



## April 2009 Regulations, Legislation and Codes of Practice

### 6 April 2009 Regulation Changes – Summarised

#### Health and Safety (Miscellaneous Amendments and Revocations) Regulations

- the Regulations hope to rectify issues brought about since new Regulations concerning the manufacture and storage of explosives came into force in 2005 (April).
- the Regulations aim to reduce administration which results from explosives legislation by lengthening validity periods of explosives certificates and storage licenses
- they will also revoke redundant and outdated local mining Regulations and amend an omission in the Control of Noise at Work Regulations.

#### Factories Act 1961 and Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations

Presently in consultation changes to these Regulations would remove several legislative form filling requirements that currently apply to most businesses operating from a factory, office or shop (and certain railway premises) in Great Britain.

Whilst the Regulations would not bring in new requirements; consultation covers whether or not the following are still required or if they could be removed without detriment to current health and safety protection.

- **Premises Notification** - employers are currently required to fill out a form notifying the HSE or their local authority of any factory, office or shop premises, and certain railway premises, where employees work
- **The general register** - factory employers are required to maintain a set of records and forms called the general register.

#### The Health and Safety Information (Amendment) Regulations

- under these Regulations employers are required to provide health and safety information, such as the contact details for the local health and safety enforcing authority office and Employment Medical Advisory Service (EMAS) office, to their employees
- this is done by displaying posters in the workplace or giving each employee an approved leaflet
- the amendments will allow the HSE to approve and publish new posters and leaflets which do not require the addition or updating of enforcing authority and EMAS contact information by businesses displaying them.

#### Chemical (Hazard Information and Packaging for Supply) Regulations 2009 – to be known as CHIP 4

- the current CHIP Regulations need to be amended because of the adoption and entry into force of the European Regulation on the Classification, Labeling and Packaging of Substances and Mixtures, known as the CLP Regulation
- the CLP Regulation adopts in the European Union, the internationally agreed Global Harmonised System (GHS) for the classification and labeling of chemicals
- although the CLP Regulation will be directly acting on Member States, without the need for transposition, the anticipated amendments will allow CHIP to be aligned with the transitional period of the CLP Regulation. It will ensure that the provisions of the CLP Regulation can be imposed in Great Britain, throughout the transitional period and beyond.



## HEALTH & SAFETY NEWS

<b>Issue</b>	<b>1</b>
<b>Date:</b>	<b>8 April 09</b>
<b>Page:</b>	<b>2 of 6</b>

### **New ACAS Code of Practice**

The new ACAS Code of Practice on Disciplinary and Grievance Procedures was implemented on 6 April 2009. The approval of this code, which is still in draft form, is understood to be a formality and employers are being advised to familiarise themselves with it.

The Code replaces the statutory disciplinary and grievance procedures, introduced in October 2004, which were repealed in their entirety on 6 April 2009.

Information on the new Code is available from ACAS to help employers capture the guidance and principles within their disciplinary and grievance procedures.

The main changes for disciplinaries are that:

- the disciplinary procedure will not apply to redundancy dismissals or the non-renewal of a fixed term contract. Employers, however, are still encouraged to follow a fair procedure in such cases
- the disciplinary procedure will not apply to the right of appeal which is not restricted to the dismissal stage – any disciplinary penalty, even an oral warning, should be 'appealable'.

The main change for grievances is that the rules which may have debarred employees from bringing tribunal claims if they have not raised a grievance under the 2004, have been removed. However, compensation may be reduced if employees have not brought a grievance.

Although the old statutory procedures have been repealed with effect from 6 April 2009 they will continue to apply after this date if:

- on or before 5 April the statutory disciplinary procedure applies in that the employer has dismissed the employee, or taken relevant disciplinary action or the employer has written the letter inviting the employee to a disciplinary hearing; or
- in the case of the statutory grievance procedure, the action that forms the basis of the employee's complaint occurs wholly before 6 April 2009 or begins on or before 5 April and continues beyond that date if the employee presents his claim to the Employment Tribunal on or before 4 July 2009 (or 4 October 2009 in the case of equal pay or redundancy claims).



<b>Issue</b>	<b>1</b>
<b>Date:</b>	<b>8 April 09</b>
<b>Page:</b>	<b>3 of 6</b>

### Prosecutions

#### **Newham Haulier Fined for Fatal HGV Incident**

Following a fatal accident to a lorry driver at a depot in East London, the Health and Safety Executive (HSE) is warning employers not to ignore basic safety precautions.

The incident concerned Joseph Caruana, a driver in the employment of John Peter Wootten, then trading as AEP Aggregates. Mr Caruana was unloading shingle at the RMC Readymix Ltd depot in Tower Hamlets. After backing his articulated vehicle up a ramp into the unloading bay, he activated the tipping mechanism. He had engaged the tractor handbrake but did not use the trailer's parking brake.

