just under one-sixth (14%) offering an unfavourable view.

However, when asked of their impression of HSE after introduction of FFI, just over half (56%) said that they now had an unfavourable impression of HSE. When asked the same question in 2017 just over two-fifths (42%) still held an unfavourable view of HSE due to FFI. See Chart 8. This may suggest that our survey cohort now accept that FFI has become part of HSE's enforcement armoury and it is now part of doing business with the regulator. Company size was not a distinguishing factor.

Further analysis of the 2017 data was undertaken to see if there was a difference in responses between those who had been visited or not visited by an inspector and those who had received a Notice of Contravention (NOC) or not received an NOC. Chart 9 reveals that those survey respondents who had received a regulatory visit or received a NOC showed a more unfavourable view of HSE.

## Chart 8 – HSE viewed less favourably due to FFI

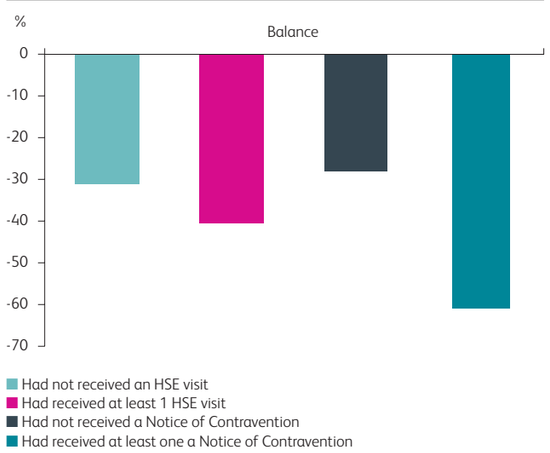
% of companies who view HSE favourably post FFI implementation




FFI Survey 1 (1/10/12 to 30/09/15; FFI Survey 2 (1/10/12 to 30/09/17)
Source: EEF 2015 FFI survey & EEF 2017 H&S survey

## Chart 9 – HSE viewed less favourably following receipt of HSE visit or Notice of Contravention

% balance of companies who view HSE favourably post FFI implementation following receipt of HSE visit or NOC




Source: EEF 2017 H&S survey





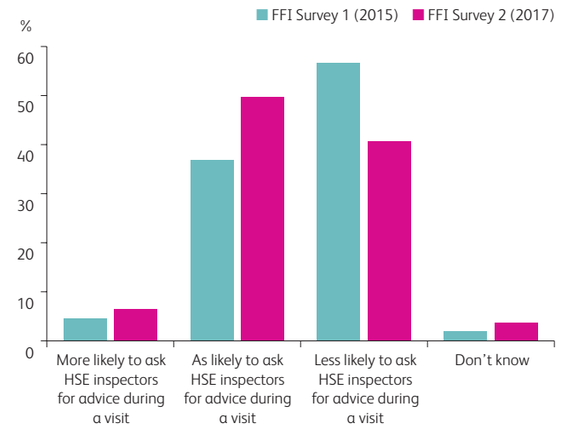
## FFI & HSE advice

In the first 2015 FFI survey more than half (57%) of the survey respondents told us that following the introduction of FFI that they were less likely to ask for HSE advice with around a third (37%) saying it would make no change. The 2017 FFI survey reveals that two-fifths (41%) share a similar but a less negative response in terms of asking for advice. See Chart 10. EEF member feedback suggests that FFI has changed the relationship between duty-holder and regulator. Companies fear that by asking for advice they are more likely to receive a visit and receive a FFI notice of contravention. Therefore they are not inclined to ask for advice.

When comparing feelings towards HSE with respect to not being visited and being visited, and receiving or not receiving NOCs Chart 11 reveals that those 2017 survey respondents who had received an NOC were less likely to ask HSE inspectors for their advice. The negative view was shared across organisations of all sizes.

## Chart 10 – HSE less likely to be asked for advice due to FFI

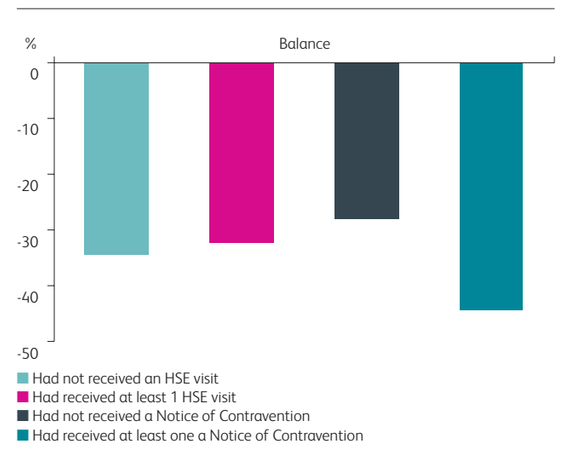
% of companies likely to seek HSE advice post FFI implementation




