

EU and UK Health and Safety Calendar

CMS Cameron McKenna

May 2011

Introduction

This calendar covers some of the key dates for proposed and existing health & safety legislation in the **EU** and **UK** (colour-coded accordingly). For a brief explanation of the different types of EU legislation, please refer to the last page.

The content is ordered as follows:

- 3_ New **UK** and **EU** legislation in force
- 8_ **UK** and **EU** legislation coming into force
- 13_ Key dates for REACH
- 16_ Bills in the 2010-2011 session
- 18_ Current & completed consultations
- 20_ Current HSE initiatives

This calendar is provided by way of general guidance only and does not constitute legal or professional advice. While we aim for it to be as up-to-date as possible, some recent developments may miss our publication deadline and some dates may change at short notice. The calendar is not intended to cover every policy or legislative initiative, only major health and safety issues.

New legislation in force

21 December 2010

Genetically modified organisms (Contained Use) (Amendment) Regulations 2010

These Regulations introduce minor amendments to the existing Genetically Modified Organisms (Contained Use) Regulations 2000.

The amendments are necessary because the European Commission notified the UK that its existing Regulations were not compliant with the Directive that they were intended to implement.

An HSE consultation on the proposed amendments took place between 31 March 2010 and 31 May 2010. For information on the outcome and the substance of the amendments, see the part 5 of the calendar.

For further information on Genetically Modified Organisms, please go to: www.hse.gov.uk/biosafety/gmo/index.htm

1 December 2010

Regulation on the Classification, Labelling and Packaging of substances and mixtures (Regulation (EC) no. 1272/2008) (CLP)

This Regulation is known as the "CLP" Regulation. It came into force on 20 January 2009 and has direct effect in all EU Member States. That means that it requires no 'enabling' UK legislation.

CLP gives effect in the EU to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS), which categorises substances according to their impact on health and the environment. It will soon replace the existing European classification and labelling rules. Manufacturers and exporters should be aware of the imminent deadlines.

CLP introduces an important new notification duty which became mandatory on 1 December 2010.

It requires that importers and manufacturers of hazardous chemicals notify the European Chemicals Agency (ECHA) if the chemicals are being placed on the market. Notification must be made within one month of the chemicals being placed on the market. That means that the first notification deadline was **3 January 2011**.

The following businesses need to know about notification:

- Manufacturers of substances (including isolated intermediates) subject to registration in accordance with the REACH Regulation.
- Importers of substances (e.g. dye products) subject to registration in accordance with the REACH Regulation.
- Manufacturers or importers of substances which are classified as hazardous, irrespective of the quantity involved.
- Importers of mixtures containing hazardous substances, irrespective of the quantity involved.
- Importers of articles containing substances which are subject to registration under REACH Article 7.

For more information on REACH, see Section 3 of the calendar.

For more information on notification, please go to:
www.hse.gov.uk/ghs/liveissues.htm

For further information on the CLP Regulation, please go to:
www.hse.gov.uk/aboutus/europe/euronews/dossiers/ghs.htm

1 December 2010

1st and 2nd Adaptations To Regulation of the Classification, Labelling and Packaging of Substances and Mixtures (Regulation (EC) No. 1272/2008) (CLP)

The Dangerous Substances Directive (67/548/EEC) classified around 7000 hazardous substances. When the CLP Regulation (above) came into force on 20 January 2009, it repealed those classifications but immediately re-enacted them. They now appear in Table 3.2 in Part 3 of Annex VI to the CLP Regulation.

The 1st Adaptation to Technical Progress (ATP) adds several hundred new entries and amends several hundred existing entries in the list of substances and classifications.

The 1st ATP is contained in Commission Regulation No 790/2009 which came into force on 25 September 2009. The implementation date was 1 December 2010, which was the same date for implementation of the CLP Regulation.

The 2nd ATP adopts the changes made in the 3rd edition of the UN 'Purple Book' (which sets out the Globally Harmonized System of Classification and Labelling of Chemicals (GHS)). It is anticipated to come into force in 2011 but there will be an 18 month period before it becomes binding on exporters and suppliers.