He had also failed to release the trailer's tailgate and, as a consequence, the weight caused by the build up of shingle caused the vehicle to skid down the ramp. Mr Caruana saw this and attempted to jump into the cab of his vehicle. Unfortunately, he did not have time to shut the door and was thrown from the vehicle when it jack-knifed. He was crushed under the wheels of the trailer and died at the scene.

The HSE investigated the accident and prosecuted the employer, John Peter Wootten. Wootten pleaded guilty to breaching sections 3(1)(a) and 10(1) of the Management of Health and Safety at Work Regulations 1999. These breaches concerned his failure to make a suitable and sufficient assessment of the risks to his employee's health whilst at work, and his failure to provide that employee with information on the result of such an assessment, the preventative and protective measures to be taken to avoid an accident and the emergency procedures to follow in the event of imminent danger. He was fined £4,000 and ordered to pay costs amounting to £750.

HSE Inspector, Charles Linfoot, commented that hauliers should ensure they have safe systems of work in place, including risk assessments, appropriate training and adequate supervision of all workers. He was appalled that this fatality had occurred through the neglect of a few basic safety precautions.

#### **HSE Prosecutes Scaffolders for Injury Caused by Falling Pole**

Construction companies and properties developers have been warned by the Health and Safety Executive (HSE) to ensure they operate safe systems of work when erecting scaffolding. This warning follows an incident in which a scaffold pole fell and gashed the leg of a female pedestrian who was passing by. As a consequence, the HSE is also issuing the reminder that, when work is taking place on scaffolding, the public should be segregated from dangerous overhead activities.

The incident that prompted the HSE's warning occurred on 18 May 2008. Scaffolding was being erected on the pavement at the front of the Metro Public House in Coventry City Centre. Pedestrians were passing close by as the pavement had neither been closed nor restricted.

Two qualified scaffolders were working at a height of around 15ft (5m) above ground level. One of the workers momentarily leant a short pole against a guardrail, but it fell as he turned away. A member of the public was struck by the falling pole which weighed several pounds. The impact caused a wound to the lady's leg which was severe enough to require hospital treatment.

One of the workmen had been given the task of asking pedestrians to wait whilst working on the pavement to pass materials and poles up to his colleagues. The problem was that the task was not an easy one for one person, given that people were approaching the scaffolding from both directions. Consequently, whilst engaged in helping his colleagues, he did not observe the lady in question approaching and consequently did not request her to stop.

At Coventry Magistrates' Court, Sky Scaffolding (Midlands) Ltd of Budbrooke Road Industrial Estate, Warwick, pleaded guilty to breaching regulation 10(2) of the Work at Height Regulations 2005 and regulation 3(1)(b) of the Management of Health and Safety at Work Regulations 1999. The breaches concerned the company's failure to take suitable and sufficient precautions to prevent a person being struck by falling objects or materials, and also its failure to carry out a suitable and sufficient risk assessment.



## HEALTH & SAFETY NEWS

<b>Issue</b>	<b>1</b>
<b>Date:</b>	<b>8 April 09</b>
<b>Page:</b>	<b>4 of 6</b>

The company claimed it had commenced work at 07.30 hrs in order to avoid the busiest periods of pedestrian traffic. However, work was still underway at 09.20 hrs, and the scaffolders had just decided to suspend work because of the amount of pedestrian traffic. They were in the process of securing materials on the upper level of scaffolding when the incident occurred.

Sky Scaffolding (Midlands) Ltd was fined £4,000 in total and ordered to pay costs of £1,761.

### News

#### Inspections Reveal Health & Safety Improvements

Targeted inspections by the Health and Safety Executive (HSE) on construction sites currently undergoing refurbishment, repair or maintenance projects, have shown a good standard of health and safety. The inspections, which focused on Norfolk, Suffolk and Essex, were part of the Shattered Lives and Hidden Killer campaigns and revealed a big improvement since the last round of visits in 2008.

The initiative was enforcement-led with the aim being to seek out poor performance.

During the inspection, HSE inspectors looked at the following areas in particular:

- working at height – identification and planning issues to ensure that appropriate precautions were in place
- equipment - correct installation/assembly, inspection, maintenance and correct usage
- sites – well organised to avoid trips and falls
- walkways and stairs – free from obstructions
- work areas – clear of unnecessary materials and waste
- asbestos removal – risks managed correctly and carried out in accordance with the Control of Asbestos Regulations 2006
- workforce – awareness of risk control measures.

A number of Prohibition Notices were served during the inspection period.



<b>Issue</b>	<b>1</b>
<b>Date:</b>	<b>8 April 09</b>
<b>Page:</b>	<b>5 of 6</b>

## Reports

### **Management of Risk of Violence in Licensed and Retail Premises**

Through funding received from the HSE under the 'Local Authorities (LA) and HSE Working Together Strategic Programme' Westminster City Council (WCC) commissioned a study looking into the management and prevention of work-related violence in retail and licensed premises. WCC identified crime and disorder and the risk of violence to staff and customers as significant issues in licensed and retail premises, and as such commissioned the study. The outcome of the study was the publication of a comprehensive literature review and the production of a good practice toolkit on preventing violence in retail and licensed premises.

