Health and safety legislation “in the pipeline”

Noise

Existing regulations Workers receive protection under Noise at Work Regulations 1989. Under the 1989 Regulations, employers have a responsibility to reduce the risk of damage to their employees’ hearing as far as reasonably practical. Employers are required to make noise assessments, reduce noise exposure at source and provide noise-awareness information and training to their staff.

At present, under the 1989 Regulations, at exposure levels in excess of 85 decibels (dB) (the ‘first action level’), employers must supply hearing protection to those who ask for it. At levels in excess of 90 dB (the ‘second action level’) hearing protection is mandatory in designated ‘ear protection zone’. To put these values into some sort of perspective, see ‘Noise levels’ below.

New EU rules In 2006 a new EU Directive comes into force. The Directive (2003/10/EC) lowers the existing action levels by 5 dB – to 85 and 80 dB respectively. As a further safeguard, the new legislation measures noise exposure on a weekly rather than a daily basis. If a reduction of 5 dB seems insignificant, it is not. The decibel scale is not linear but logarithmic, such that a reduction of 3 dB represents a halving of sound energy and a doubling of exposure time before the same degree of damage is reached. UK implementing legislation has been consulted on and is expected to come into force in February 2006.

Practical measures According to the HSE, the new Directive will also see a rise in the number of employees eligible for free hearing tests, from 273,000 to an estimated 1,097,000. Noise induced hearing loss best presents on an audiogram which will typically show a notch, signifying a deficit, at around 4 kHz. Initial damage does not impinge on normal conversation; only later, as the damage spreads to a wider frequency range, do more obvious signs of deafness appear.

Diagnosis guidelines Guidelines on the diagnosis of noise-induced hearing loss for medico-legal purposes have been drawn up by the Medical Research Council Institute of Hearing Research at Nottingham University. The main requirements are a history of hazardous noise exposure and accompanying hearing impairment, evidenced by a clear audiometric notch. Disability is then calculated by assessing hearing loss in the main speech frequencies (1-3 kHz) after 48 hours without noise exposure. In recent years, most compensation has been provided by settlements between unions and insurance companies, with hearing losses of 10-14 dB receiving compensation. The Department of Social Security awards compensation only once lip reading becomes necessary.

Vibration

Proposals for a new Control of Vibration at Work Regulations implementing the Physical agents (Vibration) Directive (2002/44/EC): Hand-arm Vibration The regulations are intended to come into force by July 2005.

Hand-arm vibration is a major cause of occupational ill-health. Around 3,000 new claims for Industrial Injury Disability Benefit are made each year in relation to vibration white finger. The courts have also awarded large

sums of compensation for the disease in recent years including an estimated £3bn for 165,000 ex-miners, and most recently £212,000 for a railway employee.

The Control of Vibration at Work Regulations will require employers to take action to prevent their employees from developing diseases caused by exposure to vibration at work from equipment, vehicles and machines.

Two distinct types of vibration hazard are covered by the proposed regulations:

- Hand-arm vibration affects people who use hand-held or hand-guided power tools and those workers holding materials that vibrate when fed into machines.
- Long-term exposure to high levels of hand-arm vibration can lead to a range of disabling conditions including vibration white finger, permanent loss of feeling in the fingers and painful joints in the hands, wrists and arms.

The regulations must come into force by July 2005 to implement the European Directive on time. UK negotiators played a significant role in developing a much more practicable Directive than was originally proposed.

The original proposal included a whole-body vibration exposure limit value which would have placed severe restrictions on industry. The UK negotiated a substantial increase in the exposure limit value to a more acceptable and workable level. The HSE is working with industry to collect more data on whole-body vibration levels but initial indications are that most agricultural and industrial work activities should be able to comply with the exposure limit value. The UK also negotiated a transitional period for the exposure limit values up to 2010 (with a further four years to 2014 for the agriculture and forestry sectors), for work activities where older machinery may be an obstacle to compliance.

The UK also insisted on an option for averaging exposure over a week to allow high exposure on one or two days to be offset by low exposure on others.

Working at Height

The HSE has consulted on proposed new working at height regulations. Every year, 50-60 workers are killed as a result of a fall from height, with some 4,000 workers suffering serious injury. The draft regulations adopt a risk-based approach to working at height, with risk assessment being the key to proper planning and organisations of all work at height.