For further information, please go to: www.hse.gov.uk/aboutus/europe/euronews/dossiers/dsd3031.htm

6 April 2011

Health and Safety at Work etc. Act 1974 (Application outside Great Britain) (Variation) Order 2011

The Health and Safety at Work etc Act 1974 (Application Outside Great Britain) Order 2001 extended the provisions of the Health and Safety at Work etc Act 1974 beyond the UK's territorial waters to include, for example, offshore installations in the North Sea.

A 2009 Variation Order was introduced to ensure that certain high risk offshore work activities (e.g. the construction of wind farms in Renewable Energy Zones) were also subject to the 1974 Act. However, the Order expired in April 2011.

The 2011 Variation Order simply continues the existing regime.

6 April 2011

The Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007

Regulations 7(4) and (5) of The Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007 came into force on 6 April 2011.

The 2007 Regulations implement [Council Directive 2003/10/EC](#) by extending measures to protect workers from risks related to noise at work to workers in the maritime sector.

Regulation 7(4) provides that an employer must ensure that workers are not exposed to noise exceeding the exposure limit values specified in the Regulations (85 or 137 decibels).

Regulation 7(5) provides that if above-limit exposures are detected following the implementation of preventative measures, the employer must take action to reduce exposure, identify the reasons why the limit has been exceeded and amend the measures taken in accordance with the Regulations to ensure that the limit is not exceeded again.

To view the 2007 Regulations in full please go to:

www.opsi.gov.uk/si/si2007/pdf/uksi_20073075_en.pdf

Legislation coming into force

2011/2012

Proposed Directive amending the Carcinogens and Mutagens Directive (2004/37/EC)

The European Commission has proposed an amendment to the Carcinogens and Mutagens Directive (2004/37/EC). This Directive consolidated the Carcinogens Directive (90/394/EEC) and subsequent amendments.

The first stage of consultation occurred in 2004 and the second stage in spring 2007. It is expected that the EU will soon publish a draft, taking account of comments received during the consultation process.

The main proposals in the second stage of Social Partner consultation are:

- That the scope of the Directive be extended to cover substances classified as Category One and Category Two Toxic to Reproduction.
- That exposure limits for the three substances listed in Annex III of the Directive be reviewed.
- That additional exposure limits for carcinogenic, mutagenic and toxic to reproduction substances be placed in Annex III.

Once the Commission publishes a draft text of a Directive, the HSE will prepare a Regulatory Impact Assessment.

For further information on the proposed Directive please go to: www.hse.gov.uk/aboutus/europe/euronews/dossiers/carcinogens.htm

2011/2012

Potential changes to the Seveso II Directive (96/82/EC) ("Seveso II")

The aim of Seveso II was to prevent major accidents at industrial sites storing or using dangerous substances and to limit the consequences if such an accident did occur. Seveso II was extended in 2003 to cover risks arising from storage of explosives and ammonium nitrate, and risks arising from mining operations.

Currently the application of Seveso II is partly determined by reference to the Dangerous Substances Directive and the Dangerous Preparations Directive (**DSD/DPD**). A new EU Regulation on the classification, labelling and packaging of substances and mixtures, **CLP** (see above), came into force on 20 January 2009. It will be phased in over a transitional period, ultimately replacing DSD/DPD in 2015. This will break the legislative link between Seveso II and the current classification system. A new method of determining the scope of the Directive will need to be found, which will require an amendment to Seveso II.

The Commission adopted a proposal on 21 December 2010 for a new directive that would be implemented by 01 June 2015. The main aim of the proposal is to address the consequences to the regulation of major-accident hazard sites from changes to EU legislation on the classification, labelling and packaging of chemical substances and mixtures. The main proposed changes are as follows:

- align Annex I to the Directive (defining the substances falling within its scope) to changes to the EU system of classification of dangerous substances to which it refers

- include corrective mechanisms to adapt Annex I in the future to deal with situations over time from the alignment where substances are included/excluded that do/do not present a major-accident hazard
- strengthen the provisions relating to public access to safety information, participation in decision-making and access to justice, and improve the way information is collected, managed, made available and shared
- to introduce stricter standards for inspections of installations to ensure the effective implementation and enforcement of safety rules.

