# Legislation WATCH

**THE No.1 RESOURCE FOR WORKPLACE LAW AND HEALTH AND SAFETY**

# Maintenance Management

It's estimated that 15-20% of all accidents are related to maintenance operations. On pages 15-18 we explain the key safety aspects that need to be considered to eliminate or reduce these risks.

## Inside this issue...

**Risk Profiling**

**Get Ready for CDM 2015**

**Drugs in the Workplace**

**SAFETY MADE EASY**

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# Letter
## FROM THE EDITOR

**Dear reader,**

I hope you enjoy your latest magazine which is packed with topical health and safety issues and up and coming legislation changes.

You've probably heard about the growing problem of fake PPE that's making its way into UK workplaces – a major supplier has already been prosecuted for supplying non-compliant safety helmets. The European Commission plans to replace the current directive with a regulation in order to simplify the law, which many UK suppliers are welcoming – see page 31 to understand how the new regulation will help tackle this ongoing concern.

If you're involved in Construction Design and Management (CDM) projects, it's really important to closely examine the guidance and regulations to prevent costly hold-ups on projects that are underway and to avoid any legal action. We have lots of information on CDM 2015 (see page 12) and don't forget we also have many articles on our website. In this edition we also discuss risk profiling, assessing your first aid needs, working outdoors, the CLP regulations which come into force on 1st June and much more.

If you haven't used our 'Ask the Expert' service yet, you're missing out on a fantastic FREE service! Ask our IOSH accredited experts a health and safety question and we will respond to you within 48 hours. See page 19 for more details. All the information within our magazines can be found online, as well as FREE downloads such as PDF printable checklists, workplace guides and downloadable training presentations – simply go to **seton.co.uk/legislationwatch**.

**Look out for your next magazine in August!**

*Cheryl*

**Cheryl Peacock**
**Editor**

# Legal UPDATE

## Unlimited health and safety fines in magistrates' courts

New regulations have been introduced that will effectively provide for unlimited fines for food and health and safety offences in the magistrates' courts.

The regulations that came into effect on 12th March 2015 were made by means of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015. The primary legislation is contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Until now, fines in the magistrates courts have been capped, as provided under the under the Health and Safety at Work, etc. Act 1974.

The cap has now been removed and will apply to a wide range of offences: from crimes under health and safety, food and environmental laws to those relating to commercial, company, financial services, competition, and property law.

Lawyers are speculating that the changes will considerably affect the way in which companies approach regulatory compliance.

Zoe Cooper, Managing Associate at the law firm Nabarro, said, "Companies and their directors may have to reconsider their approach to any offences which up until now may have been treated as relatively minor because of the low fines involved."

The changes will apply to offences committed on or after 12th March 2015 only, so will not have retrospective effect.

Marshal Ahluwalia, a director at the law firm Walker Morris, said, "Fines for health and safety offences in particular have increased at a significant rate in recent years. The relaxation of the restrictions on the fining powers of Magistrates' Courts is very likely to increase this trend further still.

"The power to impose larger fines in the Magistrates' Court will become even more relevant once the new sentencing guidelines for health and safety, corporate manslaughter, food safety and hygiene offences are implemented later this year."

## Drug driving

New legislation on drug driving has been welcomed by the campaign group Driving for Better Business which champions the cause of work-related road safety.

The new drug drive law came into force in England and Wales on 2nd March 2015, making it illegal to drive with a specific controlled drug in the body above the accepted limit for that drug.

These new rules will mean it will be an offence to be over the specified limits for each drug while driving, as it is with drink driving.

The new offence will work alongside the existing offence of driving while impaired through drink or drugs.

Drugs to be covered by the new rules include cannabis, cocaine, ecstasy and ketamine.

In a statement, the Department for Transport has warned that the limits for illegal drugs will be extremely low and one smoke of cannabis will put drivers over the limit.

The penalties for drug driving will be the same as for drink driving. Drivers who are convicted will receive:

• A minimum 12-month driving ban
• A criminal record
• A fine of up to £5000 or up to 6 months in prison or both.

In the context of drugs and health and safety in the workplace, the HSE recommends that employers should adopt a substance misuse policy, in consultation with their staff. Some employers have decided to adopt drug screening as part of their drug policy. However, the HSE suggests that employers who decide to adopt drug screening "think very carefully" about what they want screening to do, and what they will do with the information it generates. The safety watchdog warns that drug screening by itself will never be the complete answer to problems caused by drug misuse.

Commenting on the new legislation, a source at Better Driving for Business said, "This legislation will provide a more effective tool for dealing with the danger posed by drug drivers."

## REACH 2018 roadmap

The European Chemicals Agency (ECHA) has published a new "2018 REACH roadmap" outlining the Agency's milestones planned in the run up to the final registration deadline under the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regime.

The roadmap points out that the last registration deadline for existing chemicals will be on 31 May 2018. The deadline will affect companies that manufacture or import substances in low volumes, of between one and one hundred tonnes per year.

The ECHA said a significantly larger amount of small and medium-sized enterprises were expected to register for the first time for the last REACH registration deadline. Large companies may also have hundreds of chemicals in their portfolios to register.

In order to offer the best possible support, ECHA has prepared the REACH 2018 roadmap as a detailed plan, in consultation with its stakeholders.

The roadmap describes the different milestones and support services that ECHA plans to give to the registrants from now until the deadline.

The roadmap is based on the seven phases of a successful registration process. For each phase, the relevant milestones and an estimated timing for them is presented.

Commenting on the final deadline, ECHA's Executive Director Geert Dancet said, "The REACH 2018 deadline may now seem distant but I really urge companies to start preparing now in order to meet the deadline successfully. All support material will be available in 23 EU languages and together with the national helpdesks and our industry stakeholders, we are committed to supporting the companies."

Further information about the roadmap can be accessed at **http://echa.europa.eu/**.

# Risk
# PROFILING

The concept of risk profiling is not a new one. Its application is found in a wide range of disciplines from business risk management, such as financial and insurance, to medicine (including genetics) and science. Risk profiling has even been used to profile passengers in an attempt to use risk based approaches to improve airport security.

According to the International Standards Organisation (ISO) Guide 73:2009 Risk Management. Vocabulary: "A risk profile is a description of a set of risks… The set of risks can contain those that relate to the whole organisation, part of the organisation, or as otherwise defined."

Therefore, a risk profile can include the risks that the entire organisation must manage or only those that a particular function or part of the organisation must address.

The publication of the revised guidance document HGS65 Managing for Health and Safety by the Health and Safety Executive (HSE) in 2013 establishes the concept of risk profiling in health and safety management. The revised guidance explains the Plan, Do, Check, Act model (Deming Cycle) for a health and safety management system (SMS). According to the guidance, this approach achieves a balance between systems and management, treating health and safety as an integral part of good management, rather than a stand-alone safety management system. This is important because it acknowledges that health and safety risks are part of the overall risk profile of an organisation, and there is tacit acknowledgment of the interconnectedness of risks. Profiling an organisation's health and safety risks comes within the "Doing" part of the SMS cycle.

Many organisations seek to implement and certify management system standards. Annex SL (previously ISO Guide 83) describes a framework for a generic management system, with the objective of delivering consistent and compatible management system standards applying to full ISO Standards, Technical Specifications (TS) and Publicly Available Specifications (PAS). Annex SL favours a risk profiling approach.

## What is risk profiling?

Risk profiling is a systematic and structured approach to risk management which, if done correctly, should provide organisations with a detailed picture of all the risk elements of its operations, the effectiveness of the controls in place to mitigate the risks, as well as a framework for assurance and monitoring its higher risk priorities.

Organisations'"appetite" for risk will differ considerably and this may be partly a function of the size and complexity of the organisation, driven by the operations and processes it conducts, as well as the culture of the organisation. Some organisations may be willing to accept or retain risk, others may seek to

implement risk management strategies to reduce or control, transfer or avoid risk.

Every organisation will have its own risk profile: this is the starting point for determining the health and safety issues facing the organisation. In some organisations, the risk profile will consist of tangible and immediate safety hazards, while in others the risks may be longer term health-related risks, and it may be a long time before illness becomes apparent. Clearly, some organisations, such as those in the construction industry, may have a mixture, spanning both immediate and chronic hazards.

A risk profile should contain:

• A summary of the key strategic and operational health and safety risks for an organisation

• Quantification of these risks, in terms of likelihood and potential impact

• Identification of the current controls, their effectiveness and improvement potential

• Identification of any controls not yet in place and any (new) emerging risks with plans on how to deal with them

• A framework for monitoring and assurance, including a prioritised action plan with recommendations for improvements to address weaknesses with further controls and/or mitigation.

The range of risks normally includes quality (of product or services), environmental, injury, ill health and assets damage. Pure health and safety risks generally range from low hazard high frequency, e.g. slips on floors, to high hazard low frequency events, such as an oil refinery explosion, with the latter being at the top of the risk profile priority.