FFI Survey 1 (1/10/12 to 30/09/15; FFI Survey 2 (1/10/12 to 30/09/17)
Source: EEF 2015 FFI survey & EEF 2017 H&S survey

## Chart 11 – HSE viewed less favourably following receipt of Notice of Contravention

% balance of companies who seek HSE advice post FFI implementation following receipt of HSE visit or NOC




Source: EEF 2017 H&S survey

### Regulator workplace invitations

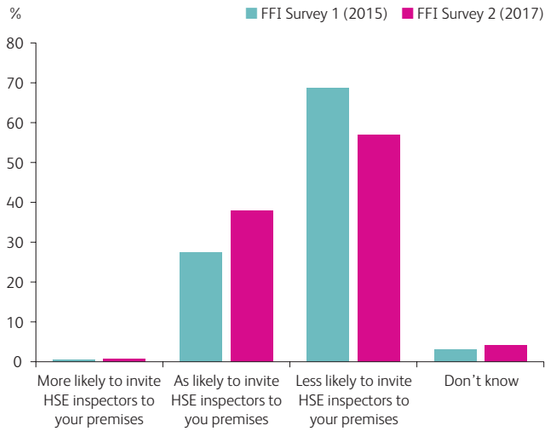
Our survey respondents were also asked whether following FFI they would invite an inspector into their workplace.

In the first 2015 FFI survey more than two-thirds (69%) of the survey respondents told us that following the introduction of FFI that they were less likely to invite HSE inspectors into their premises The 2017 FFI survey reveals that more than a half (57%) share a similar but a less negative view. See Chart 12. Again members have told us that FFI has changed the nature of the relationship. Companies fear that by inviting inspectors into their premises that they are more likely to receive a FFI notice of contravention. Therefore they are not inclined to invite inspectors in or even respond to HSE requests to allow HSE trainee inspectors to visit their workplaces.

Again when comparing feelings towards HSE with respect to not being visited and being visited, and receiving or not receiving NOCs Chart 13 reveals that those 2017 survey respondents who had received a regulatory visit or received a NOC were less likely to invite HSE into their premises. Again this picture was replicated across organisations of all sizes.

### Chart 12 – HSE less likely to be invited into companies due to FFI

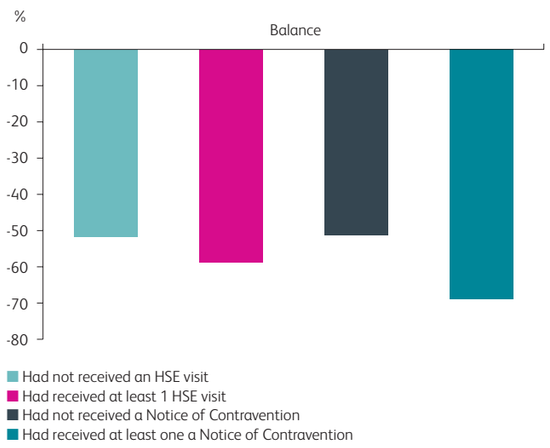
% of companies likely to invite HSE into their premises post FFI implementation




FFI Survey 1 (1/10/12 to 30/09/15; FFI Survey 2 (1/10/12 to 30/09/17)
Source: EEF 2015 FFI survey & EEF 2017 H&S survey

### Chart 13 – HSE less likely to receive invitations to company premises following receipt of an HSE visit or Notice of Contravention

% of companies who are likely to invite HSE to their premises post FFI implementation following receipt of HSE visit or NOC




Source: EEF 2017 H&S survey





### Has FFI made a difference?

In the 2015 survey respondents were asked to support or disagree with a number of statements. From the responses in Chart 14 it appears that respondents do not believe that FFI has improved health and safety standards in the UK nor made it more likely business will comply with the law. There is some support in HSE recovering costs in that just over one-tenth (12%) on balance agree.