For further information on Seveso II please go to:

www.hse.gov.uk/seveso/new-directive-proposal.htm

5 April 2012

Identification and Traceability of Explosives Regulations 2010

The Identification and Traceability of Explosives Regulations 2010 (ITOER) give effect to EC Directive 2008/43/EC on the Identification and Traceability of Explosives for Civil Uses and come into force on 5 April 2012.

Amongst other things, ITOER requires that explosives for civil uses are uniquely identified by means of a human-readable alphanumeric code and bar code. Records of manufacture, import and export must also be kept.

ITOER will supersede two existing regulations, the Classification and Labelling of Explosives Regulations 1983 (CLER) and the Control of Explosives Regulations 1991 (COER), when it comes into force in April 2012.

For further information, please go to:

www.hse.gov.uk/explosives/information/itoer.htm

2012

Physical Agents (Electromagnetic Fields) Directive (2004/40/EC)

This Directive introduces provisions on risk assessment, control of exposure and health surveillance in relation to electromagnetic fields. It was published on 30 April 2004 but subsequently postponed to 2012 so that the European Commission could further consult on its content.

The Directive is based on the values incorporated in the occupational exposure guidelines issued by the International Commission on Non-Ionizing Radiation Protection (ICNIRP).

14 May 2013

Mini revision of the Biocidal Products Directive 98/8/EC

The European Commission is proposing to revise the Biocidal Products Directive (98/8/EC) (BPD). This Directive aims to harmonise the European market for biocidal products/active substances and to provide a high level of protection for humans, animals and the environment.

The Commission is proposing to simplify the Directive's procedures and data requirements, establish a centralised system for product authorisation and bring treated materials under the scope of the Directive.

The main revision will be preceded by a 'mini revision' which will push back the review program from 14 May 2010 to 14 May 2013. This will allow time to complete the review of existing active substances.

For information on the 'mini revision' please go to:
[www.hse.gov.uk/aboutus/europe/euronews/dossiers/
biocide-mini.htm](http://www.hse.gov.uk/aboutus/europe/euronews/dossiers/biocide-mini.htm)

For further information on the main revisions to the BPD
please go to: [www.hse.gov.uk/aboutus/europe/
euronews/dossiers/biocide-mini.htm](http://www.hse.gov.uk/aboutus/europe/euronews/dossiers/biocide-mini.htm)

REACH

REACH (Registration, Evaluation, Authorisation and restriction of Chemicals) is the regime for the control and regulation of chemicals in the EU. It is co-ordinated by the European Chemicals Agency (ECHA) but largely enforced in the UK by HSE, in conjunction with other government agencies.

REACH is designed to provide more information on the risks of chemicals and increase confidence in their safe use. Information about hazards and safe use will have to be passed down the supply chain using improved Safety Data Sheets.

While the Regulations came into force on 1 June 2007, many of its provisions are being 'phased-in' over a period of years. Businesses in a wide range of sectors are affected; it is estimated that there are approximately 30,000 controlled substances being used in the EU. The Regulations require that companies register substances where they are being manufactured or imported (from outside the EU) in quantities exceeding one tonne per year.

Registration can be completed electronically using the REACH-IT tool. It involves submitting a 'dossier' containing information on the substance, its health and/or environmental risks and the precautions that have been taken to minimise those risks.

Companies affected should be planning now for registration requirements that will soon be mandatory. Failure to comply is an offence, which in the UK can be punishable by unlimited fines. Directors can also be held personally liable for breaches.

To benefit from the phased-in deadlines, manufacturers or suppliers had to pre-register their substances by 1 December 2008. 'Late pre-registration' is still available to companies who have started manufacturing or importing substances for the first time since 1 December 2008.

REACH - Key dates

1 December 2010

Phase 1

The general registration timeline is detailed below. On 1 December, 'Phase 1' of the registration requirements come into force; companies manufacturing or importing the following must have registered:

- Substances in quantities exceeding 1000 tonnes per annum.
- Substances in quantities exceeding 100 tonnes per annum and classified as very toxic to aquatic organisms under CHIP [Chemical (Hazard Information and Packaging for Supply) Regulations 2002].
- Substances in quantities greater than 1 tonne per annum and classified under CHIP as Category 1 or 2 carcinogens, mutagens or reproductive toxicants.