According to the HSE, the outcomes of risk profiling will be that:

• The right risks have been identified and prioritised for action

• Minor risks will not be given too much priority

• The level of risk will be reduced to that which is acceptable

• Paperwork and bureaucracy will be kept to the minimum necessary

• Performance will be reviewed and lessons learned.

## What is the process?

The HSE provides guidance in HSG65 on what it considers to be the key actions in effective risk profiling, which make explicit the actions required of leaders (ownerships and responsibility) and managers (operational and process) to identify and quantify the strategic and operational risk of the organisation.

Risk profiling involves gathering information about operations and process, using existing risk assessments, and risk assessment methodology to evaluate risks, and developing a suitable means for monitoring and providing assurance. Some organisations use risk registers to enable them to document and monitor key risks.

Those who undertake risk assessments need to be competent to do so. While some organisations may choose to use external expertise to help them develop their risk profile, anyone doing so must have a broad knowledge of the entire organisation and have risk management expertise.

Risk information generated from interviews, e.g. with directors, senior managers, operational managers and staff, and from workshops needs to be confirmed, and ranked, and together with other data (e.g. risk assessments) should form the basis of an overall risk profile.

### Case study

According to James Stapleton in his 2011 report, Lessons Learned from the London 2012 Games Construction Project: Health and Safety Risk Profiling, health and safety risk profiling contributed to the positive safety culture of the London 2012 programme, and promoted careful planning and safe delivery during the construction project.

A health and safety profile for construction works planned over three months was developed, using the following plan.

• **Gathering information**

  o Project teams on planned work over a three-month construction period were spoken to about their work.

  o The data captured was analysed and for each project a summary of 12-15 key tasks were identified as taking place over the next 90 days.

  o The health and safety hazards anticipated from these planned tasks were then assessed.

• **Risk assessment of future works**

  o A risk assessment was undertaken for each task.

  o Risk assessments highlighted key hazards, such as the transporting of mechanical and engineering materials to high level working platforms.

  o A key monitoring check was put in place to ensure that, in the example above, a safe system was in place to transport the materials mechanically to avoid manual handling.

  o Relevant parties were consulted throughout the risk assessment process.

• **Compliance review schedule**

  o A weekly compliance review schedule was developed.

  o A list of example checks to follow was produced and documented on the compliance review schedule.

  o Monitoring was undertaken and the schedule was updated when actions were completed and closed off, or altered to reflect changes to construction schedules.

Mr Stapleton notes that there were a number of benefits to health and safety risk profiling including providing a focus to the assurance team, anticipating and planning to minimise risk, as well as the identification of key risk themes.

### Conclusions

Risk profiling can be a time consuming and resource-intensive process and, as with any technique, the outputs will only be as good as the information gathered, the competence of those involved, the methodology used to validate the process, and the commitment of those responsible for leading organisations.

The key benefits of health and safety risk profiling are that it can be used to focus on the real risks facing an organisation, and as such can be outcome driven, helping to increase ownership by the responsible persons. Health and safety professionals can play an important role in the risk profiling process, particularly if they have a good a good working knowledge of their organisation, combined with suitable risk management expertise.

Finally, it should be noted that health and safety risk profiling does not stand alone from the bigger risk profile of an organisation; risks are often interconnected and cannot be considered in isolation. Risk profiles need to be actively monitored, as internal as well as external changes may affect the dynamic profile.

# Storing
## FLAMMABLE SUBSTANCES
# indoors

The Dangerous Substances and Explosive Atmospheres Regulations 2002 require risks from indoor storage to be controlled by elimination or by reducing the quantities of substances to a minimum and by providing mitigation to protect against foreseeable incidents.

The HSE also states that the maximum quantities that may be stored in cabinets and bins are no more than 50 litres for extremely flammable and highly flammable substances, and those flammable liquids with a flashpoint below the maximum ambient temperature of the workroom/working area and no more than 250 litres for other flammable liquids with a higher flashpoint of up to 55℃.

When not in use, flammable solvents must be stored in suitable "cabinets or bins of fire-resisting construction and which are designed to retain spills (110% volume of the largest vessel normally stored in it)". These should be located in designated areas, where possible away from the immediate processing area and not impeding means of escape.

The HSE Approved Code of Practice for DSEAR (L138) details the performance requirements for fire-resisting cupboards and bins as follows:

• Every side, top, floor, door and lid should provide a minimum of 30-minutes' fire resistance in respect of integrity

• If there is need for a viewing panel on an oven used for the evaporation of dangerous substances, this should be provided by using Georgian-wired glass or a proprietary fire-resisting glazing panel. In all other circumstances, the fire resistance integrity requirements should be maintained for cabinets, enclosures, cupboards and bins which should:

a) be constructed of materials which are, so far as reasonably practicable, of 'minimal risk' in respect of their reaction to fire;

b) be supported and fastened to prevent structural collapse in case of fire for at least 30 minutes. The supports and fastenings should be of high melting point material (in excess of 750 °C Cabinets, ovens, cupboards, bins, ducts, trunks and casings should be bonded or fire-stopped to prevent or retard the passage of flame and hot gases for a period of at least 30 minute

Many organisations will use cabinets built to BS EN 14470-1:2004 Fire Safety Storage Cabinets. Safety Storage Cabinets for Flammable Liquids, which may go beyond the minimum requirements of UK health and safety legislation.

The HSE notes that it is the responsibility of the employer/duty holder to ensure that cabinets to any particular standard or design specification meet the minimum legal requirements, but give a cautionary message in that "the use of cabinets with enhanced fire performance should not be seen as a substitute for the provision of dedicated store rooms and outdoor storage areas for the safe keeping of containers which are nominally empty or are not needed for current work".

Procedures for dealing with emergencies related to the hazardous substances being stored need to be developed. Consideration needs to be given to the range of possible events, including:

• Fire
• Explosion
• Releases, e.g. leakages or spillages.

The following factors must also be taken into account.

• The nature and quantities of the dangerous substances stored
• The location and design of the storage facility
• The people, both on and off the site, who may be affected.

Safe systems of work for dealing with spillages and leakages should be put in place and will depend on the nature of the substance involved.
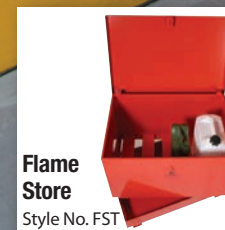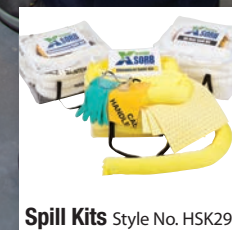
# GET READY FOR
# CDM 2015

**The Construction (Design and Management) Regulations 2015 (CDM) came into force on 6th April 2015. All those involved in CDM projects need to closely examine the Guidance and the Regulations to get ready for CDM 2015 - anything less could lead to costly hold-ups on projects underway, and at worst, result in legal action.**

### Action that needs to be taken for CDM 2015

The Management of Health and Safety at Work Regulations 1999 at Regulation 5 requires every employer to have health and safety arrangements in place for the effective management of health and safety. In practice, this means that the following action is required.

- Policies (and those including CDM requirements) must be reviewed and amended in light of requirements brought in by CDM 2015

- Procedures which relate to CDM must also be reviewed and amended. Forms and pro formas may also need revision. The guidance document can be used to obtain practical help on how to implement the changes

- Training Needs Analysis (TNA). It will be important to perform a TNA or a similar exercise to identify what training is required within the organisation and by whom. All roles relating to CDM need to be examined (including those at board level) and suitable training implemented as soon as possible. The TNA must cover not only the new requirements of CDM 2015 but also any changes to CDM policies and procedures within the organisation. Where required, training may need to be extended to contractors, sub-contractors and other personnel.

- Properly consulting and engaging with workers. This, in particular, will be a key factor in managing a successful implementation of CDM 2015.

Equally, when considering the implementation of CDM 2015, it is important to be mindful of the transitional arrangements detailed in the Regulations since they have been amended and enhanced (in light of comments made in the Consultation process for CDM 2015) and may considerably affect appointments, roles and responsibilities during the transitional period.

### Transitional arrangements

Under CDM 2007, a client was required to appoint a CDM co-ordinator to:

- Provide advice and assistance to the client

- Make arrangements for the coordination and implementation of health and safety measures during the pre-construction phase

- Identify and collect the pre-construction information

- CDM 2015 removes this role and replaces it with a new role - that of the principal designer.

Schedule 4 of CDM 2015 provides transitional arrangements for projects which span until 6th April 2015.

For projects:

- Involving more than one contractor

- Starting before 6 April 2015

- Where a CDM co-ordinator has not yet been appointed

- And where the construction phase has yet to start

- the client must appoint a principal designer as soon as practically possible.

The client is not required to appoint a principal designer if the construction phase has already started, but may do so if they wish. If they choose not to appoint a principal designer, the principal contractor takes on the responsibility for the health and safety file. In these circumstances, any designer involved with the project should provide information about any residual risks in designs to the principal contractor.

Where on 6th April 2015 the client had already appointed a CDM co-ordinator, a principal designer must be appointed within six months, i.e. by 6th October 2015.