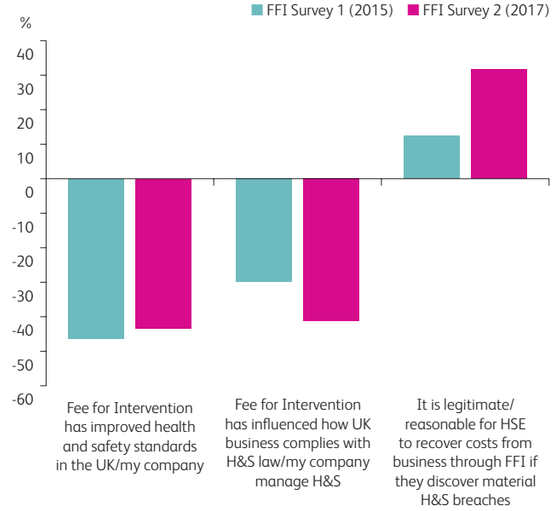
The statements were modified in the 2017 EEF survey and made more company-centric rather than UK-centric. Again the responses were negative about the overall impact of FFI in improving company health and safety standards or in influencing how companies manage health and safety. The results showed that there was now a stronger positive balance of almost one third (32%) of respondents in favour of HSE recovering costs from businesses who were in breach of health and safety legislation.

### FFI alternatives

A question asked in 2015, but not repeated in our 2017 survey was whether companies would be willing to pay for health and safety advice as a way of generating revenue for HSE. More than half (55%) said that they would pay for health and safety advice as an alternative means of cost recovery.

### Chart 14 – FFI has not influenced company H&S compliance

% balance of companies who agree or disagree with the following statements




FFI Survey 1 (1/10/12 to 30/09/15; FFI Survey 2 (1/10/12 to 30/09/17)
Source: EEF 2015 FFI survey & EEF 2017 H&S survey

# 7 IMPACT OF HEALTH AND SAFETY SENTENCING GUIDELINES

On 1st February 2016, new Sentencing Council guidelines for health and safety breaches came into force. The guidelines introduced a new framework for sentencing those convicted under health and safety legislation. The intention being to introduce more rigor into the sentencing process to take account issues such as culpability, the seriousness of harm risked and the likelihood of harm. The result of the guidelines has been a series of very large fines imposed upon large companies as opposed to fines imposed before the regime came into force.

The principal focus of the guidelines are to ensure fines are 'sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with health and safety legislation'.

The HSE's[12] [13]2016/17 data on prosecutions show a large annual increase in the total amount of fines rising from £38.8 million in 2015/16 to £69.9 million in 2016/17. This is the second consecutive year which has seen a large increase in the amount of fines resulting from convictions for health and safety offences. 2016/17 is the first full year where new sentencing guidelines have been in effect.

A feature of the sentencing guidelines is that the fine is related to the turnover of organisations and, as a result, large organisations convicted of offences are receiving larger fines than seen prior to these guidelines. In the 2016/17 period the single largest fine was £5 million and a total of 38 cases received fines over £500,000. This is in contrast to the 2014/15 period, which was the last full year without these guidelines, where the single largest fine was £750,000 and 5 cases were at or above £500,000. The average level of fine has also shown an increase since the sentencing guidelines came into effect, moving from £29,000 per conviction in 2014/15 to £58,000 in 2015/16, the last two months of which were under the guidelines, and has reached an average of £126,000 per conviction in 2016/17.

### Table 3 – Sentencing Council guidelines leads to more large fines[15]

The following table shows the scale of the 20 largest fines handed to organisations convicted of health and safety offences in 2014, 2015 and 2016*.

| Fine range | Number of Fines | | |
|---|---|---|---|
| | 2014 | 2015 | 2016* |
| £3m+ | 0 | 0 | 4 |
| £2.5m–£2,999,999 | 0 | 0 | 1 |
| £2m–£2,499,999 | 0 | 1 | 3 |
| £1.5m–£1,999,999 | 0 | 0 | 4 |
| £1m–£1,499,999 | 0 | 2 | 7 |
| £500,000–£999,999 | 1 | 11 | 1 |
| £250,000–£499,999 | 4 | 6 | 0 |
| £0–£249,999 | 15 | 0 | 0 |

Ref: IOSH (2017) - Health and safety sentencing guidelines one year on
*revised H&S sentencing guidelines came into effect.

In the manufacturing sector[14], fines doubled between 2015-16 and 2016-17, from £12.5m to £25.1m. The number of convicted cases however fell 32% from 210 to 159 during this time, resulting in an average fine per conviction of £157,821.

IOSH (2017) also carried out an analysis of fines before and after the introduction of the revised H&S sentencing guidelines. Table 3 shows how the largest fines handed to organisations convicted of health and safety offences has gravitated toward the higher end of the scale.

[12]Health and safety at work - Summary statistics for Great Britain 2017 - HSE
[13]Enforcement in Great Britain 2017 - HSE
[14]Health and Safety in the Manufacturing sector in Great Britain 2017 0 HSE
[15]Health and safety sentencing guidelines one year on - IOSH (2017)





### Have higher health and safety fines changed company behavior toward H&S compliance?

In the light of the updated H&S sentencing guidelines and the potential for much higher fines EEF members were asked what action their company had taken since their introduction on 1st February 2016. Chart 15 gives a summary of the action survey respondents had taken.