1 December 2010

Regulation 1272/2008 on Classification, Labelling and Packaging of Substances and Mixtures (CLP)

1 December 2010 was a key deadline under Regulation 1272/2008 on Classification, Labelling and Packaging of Substances and Mixtures (CLP). CLP introduced new packaging and labelling requirements. Substances covered by CLP should have been re-classified and re-labelled from 1 December 2010. Mixtures (e.g. paints or inks) must be re-classified and re-labelled by 1 June 2015.

Since 1 December 2010, manufacturers and importers have been required to make a Classification and Labelling notification to ECHA. For substances placed on the market

on or after 1 December 2010, the deadline for the notification is 1 month following the date the substance was placed on the market.

If a substance has been on the market for a period prior to 1 December 2010 but taken off for a period prior to that date, the registration deadline is one month from the substance being placed back on the market after 1 December 2010.

Tonnage thresholds do not apply to CLP. Accordingly, businesses normally outside the scope of REACH (on account of dealing in small quantities) will be affected.

1 June 2013

Phase 2

From 1 June 2013, the threshold for registration of substances will decrease from 1000 tonnes to 100 tonnes per annum.

1 June 2018

Phase 3

From 1 June 2018, the threshold for registration of substances will decrease from 100 tonnes to 1 tonne per annum

Bills before Parliament

2010 - 2011

Building Regulations (Review) Bill

This Bill received a first reading in the Commons on 26 May 2010. It makes provision for a review of the Building Regulations 2000.

If it is passed, it will require the mandatory installation of automatic fire suppression systems in new residential premises. The Bill received a second reading in the Lords on 22 October 2010.

2010 - 2011

Fire Safety (Protection of Tenants) Bill

This Bill was presented to Parliament through the ballot procedure on 30 June 2010.

The Bill requires that fire alarms fitted in rental properties should be hard-wired, rather than powered by batteries. It is intended to address the issue of batteries running out or being taken out and not replaced, which is often linked to tragic fire events. A second reading in the commons is scheduled for 19 November 2010.

2010 - 2011

Wind Turbines (Minimum Distances from Residential Premises) Bill

This Private Members Bill received a first reading in the House of Lords on 26 July 2010. If passed, it will make provision for a minimum distance between wind turbines and residential premises according to the size of the wind turbine.

2010 - 2011

Snow Clearance Bill

Providing immunity from prosecution or civil action for persons who have removed or attempted to remove snow from public places, this Bill will offer some protection to 'good samaritans' if passed.

2010 - 2011

Self-Employment (Risk Assessment Exemption) Bill

This Private Members' Bill is intended to exempt self-employed person engaged in low hazard activity from the requirement to conduct a written risk assessment. A second reading is scheduled for 1 July 2011

2010 - 2011

Reporting of injuries, Diseases and Dangerous Occurrences Regulation Bill

This Private Members' Bill is intended to reduce the duties on employers to report matters under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995

2010 - 2011

Low Hazard Workplaces (Risk Assessment Exemption) Bill

This Bill is intended to exempt employers from the requirement to produce a written risk assessment in respect of low hazard workplaces and the premises of those working from their own home with low hazard equipment. A second reading is scheduled for 24 June 2011.

Health and Safety consultants (Qualification) Bill

This Bill will introduce qualification requirements for health and safety consultants and provide accreditation. A second reading is scheduled for 8 July 2011.

2010 - 2011

A new HSE register of health and safety consultants, the Occupational Safety and Health Consultants Register (OSHCR) has already been implemented by the industry in conjunction with the HSE.

Health and Safety at Work (Amendment) Bill

This Bill is intended to amend the Health and Safety at Work etc Act 1974 in respect of systems of risk assessment. While its provisions are not yet published, it is expected to introduce separate requirements for play, leisure and work-based activities; simplified risk assessments for schools and other miscellaneous amendments.

2010 - 2011

Recent consultations

The following is a selection of recent and ongoing consultations and the expected timetable for implementation of proposals, where applicable.