The CDM co-ordinator must then comply with the duties listed in paragraph 5 of Schedule 4 for the duration of their appointment. These duties broadly reflect duties of a CDM co-ordinator under CDM 2007, but also reflect the arrangements under CDM 2015 which relate to the construction phase plan and the health and safety file.

During the transitional period, CDM co-ordinators do not have to satisfy the criteria for a principal designer under regulation 5(1)(a) that they should be a designer with control over the pre-construction phase of the project, nor do they have to comply with the principal designer duties under regulation 11.

# HEALTH AND SAFETY
# maintenance management

The purpose of a maintenance programme is to keep workplace plant and equipment in a state of good repair and efficient working order so that these assets can perform their functions without risk to health and safety. As well as hazards associated with lack of maintenance, poorly planned or poor quality maintenance activities can create significant risks, not only to the building occupiers, but to those who undertake the maintenance activities themselves.

## Other transitional provisions

These are:

- Any pre-construction information, construction phase plan or health and safety file provided in accordance with the requirements of CDM 2007 are recognised as meeting the requirements of the equivalent provisions in CDM 2015
- Notification of a project in accordance with CDM 2007 is recognised as a notification for the purposes of CDM 2015; and
- A principal contractor appointed under CDM 2007 will be considered to be a principal contractor for the purposes of CDM 2015.

### Key points to consider

**PRINCIPAL DESIGNER**

The role of the CDM co-ordinator role (under CDM 2007) has been replaced by the Principal Designer. This means that responsibility for co-ordination of the pre-construction phase will rest with the Principal Designer. Those appointed as Principal Designer need to have the necessary skills, experience and capability. Principal Designers must be appointed where there is more than one contractor involved in the project.

### DESIGNING FOR SAFETY

The new role of the Principal Designer is likely to lead to more emphasis on the importance of "designing for safety" during construction. Does the design team understand the concept of "designing for safety" and know how to perform "design" risk assessments and the implementation of control measures in line with the General Principles of Prevention as set out at Appendix 1 of CDM 2015?

### COMPETENCE

The explicit requirements for competence contained in CDM 2007 and its accompanying ACOP have been removed and replaced with a specific but general requirement for appropriate skills at Regulation 8 of CDM 2015. All appointments and those working on site must meet this requirement. In practice procedures need to be developed which satisfy the Guidance to CDM 2015, so that persons have the necessary skills.

### NOTIFICATION

Projects will need to be notified by clients where they last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project; or the project is likely to exceed 500 person days. Notification procedures will need amendment.

### DOMESTIC CLIENTS

Domestic clients are in scope of CDM 2015 and this was primarily introduced to satisfy the requirements of the Temporary or Mobile Construction Sites Directive. In practice, their duties as a client will be transferred to:

- The contractor, on a single contractor project; or
- The principal contractor, on a project involving more than one contractor.

Procedures need to reflect and prepare for this.

### Client duties

As with CDM 2007, the duties of the client are seen as imperative to the success of the new CDM regulations. With an overriding responsibility for managing a project, clients will now need to appoint a Principal Designer and Principal Contractor for projects where there will be more than one contractor involved. In such projects, procedures will need to specify and activate this requirement.

All these safety aspects must be considered when developing any facilities maintenance strategies and associated programmes of work.

### Risks and maintenance

According to the European Agency for Safety and Health at Work (OSHA), "regular maintenance has an important role in eliminating workplace hazards and providing safer and healthier working conditions", but "lack of maintenance or inadequate maintenance can cause serious and deadly accidents or health problems".

The deterioration of physical assets due to the lack of maintenance can clearly have significant health and safety consequences for an organisation, including:

- Serious harm to building occupiers by exposure to various physical, chemical or biological hazards
- Loss of use of physical assets through accident investigations and enforcement authority prohibitions, etc
- Financial losses through potential HSE fees for intervention, prosecution, civil claims and replacement of assets, production interruptions, etc.

In addition to this, the HSE states that unsafe maintenance is the cause of many fatalities and serious injuries, either during the actual maintenance or to those using the badly maintained or wrongly maintained/repaired equipment. Studies undertaken by the OSHA have estimated that around 15-20% of all accidents and 10-15% of all fatal accidents are related to maintenance operations. The same studies also found that occupational diseases and work-related health problems (e.g. asbestosis, cancer, hearing problems and musculoskeletal disorders)

are prevalent among workers involved in maintenance activities, with industrial maintenance employees having an 8-10 times greater chance of developing an occupational disease than the average population.

The HSE has also raised concerns as to human error in maintenance, suggesting that "human errors in servicing and repair can render unavailable those systems needed for safety reasons or could introduce faults that make the equipment unsafe". With health and safety risks being present in various aspects of maintenance, the need to integrate occupational health and safety management into overall maintenance management is clear.

## Maintenance for health and safety

BS 8210 Guide to Facilities Maintenance Management notes that "a well-defined facilities maintenance strategy supports the organisation's goals, whereas a poorly defined or absent strategy could have significant adverse safety and commercial consequences for an organisation".

The principal objective of the strategy is to identify and assess the methods of maintenance necessary to meet legislative, best practice or policy requirements. The key elements of the strategy and policy itself may include:

- Specifying the minimum requirements for the management of maintenance
- Ensuring that physical assets are adequately maintained
- Ensuring that risks are effectively managed
- Ensuring that health and safety requirements are met
- Ensuring that the necessary information is available to manage maintenance.

Health and safety requirements will be one of the influences on the types of maintenance that is to be undertaken so as to ensure all plant and equipment is maintained in a state of good repair and efficient working order, thereby eliminating or reducing risks of unwanted events. In this context, "efficient" is from the view of health, safety and welfare rather than productivity or economy.

The maintenance strategy selected depends largely on the type of physical assets and the tasks the assets are being asked to perform. As well as specific

recommendations in legislation and standards, most manufacturers will recommend certain maintenance procedures to the purchaser and these should be adopted unless operating conditions dictate otherwise, as identified through a risk assessment. Indeed, BS 8210 recommends that an organisation should assess risks and other hazards at all stages in a facility's life cycle and implement a formal system of risk management, including establishing and maintaining a risk register as part of the maintenance strategy.

The risk assessment process will be able to assist in identifying maintenance needs, taking into account factors such as the environment the equipment is used in, its age, the operating processes (and variety of processes), the intensity of use and previous maintenance history, as these can influence the maintenance procedures to be adopted. From the initial assessment of maintenance needs, organisations can adopt a number of regimes based upon:

- Planned maintenance, including preventative and shutdown maintenance
- Preventative maintenance, which can be condition-based or reliability-centred
- Unplanned maintenance (corrective, breakdown or emergency).

## Health and safety during maintenance

While undertaking any of the previously mentioned maintenance regimes, health and safety must be given consideration and built into the overall maintenance operational planning. Factors to consider are:

- The scope of the task (what needs to be done and what its effect will be)
- Risk assessing to identify and analyse hazards
- Risk control through adoption of safe systems of work, permit-to-work systems and working in "downtime", etc
- Time and resource requirements to undertake maintenance safely
- Communication requirements between the various stakeholders
- Competence and training requirements of those undertaking the activities and managing the work.

As with all work activities, a risk assessment should be undertaken to identify the hazards associated with the planned maintenance work, who might be at risk of harm (e.g. maintenance personnel, occupants, visitors, passers-by and trespassers) and what risk control measures can be adopted to eliminate or reduce the risks from the hazards. The risk control

method adopted will include the use of physical segregation through guarding and fencing, as well as the development and use of method statements, safe systems of work, and permit-to-work schemes. Other risk control measures will include:

- Using the most appropriate tools and personal protective equipment
- Working to the plan under appropriate supervision and to agreed timescales
- Ensuring contingency arrangements are developed for unwanted or unexpected situations
- Ensuring all relevant parties are made aware that the maintenance activities are taking place, including timescales, control measures, etc.

Competence and training are essential for ensuring relevant health and safety procedures are followed and for ensuring that the actual maintenance activities are completed, so as not to create risks through poor quality workmanship and/or human error.

The OSHA emphasises that "employers need to ensure that workers have the skills that they need to carry out the necessary tasks, are informed about safe work procedures, and know what to do when a situation exceeds their competence". To assist in the prevention of human error during maintenance, the HSE has produced various guidance documents that are free to download from its website.

It is inevitable that many maintenance tasks will be outsourced to contractors with specialist skills and knowledge. As such, it is important for organisations to understand the full maintenance requirements, and the capability and capacity required to deliver these services by contractors. These should then be built into the relevant due diligence and service specification requirements utilised when appointing contractors.

It is where contractors are used that the organisation should be setting out clear roles, responsibilities and lines of communication with all interested parties so as to ensure maintenance activities are undertaken, with health and safety being an integral part of the overall management approach.