The draft regulations propose that the following three key steps be considered before carrying out work at height:

- If you can avoid the need to work at height then do so - with a little planning many activities can be conducted safely from the ground;
- Where you can't avoid working at height then you must take steps to prevent falls by either working from a safe place of work at height, or if this is not available, by selecting the most suitable equipment for working at height. You should take into consideration the risks and

factors such as the duration of the work and the environment in which the equipment is to be used; and

- If there is any remaining risk of a fall you should take steps to mitigate the effect, for example by using fall arrest equipment. Risk assessment is the key to the proper planning and organisation of all work at height and should inform the selection and use of appropriate equipment.

Compensation

Consultation ended on 29 March on Home Office proposals to switch payments from the Criminal Injuries Compensation Scheme to companies where employees are injured in a violent attack, suffer trauma as a result of suicide on the railways or are accidentally injured when taking exceptional risk. The Home Office received 100 responses, but ministers are yet to approve the summary and analysis of responses, and decide their course of action. If ministers decide to implement any of the proposals that require legislation, they would be tabled in the Commons committee state of the Crime and Domestic Violence Bill. *Compensation and support for victims of crime,* www.homeoffice.gove.uk/inside/consults/current/index.html

Physical agents

EMFs Adoption of a Directive on electromagnetic fields (EMFs) is imminent. The HSE had earlier amended the proposal into a form that it can support. The proposal is based on risk assessment, exposure control, health surveillance and the provision on information, instruction and training.

Working Time Regulations – "Second Phase"

From 1 August 2003 the Working Time Regulations have been amended to apply in full to all non mobile workers in road, sea, inland waterways and lake transport, to all workers in the railway and offshore sectors, and to all workers in aviation who are not covered by the sectoral Aviation Directive. Mobile workers in road transport have more limited protections. Those subject to European drivers' hours rules 3820/85 will be entitled to 4 weeks paid annual leave and health assessments if they are a night worker. Mobile workers not covered by European drivers hours rules will be entitled to an average 48 hours per week, 4 weeks paid holiday, health assessments if a night worker and adequate rest.

Further to the European Commission's initial consultation paper on the Working Time Directive and its implementation, a "second phase" consultation has been launched and the EC has called on workers' and employers' representatives to negotiate as to the best way to deal with 3 specific areas of working time reform, these being:

- The definition of working time and how to treat time "on-call"
- How to deal with the individual opt-out from the 48-hour maximum limit
- Extending the reference period over which the 48-hour limit is calculated.

The EC has warned that the social partners have 9 months in which to come to an agreement on the best way to proceed and if they decide not to negotiate the Commission is likely instead to propose a new version of the working time directive

In 2003, the European Court of Justice made an important ruling on working time concerning "on-call" activities, such as those of doctors - *Landeshauptstadt Kiel v Jaeger*. The Court concluded that national legislation which treats periods of on-call duty as periods of rest is contrary to the Working Time Directive. This case concerned a German doctor who regularly performed on-call duty which required him to be present in the hospital and to work when he was called upon. This was offset in part by the grant of free time and in part by the payment of supplementary remuneration. He was allocated a room with a bed in the hospital, where he could sleep when his services were not required.

The doctor argued that the on-call duty performed by him in the emergency department must in its entirety be deemed to constitute working time. The Court considered that the decisive factor in the concept of working time in this case was that the doctors were required to be present at the place determined by the employer and to be available to the employer immediately. The court concluded that under those conditions a doctor cannot be regarded as being at rest during the periods of on-call duty when he or she is not actually carrying on any professional activity.

The Road Transport Directive will be implemented in the UK. Most likely by March 2005. The new UK regulations will:

- Allow a 4-month reference period for calculating the average 48-hour week, which can be extended to 6 months.
- Allow night workers to work more than 10 hours work for every 24-hour period.
- To take advantage of the changes, there will need to be either a collective agreement, or a workforce agreement at company level between the employer and employees. In addition, mobile workers will still be subject to the limits under EU drivers' Hours rules
- Define "night time" as a period between midnight and 04.00 for drivers and crew of goods vehicles, and 01.00-05.00 for drivers and crew of passenger vehicles
- Permit VOSA (DVTA - NI) to enforce the new regulations; primarily in response to complaints they receive. Their approach will be to educate employers and workers, rather than look to prosecute. Nevertheless, where evidence exists that the rules are being systematically broken, examiners will be at liberty to check working time records at an employer's premises.