Completed

Proposed Amendment to the Reporting of Injuries, diseases and Dangerous Occurrences Regulations 1995 RIDDOR)

This consultation concerns regulation 3(2) of RIDDOR and stems from Lord Young's recommendations in his 2010 report, "*Common Sense, Common Safety*". Currently, injury to a person at work must be reported to the HSE if that person is incapacitated for three days or more. The amendment, if adopted, would extend that period to seven days.

The consultation seeks views on the proposal and comment on the impact it may have if implemented. The consultation began on 31 January 2011 and will ended on 29 April 2011.

Completed

Consultations on Shop, Classroom and Office Risk Assessment Tools

In response to Lord Young's 210 Report, "*Common Sense, Common Safety*", the HSE designed and implemented a number of online risk assessment tools for low-risk work activities and premises, including shops and offices.

The risk assessments deal particularly with common hazards, such as slips and trips, manual handling and activities such as moving stock. The consultations closed early in 2011.

The demonstration tools can be accessed on the HSE's website www.hse.gov.uk/consult/live.htm

Completed

Proposals for Amendment of the Genetically Modified Organisms (Contained Use) Regulations 2000

Between March and May 2010, the HSE consulted on proposals to amend the Genetically Modified Organisms (Contained Use) Regulations 2000 (S.I. 2000 No. 2831). The consultation was prompted by the European Commission's view that the relevant EU Regulations had not been fully implemented by the UK. The proposals considered by HSE included:-

- A specific requirement for Risk Assessments to take account of the disposal of waste and effluents; and
- A specific requirement to place biohazard signs on doors to facilities containing Genetically Modified Micro-organisms in containment category levels 2, 3 and 4 (i.e. higher risk).

The HSE's report of August 2010 recommended that the proposed amendments be implemented.

HSE campaigns and initiatives

Current

Offshore Division Business Plan 2010/2011

HSE's Offshore Division launched their business plan for 2010/211 in April 2010. The main themes included:

Asset Integrity: A significant number of installations in the North Sea are approaching or have exceeded their original design life expectancy. The Offshore Division is currently carrying out a three-year Ageing and Life Extension Inspection Programme (Key Programme 4 (KP4)) to raise awareness of asset integrity risks, identify duty holders' attitudes to the issue and enforce remedial action where necessary.

Safety Culture: HSE see the involvement of workers in the development of safety culture as a particular area of importance. The Offshore Division will carry out a project during 2010/2011 to ensure that employers and workers understand the legal requirements to inform and consult workers and ensure that employers have adequate systems in place to allow for worker consultation and involvement in safety matters.

Leadership: HSE plan to develop an intervention procedure, which will enable them to assess the scope and depth of health and safety information available to senior leadership (including KPIs). HSE further plan to assess the checks in place to ensure the validity and reliability of that information.

The industry will be keen to see how HSE plan to implement their assessment of leadership, which HSE hope to have developed fully for 2011/2012. We await the Offshore Division's 2011/2012 Business Plan

Current

Safe & Sound at Work Campaign

This new campaign is designed to help businesses improve worker consultation and involvement in relation to health and safety matters.

Employers already have statutory obligations to consult workers in relation to health and safety. This campaign is intended to help businesses learn how to involve their workers and also highlights the benefits of doing so, including lower injury rates and reduced insurance premiums.

The HSE micro-site contains a step by step guide and information on subsidised training (www.hse.gov.uk/involvement/doyourbit/index.htm).

Current

Shattered Lives – Slips, Trip and Falls from Height

This campaign aims to raise awareness and prevent injuries from simple workplace hazards. According to statistics quoted by HSE, over 10,000 employees suffered a major injury in 2008/2009 as a consequence of a slip or trip. 4,000 employees suffered a major injury as a consequence of a fall at height.

The dedicated 'micro site' on the HSE website (www.hse.gov.uk/shatteredlives/) includes guidance and advice in relation to specific industries, including construction, hospitality and social care. The 'STEP' and 'WAIT' toolkits on the site include brief tutorials on the actions that businesses and workers can take to minimise risks.

Current

Vehicle Load Safety

According to HSE, unsafe loads injure more than 1,200 people a year in the UK and cost businesses millions in damaged goods.

The campaign focuses on the securing of loads. It highlights the risks of shifting loads on transport vehicles, damaged lashings and mistaken reliance of curtains, which are merely for weather protection.