# Training TOOLS

## This edition... Maintenance Safety

Training Tools are a quick and useful way of giving employees up-to-date health and safety information on a particular subject. A training tool can be delivered by a health and safety expert or even a line manager or responsible person. They should last no longer than 10-15 minutes and can comfortably take place in the office, staff room or canteen. Tools should be conducted regularly (weekly/monthly) or after an incident.

**There is a legal requirement for regular and effective maintenance, inspection and testing of work equipment. The lack of regular maintenance has been identified as the major contributor to recent incidents that have resulted in the deaths of employees and members of the public. By performing regular maintenance, hazards are removed at source and consequently risks are reduced to a minimum.**

**This downloadable presentation covers:**

• Legislation
• Dangers of maintenance
• Safety considerations in maintenance operations
• Controlling maintenance work risks
• Testing and inspection
.... and much more!

**Download Your FREE Presentation NOW!**

### FREE Training Tool Slides!

Download our useful presentation on Maintenance Safety.

### How To:

1. Go to: www.seton.co.uk/legislationwatch
2. Click on Knowledge Centre → Training Tools
3. Select the Training Tool you wish to download

# Ask the expert...

**Do you have a question related to Health & Safety or Workplace Law?**
Our experts are IOSH accredited and ready to answer any questions you might have.

Our fire protection contractor wants us to put fire extinguishers on all exits. Are we legally required to do so?

We have a qualified fork lift truck driver – does he have to sit a refresher after three years even if he uses the truck every day and has had no incidents?

We are holding a public event and have been told to carry out a risk assessment. What do I need to do?

What are our H&S obligations to remote workers?

### How to 'Ask the expert'

1. Go to www.seton.co.uk/legislationwatch
2. Click on the red 'Ask the expert' tab
3. Enter your question on the form
4. We will respond via email within 48 hours!

# Drugs in the workplace:

# do you need a testing regime?

In November 2014, the BBC reported that some drug screening companies had seen rises of between 40% and 470% in the number of annual tests carried out over four years. Two of the companies saw rises of 100% and 470% in the number of drugs tests they conduct annually. The use of drugs and alcohol in the workplace, and its potential impact on health and safety, is an important issue and this news is a reminder of that.

The HSE is concerned about this issue and its Research Report RR193 The Scale and Impact of Illegal Drug Use by Workers seeks to establish the prevalence of illegal drug use in the workplace, to investigate the effects of illegal drugs on work performance and to determine whether there is an association between illegal drug use and workplace accidents, injuries and human error.

Many companies have introduced drug screening programmes for their employees. The Stobart Group, which includes the well-known Eddie Stobart haulage business, introduced a drugs-testing policy three years ago.

This article examines the purpose of drug screening, the legal issues and their implications. It looks at the way a workplace drugs policy can be implemented and what are the practical issues involved.

## Legal issues and implications

It is well known that the role of human behaviour is critical to the causation of accidents and that people, the decisions they make and the actions they take, cause the majority of accidents. Many drugs (such as cannabis, amphetamines, cocaine and opiates) can impair judgement and introduce human error, which in turn can lead to accidents.

The purpose of any drug or alcohol testing regime must be to prevent accidents caused either directly or indirectly by an employee's drug use, even if such drug use occurred in the employee's own time, which is not usually the concern of the employer. It is in employers' interest' to manage drug use by their staff because it can lead to absenteeism, lateness and performance issues.

The fundamental legal requirements on health and safety implicitly require employers to consider the issue of potential drug or alcohol use by their employees and the impact this may have on their own health and safety or that of others. The general requirements of the Health and Safety at Work, Act 1974 at ss. 2 and 3 are applicable, as are the requirements of the Management of Health and Safety at Work Regulations 1999, including the duty to perform risk assessments.

Common law, too, imposes on employers a "duty of care" to their employees and others and this will extend to the potential use of drugs.

The Transport and Works Act 1992 makes it a criminal offence for certain workers to be unfit through drugs or drink while working on railways, tramways and other guided transport systems. The operators of the transport system would also be guilty of an offence unless they had shown all due diligence in trying to prevent such an offence being committed.

The Road Traffic Act 1988 states that any person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs shall be guilty of an offence. An offence is also committed if a person unfit through drink or drugs is in charge of a motor vehicle in the same circumstances.

It is also an offence under the Misuse of Drugs Act 1971 for occupiers knowingly to permit the possession of certain controlled drugs on their premises and can be grounds for dismissal by an employer.

### Drug classifications

The Misuse of Drugs Act 1971 classifies drugs as follows.

- CLASS A: includes ecstasy, cocaine, heroin, LSD, mescaline, methadone, morphine, opium and injectable forms of Class B drugs
- CLASS B: includes oral preparations of amphetamines, barbiturates, cannabis, cannabis resin, codeine and methaqualone (Mandrax)
- CLASS C: includes most benzodiazepines (eg Temazepam, Valium), other less harmful drugs of the amphetamine group, and anabolic steroids.

Screening employees for drugs and alcohol is a sensitive issue and any policy must be introduced with the involvement of, and consultation with, employees or their representatives.

Discussions on a workplace drug policy are likely to include the following.

- The aims and expected outcomes of the policy
- The standards of behaviour required to comply with the policy
- The importance of senior management commitment to the policy and to creating workplace awareness about the harmful effects of alcohol and drugs
- The factors in the workplace that may contribute to harmful drug and alcohol use
- The role of restrictions on the availability of alcohol and other drugs in the workplace, e.g. at company functions
- Intervention strategies: the earlier a problem is addressed, the better the chance of successful management

- Reporting procedures: a confidential process for reporting alcohol and other drug misuse will encourage both the affected employee and/or others to report hazards
- Incident and accident reporting: consider adding an option to note if alcohol or drugs have been a factor in any in-house incident reporting systems
- Procedures for drug and alcohol screening
- The types of counselling and support services that are most appropriate for the workplace in question
- The education, information and training needs of managers, supervisors and employees
- The confidentiality, privacy and anti-discrimination requirements
- The types of disciplinary action relating to drug-related incidents that are suitable for the workplace in question.

## Screening and training

Screening employees usually involves taking blood or urine samples from the employee and is in itself a difficult and sensitive issue. Employees cannot be forced to give blood or urine samples and taking them without their consent could be regarded as assault.

However, all policies on drugs and alcohol should contain a requirement for employees to give blood, urine or other types of sample within the constraints of the policy. The policy should be incorporated into contracts of employment; in which case, should an employee refuse to give a sample then they may be in breach of their contract of employment and face disciplinary action. Taking samples from subcontractors and others is equally challenging; again, it is important that the drugs and alcohol policy is built into contracts of service. It is imperative to train all staff in respect of the drugs and alcohol policy. Approaching a person who is under the influence of alcohol or other drugs requires skill and

sensitivity to achieve the best outcome for all at the workplace. When establishing a policy, consideration should be given to designating and training people to approach workers who are displaying signs of being under the influence of alcohol or other drugs. Suitable people may include managers, supervisors, health and safety representatives or other persons who have appropriate knowledge, experience and/or qualifications (e.g. counselling). It is important that designated persons are aware of the most effective style of approach.

## Conclusions

Although, in the majority of cases, drug use will take place in an employee's own time, it is still the concern of the employer because the effect of drugs may have a detrimental effect on health and safety in the workplace. Employers must ensure they have an effective drugs policy in place and they must consult with staff if the policy is to be accepted by all.

# When safety matters

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# Time is running out!

The hazards of chemicals are communicated through standard statements and pictograms on labels and safety data sheets.

New terms have replaced old ones:
- Mixtures for preparations,
- Hazardous for dangerous,
- Pictograms for symbols,
- Hazard statements for risk phrases,
- Precautionary statements for safety phrases,
- Signal Words (e.g. Danger, Warning) replace the Indications of Danger

**New red-framed pictograms gradually replace the familiar orange danger symbols.**
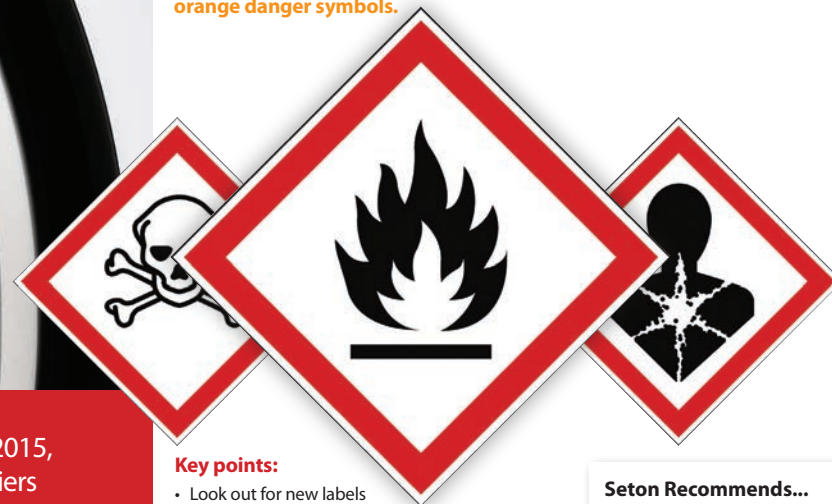
## Are you GHS compliant?