It is somewhat surprising, in view of the large fines that can now be imposed that just over two-fifths (42%) of survey respondents reported that they had taken no action following the introduction of the guidelines. This could be due to a lack of awareness or either a sign of confidence or complacency.

When those respondents who had taken no action are removed from the dataset the two stand out positive actions taken were as follows:

– just over two-thirds (68%) of companies reviewing all their health and safety policies and procedures.
– almost two-thirds (63%) of company directors taking a greater interest in health and safety risk management.

Just over a fifth (21%) said that that they were more likely to defend court cases and by inference if found guilty running the risk of a higher fine. Perhaps these companies were unaware that early entry of a 'guilty' plea helps reduce the size of the fine by between 25% and 33%.

A sixth (15%) of companies said that they had established a risk management committee. This allows the companies concerned to consider health and safety risks within the wider context of other operational and financial business risk, provide early opportunities to identify, evaluate and apply controls to occupational health and safety risks and fulfil Corporate Social Responsibility (CSR) shareholder responsibilities.

### Chart 15 – Two-fifths of companies reviewed all their H&S policies and procedures

% of companies who had taken one or more specific actions following the introduction of updated H&S sentencing guidelines on the 1st February 2016.


Source: EEF 2017 H&S survey

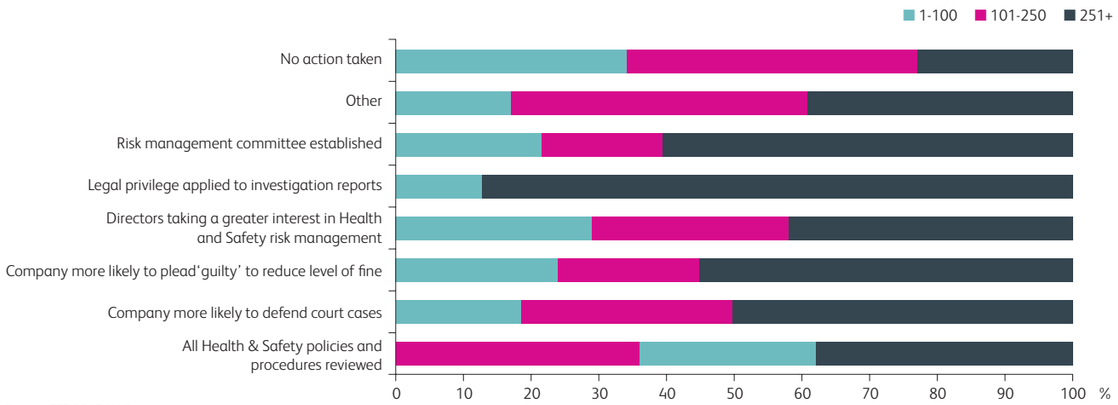
A further sixth (15%) of companies said that they would apply legal privilege to investigation reports.

By applying legal privilege the clear intention is to keep any investigation reports out of the hands of the regulator, so that they could not be used as evidence in a prosecution.

Just over one-twentieth (6%) said they would plead guilty to reduce the fine, therefore it would appear that the reducing discount for a guilty plea (introduced on the 1st June 2017) is having little impact upon those facing a

## Chart 16 – Smaller companies more likely to take 'No action' following H&S sentencing guideline changes

% of companies who had taken one or more specific actions by company size following the introduction of updated H&S sentencing guidelines on the 1st February 2016.




Source: EEF 2017 H&S survey

health and safety charge in pleading guilty early. When we examine what actions were taken by company size in Chart 16, a greater proportion of those who took no action were in SME companies employing 1-250 employees. This may have been as a result of lack of awareness or because they are less likely statistically to be the subject of legal proceedings.

By excluding those who took no action from the dataset it was the SME companies who were marginally more likely than larger organisations to review their policy and procedures. Companies employing more than 100 employees were more likely to defend cases than small employers. Only a small proportion of companies were plead more likely to plead guilty to seek the discounts available, but it was larger companies who were more likely to take this action. Applying legal privilege to investigation reports was almost exclusively an action taken by larger companies. This suggests that they have the resources to take legal advice in the event of an investigation being initiated. Finally, with respect to the establishment of a risk committee, this was mainly the preserve of larger organisations.

### Who benefits from higher H&S fines?

Our survey would suggest that two-fifths of firms they are not taking any action. On the face of it the threat of larger fines does not appear to have influenced their H&S management behaviour or preparedness for potential Health and Safety related legal proceedings. It could be (as said earlier) due to a lack of awareness or be a sign of confidence or complacency.