The HSE micro-site (www.hse.gov.uk/workplacetransport/loadsafty/) provides detailed guidance and links to Department of Transport guidance on specific load types and vehicles.

Current

Hidden Killer Campaign

This award-winning campaign aims to raise awareness of the risks of asbestos exposure and the types of products that typically contain asbestos fibres. It is aimed primarily at those working in the various trades.

While the dangers of asbestos are well known, its prevalence in everyday seemingly innocuous materials and products is less obvious. This campaign focuses on its 'hidden' nature.

The micro-site (www.hse.gov.uk/hiddenkiller/) contains guidance on what is needed in the way of licences, training and tools prior to working with asbestos. It also contains an interactive tool and quiz highlighting everyday household items that may contain asbestos parts. Additionally, the site highlights the right of workers to be informed if asbestos is in the building they are working on.

EU legislative process in brief

Various kinds of EU legislation exists and it may not always be clear to whom they apply and when. The main types are:

Directives do not automatically come into force in the UK; they must be implemented by legislation at a national level. Until they are so implemented, they are not directly effective against any individual or company. They may, however, be directly effective against a Government or Government body.

Regulations come into force in all EU Member States upon publication. That means that they apply to individuals and companies without legislation on a national level.

Decisions are directed towards specific Member States, companies or individuals. They are binding on those to whom they are addressed.

Further Information

For further information on our health and safety services please contact Jan Burgess on +44 (0)20 7367 3539 or email jan.burgess@cmck-cmck.com

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Health and Safety - what we do

Our expertise

CMS Cameron McKenna is recognised as a leading firm in the area of Health and Safety. We provide specialist advice on regulatory compliance, prosecutions, investigations and corporate governance. We have specialised knowledge of the offshore and energy sector in particular, which faces greater challenges and regulation than most. However, our client base and expertise spans a broad range of sectors, including:

- Aviation
- Construction
- Communications
- Energy
- Leisure
- Manufacturing
- Renewables
- Transport

Regrettably, accidents at work can be serious and sometime result in fatalities. Our clients appreciate the high level of attention and support we are able to offer during what can be a difficult time for any organisation. We are able to provide assistance with every aspect of incident response, including incident investigations, dealing with witnesses, defending prosecutions and advising senior management on relations with the Health & Safety Executive.

Emergency Response team

Our specialist team is on call to provide assistance and respond to incidents 24 hours a day. Our team is qualified to practise in England, Wales and Scotland but also regularly advises clients in relation to international working practices and health & safety matters in other jurisdictions.

Our clients come to us for advice on:

- Health and Safety prosecutions
- Accident Inquiries
- Formal interviews and investigations undertaken by inspectors
- Corporate Manslaughter investigations
- Inquests and Fatal Accident Inquiries
- Appeals against Improvement and Enforcement Notices
- Compliance with UK and European regulatory requirements
- Drafting corporate Health and Safety policies and contract documentation
- Safety aspects of projects and property management
- Due diligence in corporate acquisitions/disposals
- Directors' and officers' personal liabilities
- Management training Courses
- Personal injury defence
- Risk management and training

Recent experience

- Defending Health and Safety prosecutions of client companies.
- Appealing other types of enforcement action against companies (e.g. Prohibition Notices).
- Conducting numerous Coroners' Inquests and Fatal Accident Inquiries - including some of the most high-profile and complex Inquiries to have taken place in relation to offshore incidents.
- Obtaining the first ever award of expenses against the Crown in favour of a client company following a Fatal Accident Inquiry.

- Taking appeals to the High Court of Judiciary.
- Taking appeals on human rights issues to the Privy Council.
- Defending Judicial Reviews.
- Advising on forthcoming Health & Safety legislation.
- Assisting clients in consultations with the Health and Safety Executive and other regulatory bodies, including the Department for Energy and Climate Change.
- Advising clients in relation to Safety Cases, Corporate Governance issues and Directors' duties and liabilities.
- Undertaking transactional due diligence in relation to Health and Safety matters.
- Advising clients on incident investigation, legal privilege and dealing with HSE inspectors.
- Preparing and drafting incident investigation reports.
- Advising clients on media, public relations and reputational issues following incidents.

For more information please contact



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