

# 2013 Legal & Enforcement Update

## Introduction

During 2013 changes were made to the legislative framework in relation to occupational health and safety based on the Professor Löfstedt's report **"Reclaiming health and safety for all: An independent review of health and safety regulation"** which identified 4 broad options that could be considered for consolidating regulations that apply to business and the research report, written by Richard Matthews QC **"Consolidation: the practicality and effects of the options for consolidating health and safety regulations."**

In early 2013, the Government announced that in response to the Löfstedt and Matthews reports that during 2013 and 2014 it intended to:

- Exempt the self-employed from health and safety legal requirements in respect of risk assessment, policy etc;
- Simplify current accident reporting mechanisms;
- Remove the current requirements on employers in respect of first aid qualifications; and
- Review with a view to withdraw 15 Approved Codes of Practice.

## Repeals & Revocations

On 4 March 2013 the Health and Safety (Miscellaneous Repeals, Revocations and Amendments) Regulations 2013 were laid before Parliament and came into force on 6 April 2013. These Regulations repeal 1 Act and revoke 12 instruments (plus a related provision within the Factories Act 1961). These measures were removed because they have either been overtaken by more up-to-date Regulations are redundant or did not deliver the intended benefits.

These changes did not compromise essential health and safety protections. The aim was to make the legislative framework simpler and clearer.

## Additional Legal Changes

Two revised health and safety regulations took effect from 1 October 2013 that were designed to assist organisations in complying with the law more easily. Neither change altered the duties and responsibilities already placed on employers and those in control of premises. For example, both still have a legal duty to make arrangements to ensure their employees and others receive immediate attention if they are injured or taken ill at work.

## First Aid

The Health and Safety (First Aid) Regulations 1981 were amended to remove the requirement for the HSE to approve first aid training and qualifications. The change is part of HSE's work to reduce the burden on businesses and put common sense back in to health and safety, while maintaining standards. The new approach applies to businesses of all sizes and from all sectors. In addition the Approved Code of Practice in respect of the Health and Safety (First-Aid) Regulations 1981 was revised.

## RIDDOR

Changes to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995 through the new RIDDOR 2013 were introduced designed to clarify and simplify the reporting requirements, while ensuring that the data collected gives an accurate and useful picture of workplace incidents.

The main changes within RIDDOR were in the following areas:

- The classification of 'major injuries' to workers has been replaced with a shorter list of 'specified injuries'
- The existing schedule detailing 47 types of industrial disease replaced with 8 categories of reportable work-related illness
- Fewer types of 'dangerous occurrence' require reporting

The amendments to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995 do not affect how an incident at work is reported and the criteria that determine whether an incident should be investigated.

## The Enterprise and Regulatory Reform Act 2013

The Enterprise and Regulatory Reform Act 2013 came into force on 1 October 2013 amending the Health and Safety at Work Act 1974, removing a worker's right under civil law to claim compensation following an accident or injury caused by their employer's breach of health and safety regulations.

The intention of the Government was to tackle the 'compensation culture' and protect employers from paying compensation where they did all that was reasonably expected to protect the health and safety of their employees.

## Approved Codes of Practice

In addition to these changes to the law, the HSE also announced changes to a number of Approved Codes of Practice including:

### Health & Safety Management

The HSE have announced the completion of new online guidance to replace the current **'Successful Health and Safety Management'** (HSG65). The new guidance microsite aims to provide a simpler process for organisations to understand and comply with health and safety regulation, and explains the new model of: **'Plan, Do, Check, Act'**, replacing the previous mantra of: 'Policy, Organisation, Planning, Audit and Review'.

The microsite is divided into 4 distinct sections: elements of managing health and safety; are you doing what you need to; delivering effective arrangements and resources. Each section aims to target a different type of reader from business leaders, owners and line managers to health and safety managers, workers and their representatives. In addition to the introduction of microsite, a hard copy resource will also be made available.

### Legionella

The HSE in November 2013 revised the Legionnaires' disease Approved Code of Practice (ACOP) (L8), removing the technical guidance which had been published separately online enabled the HSE to update the technical guidance to incorporate technological advancements and separate it from general guidance on the regulations.