HSE clearly do not benefit from the revenue associated with higher fines. Revenue is not used to enhance their diminishing operating budget.

The £69.9 million collected in fines 2016/17 does seems to be excessive when compared with historical fine levels, especially if it does not act as a deterrent. It could be seen by some as an indirect Government tax designed to increase Treasury revenues which can then be used for any government purpose whatsoever. It is not ring fenced to help improve the UK health and safety system. Perhaps it should be.

The H&S sentencing guidelines have inevitably led to increases in the level of fines in general and it would seem that large and very large organisations are being singled out unfairly because of their perceived ability to pay. Our view is that fines and higher sentences do not offer the most appropriate 'deterrent' effect. If we are serious about preventing health and safety offences then the courts currently have the power to do this in other ways without the rather blunt imposition of fines.





### What is the best approach to influence H&S behaviour?

The increasing level of fines demonstrate the importance of organisations taking preventative action, such as regularly reviewing health and safety policies and procedures, ensuring that risk assessments and method statements are in place and that they adequately reflect the risks involved, providing refresher training to staff, and ensuring the proactive and effective management of health and safety in the workplace.

The increasing trend in high fines and custodial sentences also highlights the importance of careful management of the regulator's investigation to minimise risk and financial exposure for a company, personal exposure for individuals and the preparation of a robust defence, where justified.

The tenor of the draft guidelines and marked step change in fines especially for larger companies, is based on a premise that organisations are not taking their health and safety responsibilities seriously. This is not the case. Most EEF members fully understand and embrace the need for a strong safety culture and positive leadership. This is reflected in the GB accident data which is now amongst the lowest internationally. It is therefore difficult to see how these guidelines will act as a deterrent to those who already understand the consequence of getting it wrong, as well as the considerable benefits for their workforce and business of getting it right.

In fact these large companies provide the opportunity to inculcate H&S further into their supplier base who are often local/smaller companies with less capacity for effectively managing health and safety.

Many organisations impacted by the Sentencing Council guidelines operate in countries outside the UK and within the EU, broadly have to meet the same legal requirements. It is important that the Sentencing Council compares the relative fines which can be imposed elsewhere in the EU to ensure that the UK is not imposing excessive high fines which causes larger organisations to question its business model in the UK.

EEF in its consultation response to the revised Sentencing guidelines) said that too much emphasis was being placed on fines and the level of fines instead of using court imposed 'remedial orders' or 'publicity orders'. In terms of changing behaviours it would be far better if the courts were in a position to issue a 'remedial order' rather than a fine, requiring the company in question to make lasting improvements to company health and safety management systems and practices (at the companies expense) to prevent a re-occurrence of the offence or offences. Any plan of action would have to be 'audited' by an accredited organisation, acceptable to the courts. The audit costs would have to be shouldered by the company committing the offence.

The courts are giving insufficient focus and attention to the use of publicity orders in the guidelines instead of fines. Adverse publicity in relation to an organisations corporate social responsibility profile is a more powerful deterrent to intentional or reckless organisational culpability.

# 8 HEALTH AND SAFETY MANAGEMENT

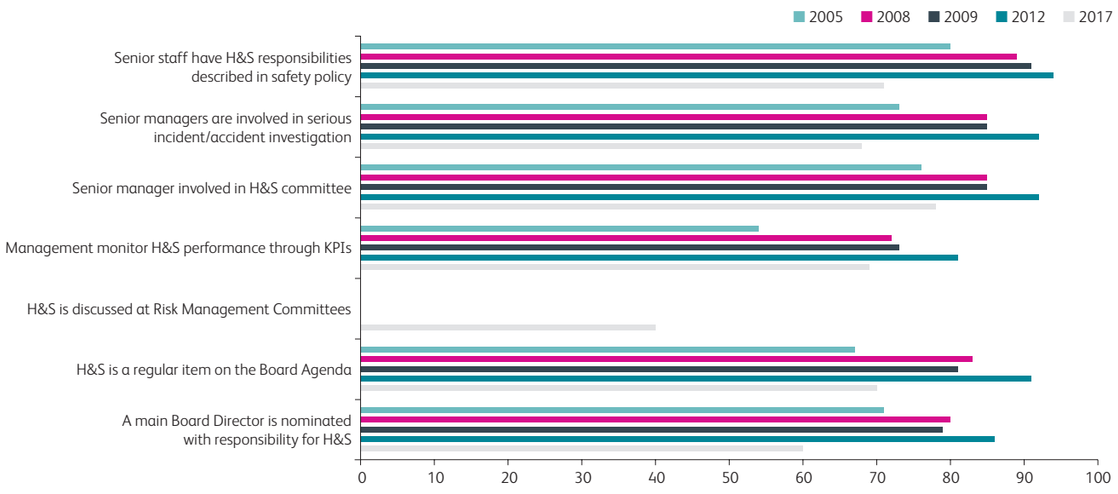
The 2017 survey again asked respondents to consider how senior managers are involved in health and safety management. A number of key measures were offered and respondents were invited to select all the options which applied to their company. This question has been asked in all previous EEF H&S surveys and therefore it is possible in Chart 17 to look at trends over time. A new key measure was added to the list for 2017, i.e. discussion of H&S at company Risk Management Committees. When looking at the survey data it is possible that this may have impacted respondent's choices about the key measures of health and safety leadership which they selected, especially as Chart 17 shows a significant reduction in engagement by senior managers in all key leadership measures between 2012 & 2017. If this is the case then it demonstrates how important it is to regularly promote key messages around the importance of Health and safety leadership. We know that there is a considerable amount of evidence that growing senior management involvement in health and safety achieves better outcomes. EEF recognizes the importance of actively, systematically and effectively managing health and safety from a cost, performance and Corporate Social Responsibility perspective.

