October 2015 – Health & Safety Legislation Update

October 2015 has been a busy month as far as new health and safety related (and governance) legislation is concerned with the Government enacting a significant number of new statutes whilst continuing to work with the recommendations made by Professor Löfstedt (within his report "Reclaiming health and safety for all: An independent review of health and safety regulation.").

The changes relate to some key areas including:

Deregulation

The Health and Safety at Work etc. Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) Regulations 2015 and the Deregulation Act 2015 (Health and Safety at Work) (General Duties of Self-Employed Persons) (Consequential Amendments) Order 2015

From 1 October 2015, if you are self-employed and your work activity poses no potential risk to the health and safety of other workers or members of the public, then health and safety law will not apply to you.

Under the above regulations and order self-employed persons (i.e. persons who do not work under a contract of employment and work only for themselves) who work within low risk or undertake low risk activities where there are no risks to the health and safety will no longer have to comply with health and safety legislation. The HSE estimate that this will apply to 1.7 million self-employed people like novelists, journalists, graphic designers, accountants, financial advisors and dress-makers, where their work does not pose a risk to the health and safety of others.

David Hills, Ark Workplace Risk's Senior Director suggests that *"Whilst this only affects self-employed persons; organisations who manage their contractors with the requirement for the provision and delivery of risk assessments and method statements may be affected and will have to consider how such contractors are managed through their contractor management and approval processes."* He continued, *"Many will want to maintain their current procedures and arrangements in respect of requesting such information from all contractors although we would urge caution and suggest that a more flexible approach should be adopted."*

Smoke and Carbon Monoxide Alarms

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

From the 1 October 2015, under these new regulations, private rented sector landlords are required to ensure that at least one smoke alarm is provided on each storey of the premises in which there is a room used wholly or partly as living accommodation (a bathroom or lavatory is to be treated as a room used as living accommodation under these regulations and a room includes a hall or landing;) and a carbon monoxide alarm is provided in any room of a premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance.

The regulations also require that checks are made by or on behalf of the landlord to ensure that each prescribed alarm is operational (in proper working order) on the day that any new tenancy begins.

The regulations are to be enforced by the local housing authority and subject to notice and civil conviction, landlords could be liable for a penalty of up to £5,000.

David Hills, Ark Workplace Risk's Senior Director suggests that:

"The introduction of these regulations do not affect the current fire safety requirements under the UK fire safety requirements (The Regulatory Reform (Fire Safety) Order 2005, The Fire Safety (Scotland) Regulations 2006 and the Fire Safety Regulations (Northern Ireland) 2010) as well as the respective Housing legislation." He continued *"Owners of private residential accommodation should ensure they have installed such alarms and very importantly that they review their fire and general risk assessments to ensure that the new requirements take into account the introduction of these regulations and ensure that records are maintained of such checks."*

Smoke Free Vehicles

The Smoke-free (Private Vehicles) Regulations 2015, the **Smoke-free Premises etc. (Wales) (Amendment) Regulations 2015 (Rheoliadau Mangreoedd etc. Di-fwg (Cymru) (Diwygio) 2015)** and the **Smoke-free (Vehicle Operators and Penalty Notices) (Amendment) Regulations 2015,**

Coming into force on the 1 October 2015, these new regulations and amendments aim to protect children (under 18) from exposure to tobacco smoke whilst travelling within private vehicles. The regulations therefore make it an offence to smoke in a private vehicle with someone under the age of 18 present. In addition the driver shall have committed an offence if they fail to prevent smoking within a private vehicle whilst someone under the age of 18 present.

There are obvious exemptions including the fact that smoking in a convertible, with the roof down is not included as is smoking within a motor home or caravan when they are being used as a home.

Under the new Smoke-free (Vehicle Operators and Penalty Notices) (Amendment) Regulations 2015, the following persons have a similar duty to that of the driver (as detailed above) to ensure that smoking is prohibited within a vehicle whilst someone under the age of 18 is present;

- Any person with management responsibilities for the vehicle; and
- Any person on a vehicle who is responsible for order or safety on it.

David Hills, Ark Workplace Risk's Senior Director suggests that "*Organisations who allow or require staff to use their private vehicles for work purposes should ensure that they provide guidance to their staff that advises them of the change in the law and the need to prohibit smoking whilst at work, especially where they are with someone under the age of 18."*

Construction Safety

The Deregulation Act 2015 – amends sections 11 and 12 of the Employment Act 1989 and exempts turban-wearing Sikhs from any legal requirement to wear head protection at a workplace. A workplace is defined broadly and means any place where work is undertaken including any private dwelling, vehicle, aircraft, installation or moveable structure (including construction sites).

There is a limited exception for particularly dangerous and hazardous tasks performed by individuals working in occupations which involve providing an urgent response to an emergency where a risk assessment has identified that head protection is essential for the protection of the individual e.g. such as a fire fighter entering a burning building, dealing with hazardous materials.

The exemption applies only to head protection and Sikhs are required to wear all other necessary personal protective equipment required under the Personal Protective Equipment Regulations 1992. The exemption does not differentiate between employees and other turban-wearing Sikhs that may be in the workplace, e.g. visitors. However, it applies solely to members of the Sikh religion and only those Sikhs that wear a turban.

Employers are still required to take all necessary actions to avoid injury from falling objects by putting in place such safe systems of work, control measures and engineering solutions e.g. restricting access to areas where this may be an issue. Where a turban-wearing Sikh chooses not to wear the head protection provided, the exemption includes a limitation on the liability of the duty-holder should an incident occur.

Working Time

Recently the European Court of Justice ruled on a case brought by the Spanish Government in respect of time taken to travel to and from work for non-office based employees which suggests that such time is now considered to be "working time." This means that organisations employing peripatetic workers who are required to travel to client's sites and/or buildings have to consider this time under the EU working time directive.

David Hills, Ark Workplace Risk's Senior Director suggests that "Clearly the UK government will have to consider this in respect of the Working Time Regulations (and their subsequent amendments), but in the meantime organisations should consider and take into account the time taken by staff who travel to and from remote sites and premises and count this within their working time and ensure that appropriate arrangements are in place to monitor and manage such time." He continued "Whilst the Institute of Directors have bemoaned the ruling suggesting that it would increase costs for UK businesses, the case was brought on the auspices of protecting the health and safety of employees."

Other issues

Slavery and Employment

From October 2015 under the **Modern Slavery Act 2015**, organisations with a turnover of £36million or more which are incorporated in the UK or carry on a business within the UK will have to produce annual reports on the steps that they are or have taken during their financial year to ensure that slavery and human trafficking are not taking place within their own business or more importantly within their supply chain.

David Hills, Ark Workplace Risk's Senior Director suggests that "*The act will give law enforcement the tools to fight modern slavery, ensure perpetrators can receive suitably severe punishments for these crimes and enhance support and protection for victims."* He continued *"Organisations who fall under this Act will have to ensure that appropriate measures are in place within their supplier approval and management systems to monitor their suppliers and ensure that rigorous checks are in place to verify the validity of claims and statements from suppliers. You cannot just rely upon the word of a supplier to confirm that they are not engaging in slavery or human trafficking, organisations must go further and we would recommend independent validation and verification measures to confirm such claims.*" He went on to say that "*Whilst this is an obvious burden on businesses, organisations cannot afford to brush this under the carpet.*"