# CLP Update

The Classification, Labelling and Packaging Regulation 1272/2008 (CLP) aligns European legislation with the GHS (Globally Harmonised System of Classification and Labelling of Chemicals), a United Nations system, to identify hazardous chemicals and inform users about these hazards.

From 1st June 2015, chemical suppliers must comply fully with the CLP Regulations. From that date, all products must be classified, labelled and packaged according to CLP, unless they were already in the distribution supply chain before this point, in which case a two-year derogation is available to allow existing stocks to be used up.

**Key points:**
- Look out for new labels and safety data sheets (SDS)
- Train workers to understand and recognise the new label information
- Check that your use of the substance or mixture is covered on the SDS and is not advised against
- Follow the advice provided on the new labels and in safety data sheets
- Check whether the classification has changed
- Evaluate the risks to workers and update your workplace risk assessments if necessary
- Communicate these changes to your workers
- If you have any questions speak to your supplier

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**GHS Labels in sheet, roll or sign format**
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**See links for more information:**
http://ec.europa.eu/enterprise/sectors/chemicals/classification/index_en.htm
http://www.hse.gov.uk/chemical-classification/what-to-do/index.htm

# OUTDOOR WORKERS AT RISK OF **Sun Exposure**

A research survey conducted by a healthcare company has concluded that gaps in employers' policies are putting outdoor workers at risk of harmful UV radiation exposure.

The healthcare company AXA PPP commissioned an online survey of 2000 adults in the UK, 647 of whom spend 50% or more of their working time outdoors.

The poll of outdoor workers found that:
- Over half (56%) were unaware whether their own company had a policy on sun protection
- Only one in six (16%) worked for companies that provided free sunscreen
- Just one in seven (14%) used sunscreen when working outdoors
- Nearly half (44%) said that their employer should be required to provide them and colleagues who work outdoors with sunscreen.

As it released the survey results, the healthcare company also highlighted figures from Cancer Research UK which show the incidence rates of malignant melanoma in Great Britain have been increasing more rapidly than those of any other of the ten most common cancers.

In addition, other statistics from Public Health England show that hospital admissions for treatment of skin cancer have risen by 41% in the past five years.

Commenting on the survey, Dr Steve Iley, AXA PPP's Medical Director for Health Services, said, "Our research demonstrates that employers are not providing outdoor workers with the necessary advice on sun protection despite the Health and Safety Executive's warning that UV radiation should be considered an occupational hazard for people who work outdoors."

He added, "Companies have a duty of care to safeguard their employees' health and safety and, as such, they need to regularly review their sun protection policies to ensure they're fit for purpose."

HSE Guidance

The HSE publication INDG337 Sun Protection: Advice for Employers of Outdoor Workers states that "UV radiation should be considered an occupational hazard for people who work outdoors" and as such the normal legal requirements would apply.

Employers should conduct a risk assessment, particularly when outdoor work is scheduled for the period from April to September, when UV radiation levels peak, to assist in developing appropriate sun protection measures.

Such an assessment may take into account the tasks that may involve solar UV radiation exposure, the frequency and time of day at which the task is to take place, the amount of shade that will be available or provided by the physical environment, and the presence of any photosensitising substances.

The most likely factor that can be accurately assessed is the susceptibility of the individual to UV radiation. Anyone whose work involves a lot of time spent outside is potentially at risk but those with fair skin, who have had long-term exposure to UV radiation (e.g. through living in areas of high UV exposure), who have certain moles, have a family history of skin cancer or have sudden or intense exposure are more at risk.

The more exposure to the sun, the greater the damage, but there are a few simple steps that will help reduce the risk. These can be summarised as follows.
- Examine the possibility of some outdoor jobs being done inside or in a shady location.
- Reschedule some outdoor work to be done earlier or later in the day when the UV radiation is less intense.
- Provide personal protection, e.g. appropriate clothing, hats and sunscreen.
- Provide people who work in the sun with the appropriate training and education so they understand the dangers.

It should be noted that cancer is not the only risk from the sun. UV radiation also causes premature ageing of the skin and can cause eye damage such as inflammation of the cornea and conjunctiva, known as photo-keratitis and photo-conjunctivitis respectively. These factors may also be included in the risk assessment.

# Highlighting
## HEALTH AT WORK

**In October 2014, the Health and Safety Executive (HSE) published its latest statistical annual report on work-related injuries, fatalities and ill health for Great Britain for the period 2013/14.**

The report was welcomed with great interest by those with an interest in work-related health, not least because it has been two years since comparable information on the subject has been collected. The HSE's report for 2012/13 failed to feature updated occupational ill health figures for the period - as collected by relevant questions commissioned by the HSE in the Labour Force Survey (LFS) - a decision apparently made as a result of budgetary constraints.

The new figures for 2013/14, however, indicate that 2 million people told the LFS interviewers that they were suffering from an illness - either long standing or a recent health problem - which they believed was caused or made worse by their current or past work. Of this 2 million, there were 535,000 new cases of work-related illness that had started in the previous 12 months. Comparable figures from the 2012/13 period are not available, for the reasons outlined above, but it is clear from the preceding figures for 2011/12 that the corresponding figure was 1.8 million people, representing a significant increase over the two-year period. Similarly, the new cases reported in 2011/12 were 452,000; again illustrating a rising trend compared with the figure of 535,000.

Analysing other figures available from the HSE, it can be noted that in 2013/14 around 4000 workers per 100,000 self-reported cases of work-related illness (new and existing cases). In 2011/12, the corresponding figure was 3660 per 100,000, representing a significantly higher figure than the last available figure two years ago.

Reacting to the new figures, a source at the British Occupational Hygiene Society (BOHS) bluntly said, "We've put safety first, at the expense of health."

The Trades Union Congress (TUC) said the figures painted "a worrying picture", noting the rising number of people being made ill through work, and an end to the previous long-term downward trend in figures.

In this regard, indeed it should be noted that the longer term outlook on worker health is more favourable. In 2001/02, around 5000 workers per 100,000 self-reported cases of work-related illness (new and existing cases), which indicates significant long-term progress compared with the latest figure of 4000 mentioned above.

### Deaths as a result of work-related illnesses

The HSE has a long and proud history of scrupulously recording each and every work-related accident and fatality in the workplace. Therefore, it is somewhat surprising to note that it was only in 2010 that the HSE started to issue estimates of the numbers of people who die each year from work-related illnesses. As a result, figures to analyse year-on-year trends for most deaths due to work-related ill health are not available.

However, the latest available estimates indicate that around 13,000 people die each year from work-related ill health, a figure mostly made up by 8000 occupational cancer deaths and 4000 deaths as a result of work-related chronic obstructive pulmonary disease (COPD) such as bronchitis and emphysema.

Commenting on the latest figures, Steve Perkins, Chief Executive of BOHS, the Chartered Society for worker health protection, compared the figure of 13,000 deaths with the latest number of 133 workers killed at work as a result of workplace accidents, and said, "That means the deaths caused by accidents represent only 1% of the total deaths caused by work. 99% of occupational mortality is attributable to disease."

### The big issues in work-related health

The HSE's latest statistical annual report points out that 80% of the 535,000 new cases of work-related ill health were either musculoskeletal disorders or stress, depression and anxiety. The figure of 535,000 can be broken down as:

- 244,000 attributable to stress, depression or anxiety
- 184,000 to musculoskeletal disorders
- 107,000 to other illnesses.

On the fatalities side, more than half of the 8000 cancer deaths were caused by past exposures to asbestos (either mesothelioma or asbestos-related lung cancer).

In 2012, there were 2535 deaths from the disease, most of them caused by past

**CONTINUED... ▸▸**

occupational exposure to asbestos, up from 2311 in 2011.

Commenting on the asbestos issue, Jane White, Research and Information Services Manager at the Institution of Occupational Safety and Health (IOSH), said, "It is not right that people are contracting and dying from mesothelioma and other diseases while at work. We are very concerned about the high number of people dying from mesothelioma and that people are still being exposed today. More should be done to tackle this and all other cancers caused by workplace exposures."

### A massive financial and social burden

The HSE's latest figures indicate that new cases of workplace illness cost around £8.6 billion. Of course, besides the financial costs, there are social and personal costs borne by society.

Commenting on the latest figures, Frances O'Grady, General Secretary of the TUC, said "Illness or injury caused by work not only leads to absence, it also leaves people suffering pain, disability and financial loss… It's both a human tragedy and a false economy to continue with two million people living with an illness caused by work".

### New campaigns and future outlook

There is increasing evidence that work-related ill health is slowly but surely gaining prominence in the health and safety world. During 2014, the HSE launched two separate inspection initiatives under a new "Think Health" campaign, to tackle the unacceptably high levels of exposure to health hazards on UK building sites. The safety watchdog's campaigns in June and then September/October of 2014 featured the slogan "Health as well as safety," with a firm message to remind employers of their duties to actively manage the risks associated with work-related ill health. This was followed, in early October 2014, by another big campaign focusing on the dangers of asbestos faced by tradespeople.