It is not clear why these responses have all dipped in comparison to the peak responses reported in the 2012 survey. Up to 2012, across all but two of our measures, the level of engagement of senior management involvement in health and safety was more than 90%. One of the exceptions in 2012 was monitoring of H&S performance though KPIs at 81%, although this had shown the greatest % (+27) point increase in the seven years between 2005 & 2012. Smaller companies (74%) are less likely to monitor H&S performance through KPIs.

In 2012 FFI was introduced; did that initiative spark action of senior managers to get more involved in health safety management? Evidence from other EEF surveys would suggest not. Did health and safety have a higher general profile in 2012? Possibly HSE was more active and visible at that time and possibly there was more chance of a visit. The sentencing guidelines were in introduced in 2016, which should have generated more senior management interest, but as highlighted in Chapter 8 just over two-fifths of the respondents took no action in response to the guidelines and the risk of higher fines for health and safety breaches.

## Chart 17 – Senior managers less engaged in H&S leadership since 2012

Key measures of health and safety leadership - % of companies answering positively




Source: EEF Health and Safety Survey 2005, 2008, 2009, 2012 & 2017





Chart 17 shows how 40% of survey respondents say that they now discuss H&S risks at their risk management committees. This is an encouraging start and is likely to be a reflection of the number of companies who operate a risk management committee and use integrated business risk management (BRM) processes. In essence, integrated risk management highlights the importance of risk assessment and control to the board and senior management of organisations, and ensures that both cost and risk are taken into account when management decisions are taken and implemented. Making sure that all significant corporate risks, including health and safety risks, are effectively managed is an essential part of the role of company directors especially with regard to good corporate social responsibility and the growth of socially responsible investing.

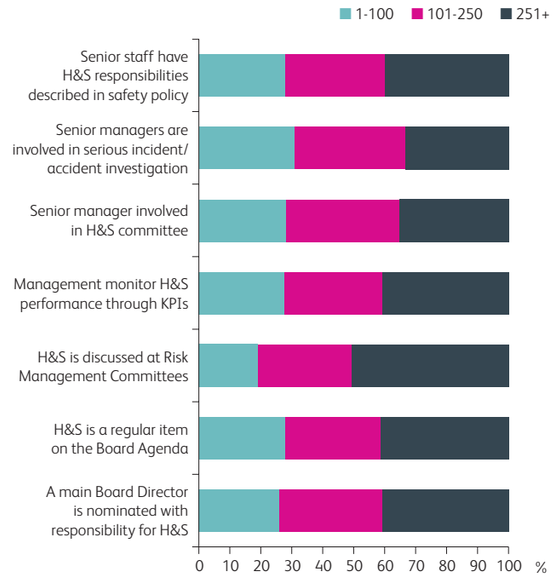
In terms of company size, Chart 18 clearly shows that companies between 1-100 employees are less likely to adopt key health and safety leadership measures, particularly the consideration of H&S risk in the context of all risks to the business (risk management committees).

Survey respondents were then asked if senior management involvement in health and safety management had increased over the past 5 years (since the 2012 EEF survey) and if it had to what did they attribute the change?

It should be noted from the outset that Chart 19 illustrates how almost a third of respondents (32.6%) said that there had been no increase in senior management involvement over the previous 5 year period This compares favourably with the 2012 survey when almost three-fifths (57%) said that senior management involvement had not increased over the previous two years. However, it has to be recognized that the figure may be low because senior managers are already highly engaged in running the business and further involvement would have little or no impact on performance.