The revised ACOP provides greater clarity for duty holders on what constitutes the legal requirements and what is guidance. Where possible the terminology has been simplified.

The ACOP was one of several identified for review and revision; consolidation; or withdrawal, in line with a recommendation by Professor Löfstedt.

### Workplace Health, Safety & Welfare

The Workplace (Health, Safety & Welfare) Regulations 1992 cover a wide range of basic health, safety and welfare issues and apply to most workplaces (except those involving construction work on construction sites, those in or on a ship, or those below ground at a mine).

The revised and updated version of the ACOP takes account of changes to legislation since the previous edition was published, including:

- Work at Height Regulations 2005;
- Construction (Design and Management) Regulations 2007; and
- Health and Safety (Miscellaneous Amendments) Regulations 2002

### Substances

The 6th edition of The Control of Substances Hazardous to Health Regulations 2002: the Approved Code of Practice and guidance takes account of regulatory changes following the introduction of the EU Regulations for REACH (Registration, Evaluation, Authorisation and restriction of Chemicals) and CLP (European Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures).

## Electricity at Work

HSG85 Electricity at work: safe working practices - covers the key elements to consider when devising safe working practices and is for people who carry out work on or near electrical equipment. It includes advice for managers and supervisors who control or influence the design, specification, selection, installation, commissioning, maintenance or operation of electrical equipment. This 3rd edition updates the guidance and provides sources of further information.

## Withdrawal of ACOP's

The HSE withdrew a number of ACOP's and Guidance Documents (HSG) including:

- Health surveillance at work (HSG61);
- Management of Health and Safety at Work Approved Code of Practice (ACOP – L21);
- Design of plant, equipment and workplaces. Dangerous Substances and Explosive Atmospheres Regulations 2002 (L134);
- Storage of dangerous substances. Dangerous Substances and Explosive Atmospheres Regulations 2002 (L135);
- Control and mitigation measures. Dangerous Substances and Explosive Atmospheres Regulations 2002 (L136);
- Safe maintenance, repair and cleaning procedures. Dangerous Substances and Explosive Atmospheres Regulations 2002 (L137&); and
- Dangerous Substances and Explosive Atmospheres Regulations 2002 (L138).

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## Construction Site Safety

The HSE aim to address the poorer standards upheld in the construction sector. The action involved unannounced inspections of sites across the country. Particular areas of concern include falls from height, structural stability, asbestos, respirable silica and welfare and site housekeeping. The purpose is to increase sector awareness of the HSE expectations and where material breaches were identified to use enforcement action as outlined in the Enforcement Management Model.

HSE statistics highlight that construction workers are 4 times more likely to be killed at work than the average worker. In particular, falls through roofs account for 20% of all fatalities in the construction sector.

## A Review of Slips & Trips

The HSE have launched a new and improved webpage [www.hse.gov.uk/slips/](http://www.hse.gov.uk/slips/) providing detailed information and guidance on slip and trip regulations to raise awareness and reduce the number of incidents.

Slip and trips make up more than half of all reported major injuries, despite the fact the number of accidents have decreased in the past decade.

## Fee for Intervention (FFI)

Under the Health and Safety (Fees) Regulations 2012, businesses who are in contravention of health and safety legislation will be charged at a rate of £124 per hour if the HSE is required to make a formal intervention, such as a letter, to rectify a 'material breach'. The charges cover all HSE related costs for inspection, investigation and taking enforcement action. The charges begin at the time of the material breach and end at the point of rectification.

It has been reported that the 3rd set of invoices issued by the HSE under the FFI scheme has generated over £1 million in fees for the HSE between February and March 2013. This is a significant increase of £232,000 since the last invoice run. It is unsurprising, in light of the HSE clampdown on construction site safety, that the construction sector accounts for the largest increase in invoices at 68%.

## Contact Us

We have over 18 years' experience in providing major and global organisations with our tailored solutions and services specialising in Property and the Corporate market. If you would like to find out more about how we can add business value to your organisation please contact us.

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