In addition, self-employed drivers will not be covered by UK Regulations until March 2009 and voluntary work will not contribute towards the working time of mobile workers under the new Regulations. The Department will consult on the text of new draft Regulations in early June 2004 and the legislation will take effect by 23 March 2005.

Smoking

Regulatory: This issue is becoming more and more prominent in particular in light of the recent Irish ban in pubs and bars.

The European Commissioner for Health, David Byrne, had proposed controversial new European legislation that would ban smoking in bars, cafes and restaurants. The Commission has been discussing the use of employment legislation to ban smoking in all work places, including offices.

The government continues to maintain silence on an Approved Code of Practice on passive smoking at work. The HSC recommended an ACoP to ministers on 5 September 2000, but they asked the HSC to reconsider the implications of an AcoP for the hospitality and small business sectors, and the role that the Public Places Charter might play. The charter is the mainstay of a voluntary approach that the government now appears to favour. In March 2003, the government stated it had no plans to review legislation on worker safety dealing with the effects of passive smoking.

However, there is now discussion as to whether or not Labour will enter the next election with a pledge to ban smoking in public places as party policy.

There is currently no explicit requirement on employers to protect employees from the effects of tobacco smoke – but employers are required under the Health and Safety at Work Act 1974 to provide a safe, clean and healthy working environment for all of their employees. Until a ban is implemented, the onus remains on employers, therefore, to provide an appropriate atmosphere for its employees to work in, in order to promote the health and well-being of its employees.

Civil: Nevertheless, employees who have been exposed to passive smoking at work may be encouraged to take legal action against their employees, following aggressive statements made by charity Action on Smoking and Health (ASH) and personal-injury law-firm Thompsons.

In January, ASH and Thompsons sent a letter to all the UK's leading hospitality trade employers, warning them that the "date of guilty knowledge" under the Health and Safety at Work Act is now past, and that employers should know the risks of exposing their staff to secondhand smoke.

The two organisations have linked up to produce a free helpline and a new leaflet giving advice to employees whose health may have been affected by breathing in other people's smoke at work. The leaflet was distributed through trade unions and tobacco control networks across the country earlier this year: http://www.ash.org.uk/html/workplace/pdfs/ashthompsonsleaflet.pdf

Stress

Stress is now one of the most important employment law and health and safety issues faced by employers. Following a 3-year study, research by the Health and Safety Executive (HSE) reveals that up to 5 million workers in the UK suffer from extreme stress at work.

Stress now constitutes the biggest single issue in TUC personal injury claims and a MORI poll shows that 60% of working adults experience substantial symptoms of stress at work.

The HSE has consulted on their management standards for stress. These may be accessed at http://consultation.hse.gov.uk/consult.ti/StressManagementStandards. The consultation took place from 25 May to 27 August 2004.

The standards will be supported by proposed new HSE guidance built upon the previous risk assessment approach. This is being developed by the HSE to coincide with their launch of the standards in November 2004.

The aims of the HSE are to reduce the incidence of work related illness by 20% by 2010, and to reduce the number of working days lost due to work related illness by 30% by 2010.

Level of Guidance: The management standards on stress are proposed as 'standards' only, as opposed to an Approved Code of Practice. However, the need or otherwise for an Approved Code of Practice is being kept under review.

Drawbacks: One of the main drawbacks in carrying out these management standards would be in relation to the administration of the various questionnaires and different issues raised. It is uncertain whether or not the HSE has realistically estimated the time and costs involved in this into account, especially as risk assessments for stressors will have been already carried out by industry and measures put in place to reduce this stress under current health and safety legislation and guidance.

Where a company has, as is required, a generic risk assessment in place, has implemented the precautionary measures this risk assessment illustrated, and has the option of an individual risk assessment and counselling where necessary, the management standards may be interpreted as requiring a level of individual enquiry which might put an unnecessary and excessive cost on industry.

The implementation of these stress management standards does appear to be on schedule for the end of 2004. Employers will need to take on board this HSE guidance in order to provide best practice in health and safety.