Similarly, in November 2014, the Institution of Occupational Safety and Health (IOSH) launched its "No Time to Lose" campaign, aimed at cutting the number of deaths from work-related cancers and raising awareness about the risks. As for forthcoming initiatives, the BOHS has pledged to launch a major new campaign on occupational lung disease in the spring of 2015.

Even work-related stress, that pervasive area of worker ill health, has benefited from a massive recent boost in awareness with the Healthy Workplaces Campaign for 2014 and 2015 run by the European Agency for Safety and Health at Work (EU-OSHA), and focusing on stress with the slogan, "Healthy workplaces manage stress".

The cumulative effect of all these initiatives no doubt point to an increasing emphasis on ill health in the workplace and will hopefully improve future conditions for workers. It is clear that workplace health is moving out of the shadows, with far greater awareness around the issue.

The regulatory framework to enforce the management of work-related ill health is already in place and now we can increasingly expect to see the full range of the HSE's enforcement actions focused on this area — from inspections and investigations, to prohibition and improvement notices, and ultimately prosecutions and fines.

# PPE Update
## PLANS FOR UPDATE TO PPE DIRECTIVE

Suppliers of personal protective equipment (PPE) have welcomed plans for revisions to the current European PPE Directive (89/686/EC) to tackle the "growing problem" of fake PPE in the UK.

The PPE Directive is implemented in the UK as the Personal Protective Equipment at Work Regulations 2002.

In terms of the legal framework, the European Commission intends to replace the Directive with a Regulation in order to simplify the law.

The new Regulation will extend the scope of the Directive, with the addition of PPE for private use for protection against moisture, water and heat (e.g. dish-washing and oven gloves). (These products were already covered by the Directive when they were used for commercial purposes.)

However, UK suppliers of PPE have argued that the new Regulation will also help to control what they say is a growing problem of counterfeit and inferior quality PPE in UK workplaces.

The new proposed legislation would make retailers and distributors responsible for ensuring products they sell meet the required safety standards, whereas at present it is only manufacturers that are responsible for checking products comply with performance standards.

**Problem of fake PPE featured on BBC1**

The problem of fake PPE was recently highlighted on the BBC1 programme, Fake Britain, a series revealing the extent of fake goods in the UK.

The programme featured builder's merchants Jewson who were prosecuted for selling substandard, non-compliant, fraudulently marked PPE after trading standards officers found safety helmets at its Northampton store which failed impact tests.

Northampton Magistrates Court fined Jewson £14,000 in October 2013.

Alan Murray, Chief Executive Officer of the British Safety Industry Federation (BSIF), a health and safety trade body, appeared on the BBC1 programme Fake Britain in order to comment on the issue of fake PPE in the health and safety world.

In the programme, he described the purpose of hard hats and outlined how in the particular case, workers had not been supplied with the appropriate protection.

Alan Murray said, "It is extremely disappointing that such a strong brand and household name would be providing product that wasn't up to performance requirements of the safety industry."

Commenting on the issue of fake PPE, the BSIF said it is committed to ensuring that PPE on sale in the UK meets relevant European safety standards and provides the level of protection that it claims.

To help combat the sale of substandard PPE, the BSIF has created the Registered Safety Supplier scheme.

Companies displaying the scheme's logo have signed a binding declaration that the safety equipment they offer meets the appropriate 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. A list of registered companies can be accessed at www.bsif.co.uk/news/display/home

# SENSIBLE HEALTH AND SAFETY **in schools**

**According to research by the University of Exeter, children come second in the list of groups most affected by health and safety myths. In this article, Michael Evans looks at some of these myths and at how schools can take a sensible, rather than a "better safe than sorry", approach to keeping pupils safe.**

Schools have a statutory requirement to abide by health and safety legislation. This applies to risks to staff, pupils and visitors as well as to any contractors in the school. All work activities carried out by the school, including off-site activities such as school trips, are also covered.

An increase in risk consciousness has led to health and safety often being used as an excuse to stop activities or disguise unpopular decisions. This has given rise to a number of myths and misunderstandings, and in some cases it has been used as a catch-all phrase to cover something completely different.

### Focus on the real risks

The Health and Safety Executive (HSE) points out that the management of health and safety should focus on real risks that could potentially cause harm. It should not involve wasting time on trivial matters and unnecessary paperwork.

When an over-cautious approach is adopted, says the HSE, pupils will miss out on challenging and exciting activities, plus other learning activities that enable them to develop new skills. Importantly, health

and safety is not about banning activities.

Overall accountability for health and safety lies with the employer, although day-to-day responsibility is normally delegated to the Head and the school management team.

The employer will vary according to the type of school. It could be a local authority, a proprietor, an academy trust, a charity, a company, a partnership or a board of governors.

The HSE stresses that in any organisation, sensible health and safety starts at the top and relies on every member of the management team to make sure that all health and safety arrangements are appropriate and proportionate.

The priority is to create a safe learning environment where pupils are given an appreciation of risk and how to deal with it. This means that control measures will be put in place that will do what is reasonably practicable to manage and reduce significant risks.

### The classroom checklist

"Traditional" classrooms are typically lower-risk environments and the HSE has

provided a classroom checklist which, while not mandatory, can be quite useful for those working there.

It is a tool for school staff to use in order to raise awareness of areas of concern. It covers issues such as where an uneven floor, a blocked gangway or trailing wires can possibly cause trips and falls. Furniture should be in good condition and trollies should be provided for moving heavy equipment. Pupils should be advised about good practice when using computers.

Electrical safety is another issue. Plugs and cables should all be in good repair and in addition to regular visual checks, portable equipment should be tested at suitable intervals to ensure that it continues to be safe to use. Any damaged equipment

should be taken out of service.

If the school contains asbestos, it is important that staff are familiar with its location and condition.

Similarly, it is important for them to be given guidance with respect to securing pieces of work to walls and ceilings that might contain asbestos.

Fire exits should be unobstructed, kept unlocked and easily opened. Fire evacuation notices should be clearly displayed and staff and pupils should be familiar with the evacuation drill.

Rooms should have sufficient natural ventilation and a reasonable room temperature. Measures should be in place to prevent unwanted glare and heat from the sun.

The HSE points out that this list is not exhaustive and it is up to school staff to identify any other hazards that might be apparent. For instance, design and technology workshops, science laboratories, art studios, textile, drama and PE are not covered and there could be inherent risks in these activities.

Some of the higher risks that a school might need to manage include vehicle and pedestrian movements, such as those associated with cars and buses delivering and collecting pupils at the start and end of the school day. There will also be risks associated with any refurbishment or construction work that is taking place at the school. Adventure activities can form an important part of the school curriculum and any risks associated with these will also need to be managed.

# School health and safety myths

It is easy to fall prey to health and safety myths and misunderstandings. There are many instances where activities have been curtailed or prohibited, with health and safety being given as the reason. In fact, the HSE now has on its website the findings of a Myth Busters Challenge.

Many of these seem to have no logic, while others simply use health and safety legislation as a cover for something else.

An example of this was when parents were taken to task after their daughter took a flask of hot drink on a school trip. They were told that there was a no hot drink policy "due to health and safety". The HSE pointed out that although the school might have a policy with respect to children having hot food or drink in their packed lunches, this should have been clearly communicated to parents rather than putting the blame on a health and safety catch-all.

In another case, a school governor stipulated that for "health and safety" reasons bamboo canes supporting runner bean plants in the school garden should have cane toppers. The HSE's response was that this seemed to be plain common sense and it was a pity that it should be represented as a "health and safety requirement" when there was no such thing.

"Health and safety" was the reason that a pupil in another school was banned from taking in his pet baby chick as part of a presentation. Bird flu was quoted as the main risk.

Over-caution has led to dozens of other cases. Dew on the grass was given as a reason for the postponement of a sports day for 3- to 4-year-olds. Another school refused to apply sun cream to a child in a reception class "for health and safety reasons".

A proportional approach was recommended after several schools banned footballs in school playgrounds and pupils in a secondary school were told not to push a fellow pupil in his wheelchair because they had not received appropriate training.

In a school where premises were owned and administered by a private company, staff were told that due to health and safety concerns they were not to use Blu Tack® to display work on windows because it contained a chemical that could cause glass to shatter. Since this was plainly not true, the reason for the ban certainly had nothing to do with healthy and safety.

With some justification, the HSE feels sensitive that in the past it has been wrongly blamed for a great many of the health and safety myths that have crept into school life. Its Myth Busters Challenge Panel can provide a useful resource to help schools avoid the more commonly occurring ones.