## Chart 18 – Companies between 1-100 employees less likely to adopt H&S leadership measures

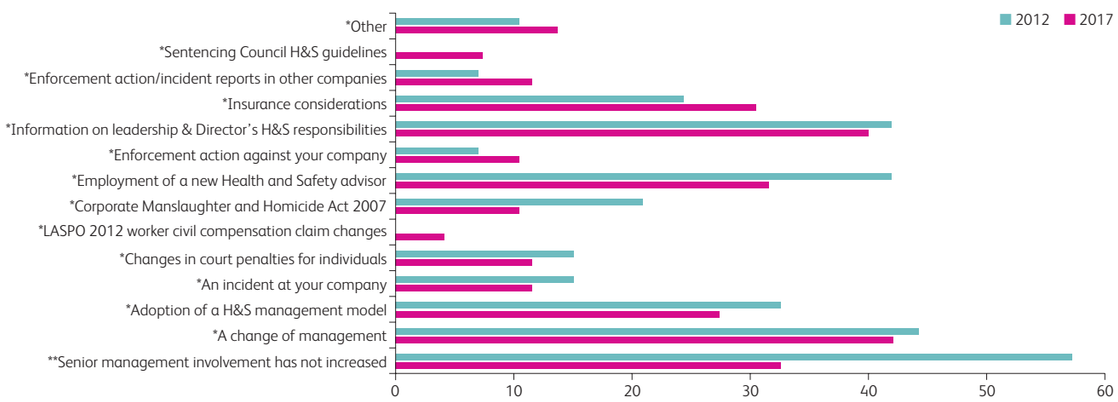
% of companies by company size adopting H&S leadership measures




Source: EEF Health and Safety Survey 2017

## Chart 19 – Senior management involvement increased mainly as a result of changes in company management

% of companies attributing causes for greater senior management involvement in the management of health and safety




*Excluding Senior management involvement has not increased
** The 2017 survey asked whether senior management involvement had increased in the past 5 years whereas the 2012 survey asked whether senior management involvement had increased in the past 2 years.
Source: EEF Health and Safety Survey 2012 & 2017

Chart 19 highlights four key reasons for greater management involvement in health and safety matters – all cited by between a quarter and two fifths of respondents. These were a 'change of management', the employment of new health and safety advisers, information on Directors' H&S responsibilities and the adoption of a health and safety management model was mentioned as a key reason by just over a third of all respondents.

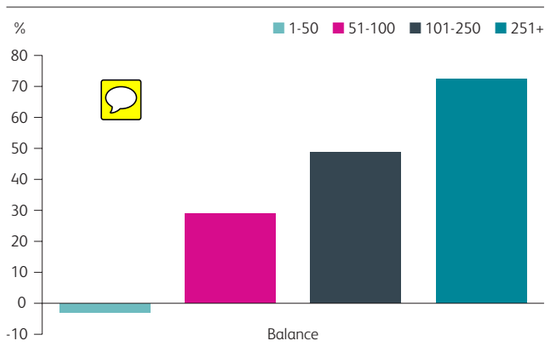
What is significant is that the increased fines under the Sentencing Council guidelines did not appear to be a significant driver in bringing about greater management involvement. Just over one twentieth (7.4%) of companies saw it as a driver. This is consistent with our findings in Chapter 7 which showed that two-fifths of companies had not taken any action following their publication.

The biggest drivers for senior management involvement for companies up to 100 employees were insurance considerations (42%) and a change of management (39%), for companies with more than 100 it was information on leadership and Director's H&S responsibilities (52%) followed by a change of management (43%).

When size of company and increased management involvement are considered, there is an incremental increase in involvement from small through to larger companies. See Chart 20. This is likely to be as a result of increased senior management capacity in larger companies.

## Chart 20 – Senior management involvement clearly linked to company size

% balance by company size showing whether senior management involvement has increased




Source: EEF Health and Safety Survey 2017





# 9 ARCO VIEWPOINT

As the UK approaches the Brexit deadline of March 2019, there are still many unanswered questions. We firmly believe that Brexit affords us an opportunity to improve health and safety regulation and the results of the EEF's survey appear to corroborate this view. The fact that some of the largest companies in the manufacturing market support this view, suggests a growing majority in this sector. Policymakers should now listen to the call from industry and respond by honouring the commitment to lead a 'race to the top' on health and safety standards after the UK has left the EU.