The study found that violence and aggression in the workplace suffers from under-reporting, however it is definitely a significant issue, particularly in the licensed and retail trade. This was borne out through the findings of the literature study. What is not so clear is the issue of whether violence is a health and safety or a crime issue? This is also explored in the literature review.

Employers have a duty under the Health and Safety at Work etc. Act 1974 (HSWA) to ensure as far as is reasonably practicable the health, safety and welfare of employees and anyone affected by their business. This includes controlling the risk of potential violence. Further to HSWA, the Management of Health and Safety at Work Regulations 1999 (MHSW) requires employers to consider risks to employees from exposure to reasonably foreseeable violence. Other relevant legislation in relation to managing the risk of violence in the workplace includes the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995, the Safety Representatives and Safety Committees Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996.

Factors to be taken into account when looking at the risk of violence in the workplace include:

- type of work the staff are involved in
- staff training
- location of the premises, design of the job and work environment factors
- special groups of staff who may be more at risk, and whether they need any additional or special interventions to manage the risk.

The study recommends several measures that may be used to control and manage the risks of violence in retail and licensed premises. These are summarised as follows:

#### **Raising Awareness**

Violence in the workplace should be highlighted as a major health and safety concern in certain industries. It should be made clear to duty holders that workplace violence should be assessed and managed in the same way as other workplace hazards. Staff should also be made aware that violence in the workplace is not acceptable, and this in turn should increase reporting of such incidents.

#### **Improving Reporting**

More effective reporting of violent incidents in the workplace needs to occur in order to obtain a better understanding of the extent of the problem. Staff should be encouraged to report violent incidents.

#### **Using Risk Assessment**

The use of risk assessment as a means of managing and preventing violence in the workplace should be promoted, with Environmental Health Officers assisting duty holders in this process.



### **Combining Measures and Working in Partnership**

Duty holders should be encouraged to use a combination of measures in order to obtain a solution to the control of the risk of violence that is specific and tailored to their own business. The formation of partnerships between businesses faced with the risk of workplace violence and the Police and Local Authorities should also be promoted.

In addition to the above four measures the Report contains a wealth of information on workplace violence. The information is backed up numerous references to case law and other articles.

### **Management of Health and Safety in Care Homes 2009/2010**

The Health and Safety Executive (HSE) has published a new instruction which gives guidance for visiting staff on inspecting the management of health and safety in care homes in 2009/2010. This is in response to steadily increasing numbers of accidents in such premises, highlighted through the RIDDOR accident statistics. 2007/08 saw a total of 4503 injuries reported for employees and 1049 to service users in the care home sector.

A series of inspections in 2008/2009 highlighted poor compliance with health and safety requirements. A sample of 74 HSE inspections carried out during this period in England and Wales resulted in a total of 65 improvement notices being served, in relation to bedside rails (26), legionella (18), falls/windows (9) as well as hot water/surfaces, manual handling/training, LOLER, latex and the management of asbestos. As well as this the police undertook a major investigation into alleged cases of neglect in a number of care homes in Wales.

As such the HSE is writing to every care home in England, Scotland and Wales to remind them of their responsibilities under health, safety and care legislation. In addition to this, the Health and Social Care Services Unit (HSCSU) held 18 seminars for care home staff in 4 regions – Scotland, Yorkshire and the North East, South West, and East and South East emphasising health and safety requirements for the care home sector.

Further to the seminars the HSE advises a rigorous inspection campaign concentrating in the areas where seminars were held, however inspections in other areas would also be welcome. Being unfeasible to inspect each and every care home, it is anticipated that a cross-section of the complete list of care homes be undertaken, having due regard to the quality rating awarded by the Commission for Social Care Inspection (CSCI).

Local authorities should contact [publicservicesector@hse.gsi.gov.uk](mailto:publicservicesector@hse.gsi.gov.uk) for information on their individual areas.

It has been shown that individual and smaller groups of care homes appear to have higher rates of non-compliance. Inspectors visiting larger/corporate care providers should consult SIM 07/2008/06 (also known as LAC 79/10) – the HSE national lead for corporate care providers. Consideration should be given to issuing a press release relating to the campaign and liaison should also be made between inspectors and the relevant sister agency – in England and Wales the CSCI, the Care Commission in Scotland and the Care and Social Services Inspectorate in Wales.

Inspectors are urged to undertake a full inspection of the care home, paying particular attention to the areas covered in the care home seminars, namely those identified as being the most troublesome:

- manual handling (to include reviewing individual handling assessments)
- slips and trips
- risks to the service user – including risks associated with hot water, hot surfaces, bedside rails and falls from windows
- legionella

As well as this it is useful to include dermatitis, asbestos management, challenging behaviour and migrant workers.

Annex 1 to the HSE document outlines guidelines for inspectors undertaking inspections of care homes.

Annex 2 provides a list of information sources for inspectors.

The inspections are to be carried out between April 2009 and March 2010.