# Sharing responsibility

## FOR HEALTH AND SAFETY

**Facilities managers are often responsible for shared premises, properties in which there are several businesses or other organisations, or for premises in which there are apartments. In this type of situation it is essential that responsibilities for health and safety and fire safety are clearly defined and understood by both managers and tenants alike.**

Where several businesses/organisations operate in the same building the responsibilities for health and safety are shared in accordance with who has control over different aspects of the building. Landlords and managing agents need to ensure that the lease or commercial tenancy agreements clearly define who has responsibility for what. Lack of clarity around roles and responsibilities can lead to increased risks because safety is not adequately managed.

### Common areas

Where several businesses operate in the same building and share the use of common areas, landlords and managing agents have the responsibility for safety in these areas, unless the duties have been otherwise allocated in the contract.

Thus, landlords and managing agents will usually be responsible for the health and safety of corridors, stairs and lifts, and for the provision and condition of common sanitary conveniences and washing facilities. On sites where there are traffic routes the landlord and managing agent will normally be responsible for the organisation and maintenance of the routes. The managing agent should ensure there are appropriate risk assessments for activities in common areas, e.g. for slips, trips and falls, cleaning operations and traffic operations.

### The workplace

Landlords' responsibility for the tenant's workplace depends on the extent of their control over the area. This should be clarified in the contract. Responsibilities that should be included in the contract include those for the fabric of the building, electricity and gas supply, heating and ventilation, waste disposal and, if supplied, plant. Of particular importance is the allocation of the responsibility for ensuring that measures are in place to control the risks of Legionnaires' disease from hot and cold water systems, particularly wet air-conditioning systems.

### Asbestos

The Control of Asbestos Regulations 2012 require duty holders to find out if there is asbestos or asbestos-containing materials (ACMs) in non-domestic premises, to keep a record of the location and condition of the asbestos or ACMs, assess the risk from the asbestos, and prepare a plan that sets out in detail how the risk is to be managed. Where there is asbestos or ACMs present in the building the key duty is to ensure that everyone who needs to know about the asbestos is told about its presence and those who might work on the material take adequate precautions. In most cases, the duty holder is the person or organisation that has clear responsibility for the maintenance or repair of non-domestic premises through an explicit agreement such as a tenancy agreement or contract.

It is therefore essential that the extent of the duty is clarified in the contract. In a building occupied by one leaseholder, it might be either the owner or leaseholder who takes on the full duty for the whole building; or the duty might be shared. In a building with several tenants the owner may take on the duty for the whole building, or the duty might be shared, e.g.

with the owner taking responsibility for the common parts and the leaseholders taking responsibility for the parts they occupy.

### Co-operation and co-ordination

Where two or more employers share a workplace, the Management Health and Safety at Work Regulations 1999 apply. These regulations require each employer to:

- Co-operate with the other employers concerned, so far as is necessary to enable them to comply with the health and safety legislation
- Take all reasonable steps to co-ordinate the measures they take to comply with the legislation with the measures taken by the other employers concerned.

In addition, each employer must take all reasonable steps to inform the other employers concerned of the risks to their employees' health and safety arising out of, or in connection with, the conduct by them of their undertaking. The facilities manager will have to co-ordinate and co-operate with the tenants to ensure compliance with the health and safety duties.

### Responsibility for fire safety

The Regulatory Reform (Fire Safety) Order 2005 requires the responsible person to:

- Carry out a fire risk assessment identifying any possible dangers and risks
- Eliminate or reduce the risk from fire as far as is reasonably possible
- Provide general fire precautions to deal with any possible residual risk
- Create a plan to deal with any emergency.

Under the Order, anyone who has control of premises or anyone who has a degree of control over certain areas or systems may be a "responsible person". In shared premises the responsible person for shared parts of premises or shared fire safety equipment, such as fire-warning systems or sprinklers, could be the managing agent or owner or any other person who has some control over a part of the premises.

It is likely that the facilities manager will have to co-operate with tenants to agree the emergency procedures and to arrange and carry out fire drills.

### RIDDOR

Under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations

(RIDDOR) the person responsible for reporting the death, specified injury, over-seven-day injury, or case of disease of an employee at work is the employee's employer. However, the death, specified injury, over-seven-day injury, or case of disease of a self-employed person at work in premises under the control of someone else must be reported by the person in charge of the premises at the time of the event. Similarly the death, or injury requiring removal to a hospital for treatment of a person who is not at work (but is affected by the work of someone else), e.g. a member of the public, a student, a resident of a nursing home, must be reported by the person in control of the premises at the time. Once again, where there are shared areas, it is important to identify the person responsible for making reports in a given situation.

### Summary

Whenever there are shared premises, it is essential that the facilities manager co-operates and co-ordinates with the leaseholders/tenants to clarify who holds the responsibility for health and safety.

# ASSESSING
# First Aid needs

Employers are required to provide adequate and appropriate equipment, facilities and personnel to ensure their employees (and others when deemed necessary) receive immediate attention if they are injured or taken ill at work. What qualifies as "adequate and appropriate" will depend on the circumstances of each employing organisation but to determine this, those responsible for first-aid provisions should carry out an assessment of first-aid needs.

The Approved Code of Practice to the Health and Safety (First-aid) Regulations 1981 (FAR) recommends that a number of factors be taken into account when determining first- aid needs, including:

- The hazards and risks associated with work activities
- The size of the organisation and its history of accidents
- The nature and distribution of the workforce
- The needs of lone workers and working patterns
- The possible absence of first aid personnel.

Other factors may influence the level of provision, including the remoteness of the premises from emergency services and hospitals or the findings of incident statistics and investigations.

The Approved Code of Practice to FAR notes that where the work involves specific hazards, first-aid requirements will be greater and employers may then need to consider additional first-aid equipment and the precise siting of this equipment.

## Determining the Number of First Aid Personnel Needed

The following table gives an indication of the numbers of First Aid personnel required according to the number of employees, on the assumption that the more employees there are, the greater the probability of injury or illness.

| Category of Risk | No. of Employees | Suggested Number of First-aid Personnel |
|---|---|---|
| Lower-risk organisations: shops, offices, libraries | Fewer than 25 | At least 1 appointed person |
| | 25-50 | At least 1 first aider trained in Emergency First Aid at Work |
| | More than 50 | At least one first aider trained in First Aid at Work for every 100 employed (or part thereof) |
| Higher-risk organisations: construction, chemical, dangerous machinery, sharp instruments | Fewer than 5 | At least 1 appointed person |
| | 5-50 | At least one first aider trained in Emergency First Aid at Work or First Aid at Work depending on the types of injury that might occur |
| | More than 50 | An additional first aider trained in First Aid at Work for every 50 employed (or part thereof) |

### First-aid box contents

It is not a regulatory requirement under FAR to purchase first-aid kits that comply with the national standard BS 8599–1:2011 Workplace First Aid Kits. Specification for the Contents of Workplace First Aid Kits. Instead, the contents of a first-aid kit are dependent upon the First Aid needs assessment. Following a needs assessment, a business may find itself with a kit that complies with BS 8599; or, alternatively, a kit that matches the needs assessment but does not comply with the standard.

### A suggested guide

Where work activities involve low hazards, workplaces should keep as a minimum the following items:
- 20 individually-wrapped sterile plasters
- 2 sterile eye pads
- 4 individually wrapped triangular bandages, preferably sterile
- 6 safety pins
- 2 large, individually wrapped, sterile, unmedicated wound dressings
- 6 medium-sized, individually wrapped, sterile, unmedicated wound dressings
- A pair of disposable gloves, preferably latex free or nitrile (synthetic rubber), as latex can cause allergic reactions
- A leaflet giving general guidance on first aid.

Painkillers and other medicines should not be kept in a first-aid kit.

### Eye Wash

If mains tap water is not readily available for eye irrigation, at least a litre of sterile water or sterile normal saline (0.9%) in sealed, disposable containers should be provided. Once the seal is broken, the solutions should not be kept for reuse. Solutions should not be used beyond their expiry date.

### Additional Materials and Equipment

If the first-aid assessment and the likely response time of the emergency services suggest that some means of moving a patient is necessary, such as a stretcher or evacuation chair, it should be stored in a place that is secure, yet readily available for use. It is important that anyone expected to use it must be fully trained in its correct use, as the injuries that could result from its misuse could lead to litigation for the organisation.

It is possible that the circumstances of the rescue or treatment of an injured person place the first aider at sufficient risk to require some form of personal protective equipment, e.g. a hard hat or some form of protective garment. In addition, it may be necessary to provide blankets or some other form of protection for the patient. Where these are necessary they should be readily available for use but secure from misuse or accidental damage. Their positioning will depend on the need, e.g. it may be appropriate to:

- Issue the equipment to individual first aiders trained in its use
- Hold it in a central (secure) location
- Site the equipment near to the area where the risk that may require its use is situated.