Although it's clear from this survey that the majority of those asked wouldn't recommend a rapid change in regulation post Brexit, it's encouraging to see that most manufacturing professionals see Brexit as an opportunity to review current health and safety regulation to ensure it remains fit for purpose. Continuity with EU policy is the correct approach by initially maintaining the regulations. This will minimise disruption and provide a smooth transition period for all businesses.

However, industry support for continuity should not provide justification for complacency and there are urgent issues within the current framework – for example the fact that a great number of non-compliant products have achieved CE marking – that need to be addressed. Following research we conducted that looked into the quality of products supplied to the UK workforce, we strongly agree with the EEF's argument that market surveillance needs to be improved. As the survey highlights, much of the current market surveillance is reactive rather than proactive, which is resulting in a large number of substandard products being available. In order to reduce the risk of non-compliant PPE entering the UK marketplace the CE mark approval process needs to be improved with current procedural weaknesses addressed. Our 'Be Sure' campaign discusses in detail how the current CE and EU type approval process is allowing less reputable manufacturers or importers to make changes to the main components of a CE approved product, which may impact its safety performance, without needing to retest it. Currently there is no third party monitoring process for category 1 or 2 PPE, which puts the responsibility on the manufacturer; we believe there needs to be more governance within this process. To support this, market surveillance needs to be enhanced, so regulatory authorities aren't just responding when issues are brought to their attention but have the resources to work proactively to identify non-compliant products. This, of course, will require sufficient funding to organisations like the HSE and local Trading Standards authorities, for education, prevention, enforcement and prosecution functions.

While there are those who still see health and safety regulation as unnecessary 'red tape', it's absolutely imperative that the Government doesn't see Brexit as an opportunity to reduce worker protection – the British people voted to leave the EU, not to make their workplaces and lives more dangerous. Any review and improvements to the UK's regulatory landscape must be done in an international context and retaining membership of organisation like EU-OSHA, CEN and CENELEC will allow the UK leadership to be reflected in the European standards.

Uncertainty is clearly beginning to weigh heavy on the leadership of companies in the manufacturing sector, as the EEF survey outlines. If the Government plans to revisit any aspects of the safety framework, this must be conducted with a clear timeframe and sufficient opportunities for industry consultation to ensure that the UK's reputation for excellent health and safety management isn't compromised.

# ABOUT US

EEF is dedicated to the future of manufacturing. Everything we do is designed to help manufacturing businesses evolve, innovate and compete in a fast-changing world. With our unique combination of business services, government representation and industry intelligence, no other organisation is better placed to provide the skills, knowledge and networks they need to thrive.

We work with the UK's manufacturers from the largest to the smallest, to help them work better, compete harder and innovate faster. Because we understand manufacturers so well, policy-makers trust our advice and welcome our involvement in their deliberations. We work with them to create policies that are in the best interests of manufacturing, that encourage a high growth industry and boost its ability to make a positive contribution to the UK's real economy.

Our policy work delivers real business value for our members, giving us a unique insight into the way changing legislation will affect their business. This insight, complemented by intelligence gathered through our ongoing member research and networking programmes, informs our broad portfolio of services; services that unlock business potential by creating highly productive workplaces in which innovation, creativity and competitiveness can thrive.

**www.eef.org.uk**

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# INTRODUCTION TO ARCO

Arco is the UK's leading safety company and has a core purpose of keeping people safe at work. Through its dedicated in house experts, Arco helps to shape the safety world in order to ensure UK workers go home safe every night. As well as distributing a world-class range of over 170,000 quality assured, branded and own brand products, it also provides professional services including training, consultancy and site services to a range of industrial sectors including some of the UK's largest manufacturing businesses.

Arco reaches its customers through its extensive product catalogue, interactive website and 47 strong retail store network. The company has sales of over £295m and employs approximately 1600 people nationwide.
Arco is committed to providing safety equipment that is genuine and compliant with relevant standards and regulations. To do this, it has a five step product assurance process and is the only safety distributor with an independently accredited testing laboratory. Arco is also a member of the BSIF Registered Safety Suppliers Scheme.

In 2007, Arco became a member of the Ethical Trading Initiative (ETI) incorporating their internationally recognised code of labour practice into its own ethical policy and in 2010 became a member of Sedex, the Supplier Ethical Data Exchange. To ensure ethical standards are continuously met throughout its supply chain, Arco carries out regular audits amongst all suppliers and, working with the ETI and other regulatory bodies, the company plays a leading role in helping to eliminate modern day slavery across the globe.

**For more information about Arco, contact:**
0300 390 2520
www.arco.co.uk/besure

The manufacturers' organisation

We foster enterprise and evolution to keep your business competitive, dynamic and future focused

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