## Seton Recommends...



**First Aid Kit** Style No. FAD0003



**First Aid Station** Style No. FAD1024



**Eye Wash Saline** Style No. 09118/1

# First Aid Needs
## ASSESSMENT FORM

**Reference number**

**Workplace**

**Date**                                    **Review date**

**Workplace activities**

| Factor to Consider | Considerations and Additional Notes |
|---|---|
| The risks of injury and ill-health arising from workplace activities | Significant risks will require first aiders |
| Any specific risks from working with substances, tools and machinery | Specific equipment and training may be required |
| The number of persons in the workplace | A number of first-aid personnel may be required |
| Workers who have increased risk, such as disabled employees, inexperienced workers and trainees | Special equipment may be required at specific locations |
| Employees who travel | Portable first-aid kits may be required |
| Employees who work remotely | Portable first-aid kits may be required. |
| Employees on other employers' premises | Check to see what arrangements are in place for first aid |
| Members of the public in the workplace | Will first aid be provided? Check public liability insurance |
| Employees with reading/language problems | Will special arrangements be required? |

| Factor to Consider | Considerations and Additional Notes |
|---|---|
| Previous injury and ill-health records | Equipment and facilities may have to be located elsewhere. Check first-aid box contents. |
| Different levels of risk in the workplace | Will provisions differ in each risk area? |
| Location of workplace from emergency services | Will special arrangements be required? |
| Number of buildings in the workplace | What risks are in each building? Will arrangements vary? |
| Shift work/hours of work | What cover will be required? |
| First-aid personnel absence | How many additional staff will be required? |

### Summary of First-aid Requirements

| Item | Location | Number |
|---|---|---|
| First aiders | | |
| Appointed persons | | |
| First-aid boxes | | |
| First-aid room | | |
| First-aid signs | | |

Signature of assessor                                    Date

# Q&A'S

## Compatibility of personal protective equipment

**Q.** A number of our employees have to wear various items of personal protective equipment. I am aware they must be compatible but how do we ensure that these items meet the compatibility standards required?

**A.** Fit quality is essential to ensure optimum protection for employees when wearing more than one item of Personal Protective Equipment (PPE). The use of incompatible PPE may result in reduced protection from one or more items of PPE and attributable to poor fit quality and also to discomfort in use; at worst, where constant readjustments are made, this can lead to employees choosing not to wear PPE altogether. Under the Personal Protective Equipment Regulations 2002, where an employee has to wear more than one item of PPE, the employer must ensure "equipment is compatible and continues to be effective against the risk or risks in question" and through the risk assessment process ensure compatibility. Guidance to the Regulations states that when selecting PPE "it should be ensured that all items, when used together, would adequately control the risks against which they are provided to protect" but does not provide any guidance on how to ensure compatibility.

Although all items of PPE will be appropriately CE marked and approved to the relevant national, European or international standards this does not always mean that PPE is going to be compatible in use.

Depending upon the circumstances, one method of overcoming incompatibility issues is to purchase items that combine several items into one, for example safety helmets that have integrated ear protectors and goggles.

Where such items of personal protective equipment are not available, it may be necessary to individually assess the requirements of each employee who is expected to wear items of PPE.

As each individual will be physically different, it may be the case that various combinations of ranges and styles of PPE may have to be given consideration in safe trial conditions to find the most compatible items.

As well as involving employees in the process of selection and assessment, suppliers of PPE can be consulted with as it may be the case that although items are separate they are designed for use together.

As well as selection for compatibility, how the wearers fit the PPE can also impact on the amount of protection provided. As such, users of PPE "must be trained in the proper use of PPE, how to correctly fit and wear it, and what its limitations are".

## Safety of advertising signs

**Q.** My company wishes to place some advertising signs outside the building. I have been asked to comment on whether there are any safety issues that we need to consider. Could you outline for me what these are?

**A.** Although technically not an occupational safety issue, the installation of advertising signs outside a property may have to take public safety issues into consideration.

The advertisement control system consists of rules which form part of the planning control system. In England, the present rules are contained in the Town and Country Planning (Control of Advertisements) Regulations 2007, the operation of which normally falls to the relevant local (planning) authority.

The rules cover a wide range of advertisements including posters, placards, flags and projecting signs. These fall into the following three groups depending on their size, shape and location.
- Advertisements which the rules exclude from the planning authority's direct control.
- Advertisements for which the rules give a "deemed consent" so that the planning authority's consent is not needed.
- Advertisements for which the planning authority's "express consent" is always needed.

Whatever category an advertisement falls into, there are a number of basic rules that will apply to all advertisements. These include the requirement to be kept in a safe condition and not to "obscure, or hinder the interpretation of, official road, rail, waterway or aircraft signs, or otherwise make hazardous the use of these types of transport".

For advertisements falling into the third category, factors relating to public safety will be given consideration by the planning authority as part of the express consent. This means considerations that are relevant to the safe use and operation of any form of traffic or transport on land (including the safety of pedestrians), over water or in the air. The planning authority will work on the assumption that all adverts are intended to attract a person's attention but the determining factor will be if the advertisement is so distracting or so confusing "that it creates a hazard for, or endangers, people who are taking reasonable care for their own and others' safety".

The term "public safety" is not defined in the regulations but further guidance can be found in the National Planning Policy Framework.

In addition, many planning authorities have formulated and adopted advertisement control policy statements, indicating what detailed considerations they regard as relevant to their decisions on advertisement applications.

It is advisable to contact the local planning authority to seek clarification and advice on advertisements.

# News ROUND UP

# May 2015

## Asbestos awareness app controversy

Controversy has developed around an asbestos awareness app recently launched by the Health and Safety Executive (HSE) after an asbestos training association slammed the web application as potentially encouraging untrained personnel to perform asbestos work.
A spokesperson for United Kingdom Asbestos Training Association (UKATA) was quoted as saying that the app "appears to have been produced without any input from competent asbestos trainers, and without any input from personnel experienced in asbestos works".

## Report calls for legislation to promote sprinklers for businesses

The Chief Fire Officers Association (CFOA) and the Local Government Association (LGA) has published a new report calling on the Government to provide an incentive for businesses to install fire sprinklers, by introducing a reduction in stamp duty in new or renovated commercial properties that are fitted with sprinklers.
The report can be accessed at **www.cfoa.org.uk**.

## Research on exposure to carcinogens in surface engineering

The HSE has published a new research report on exposure to carcinogens in surface engineering. The report examines:
• The efficacy of gloves
• The use of surfactants (these are substances which reduce the surface tension of liquids in which they are dissolved)
• Local exhaust ventilation (LEV) in chromium plating
• The potential for transfer of contaminants outside the workplace.

## Call for careful monitoring of asbestos in schools

The British Occupational Hygiene Society (BOHS) has called for careful monitoring of asbestos-containing materials (ACMs) in schools but says it is not always "necessary or desirable" to remove the asbestos.

## Worker health theme for Health and Safety Week 2015

This year's Health and Safety Week, which will take place from 15th to 19th June 2015, will focus on the theme of worker health. The aim of the Week is to celebrate the achievements of UK health and safety practitioners and bring pride to the industry.

## REACH dossiers need improvement says ECHA

The European Chemicals Agency (ECHA) has published a new annual report on compliance of companies with the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regime, which concludes that a "considerable" number of the examined registration dossiers still need improvement.
The EU- REACH Evaluation Report 2014 can be accessed at **http://echa.europa.eu**.

## HSE publishes Science Report 2015

The HSE has published its seventh annual Science Report covering the HSE's science projects which it has commissioned from the Health and Safety Laboratory (HSL) and other external contractors.

## Directory of HAVS qualified doctors and nurses

The Faculty of Occupational Medicine (FOM) has announced that it will, in the next few months, be launching a directory of nurses and doctors who are qualified in the field of Hand-Arm Vibration Syndrome (HAVS).

## Treadmill desks good for health and work performance

Canadian researchers have published a new study on the use of treadmill desks in the office environment which concludes that such desks, in addition to offering health benefits for workers, can also be beneficial for businesses by enhancing workforce performance.
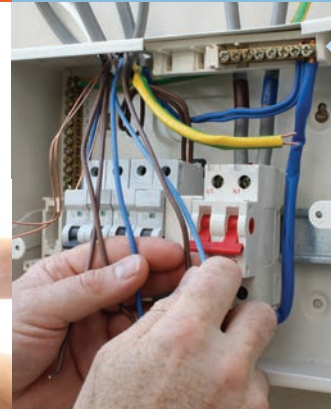
## Government compromises on Deregulation Bill on self-employed workers

Despite an 11th hour amendment by the Government to water down health and safety exemption plans for self-employed workers, the latest changes to the Deregulation Bill have failed to impress health and safety campaigners.
Clause 1 of the Government's Deregulation Bill will amend the Health and Safety at Work, etc Act 1974 to exempt certain self-employed people from general health and safety duties unless they work in a specified list of occupations and sectors.

## Major change to wiring regulations

The British Standards Institution (BSI) has warned that all users of the IET (Institution of Engineering and Technology) Wiring Regulations need to be aware of important changes in Amendment No. 3 to the 17th Edition (BS 7671:2008+A3:2015). Amendment No. 3 comes into effect on 1 July 2015 and will be of interest to all those concerned with the design, installation and maintenance of electric wiring in buildings. This includes electricians, electrical contractors, consultants, local authorities, surveyors and architects.