

# UK and EU Health and Safety Calendar

September 2020

# Introduction

This calendar covers some of the key dates for proposed and existing health and safety legislation in the **UK** and **EU** (colour-coded accordingly). For a brief explanation of the different types of EU legislation, please refer to the end of this calendar. The content is ordered as follows:

1. New **UK** and **EU** Legislation in force
2. Bills before Parliament 2019–2020; and Bills in the 2017–2019 Parliament session
3. The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update
4. REACH
5. Current and completed consultations
6. Current and completed campaigns and 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.

# 1. New UK and EU Legislation in Force

26 March 2020

## **The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350)**

These Regulations make provision for the purpose of enabling a number of public health measures to be taken to reduce the public health risks posed by the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England which causes the disease Covid-19. These Regulations mandated the closure of certain venues and businesses in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England. In accordance with section 45R of the Public Health (Control of Disease) Act 1984, the Regulations were, by reason of urgency, made without a draft being laid before Parliament.

25 March 2020

## **Coronavirus Act 2020**

This Act implements the legal basis for the “lockdown” of citizens and businesses in response to the COVID-19 pandemic and was fast tracked through Parliament in four sitting days.

The Act has three main purposes:

- to give further powers to the government to slow the spread of COVID-19;
- to reduce the resourcing and administrative burden on public bodies;
- to limit the impact of potential staffing shortages on the delivery of public services.

23 January 2020

### **European Union (Withdrawal Agreement) Act 2020**

The Act implements the UK-EU withdrawal agreement into UK law, and makes other provision in connection with the withdrawal agreement. The Act amends the European Union (Withdrawal) Act 2018 to enable most EU law to continue to apply in the UK during the transition period (23.00 on 31 January 2020 until 23.00 on 31 December 2020).

The Act delays the operation of a number of regulations until the end of the transition period. This includes:

### **The Health and Safety (Amendment) (EU Exit) Regulations 2018 (SI 2019/1370)**

The Regulations were made on 18 December 2018 and were due to come into force on 31 January 2020, however this has been delayed until the 31 December 2020.

The Regulations are intended to ensure that EU-derived measures relating to health and safety, which have been incorporated into UK law will continue to be operable after exit day. The Regulations make necessary amendments, by removing what will then be redundant or inappropriate EU references, to various legislation including: the Control of Major Accident Hazards Regulations 2015 (SI 2015/483); the Genetically Modified Organisms (Contained Use) Regulations 2014 (SI 2014/1663); Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 (SI 2015/398); and Offshore Installations and Wells (Design and Construction, etc.) Regulations 1996 (SI 1996/913), reflecting the fact that the UK will no longer be an EU member state on exit day.

22 May 2019

### **The Radiation (Emergency Preparedness and Public Information) Regulations 2019 (SI 2019 No. 703)**

The Regulations transpose the emergency preparedness and response elements of the Euratom Basic Safety Standards Directive (2013/59/Euratom) in relation to premises in which work with ionising radiation takes place by revoking and replacing the Radiation (Emergency Preparedness and Public Information) Regulations 2001.

The Regulations strengthen Great Britain's emergency preparedness and response arrangements for radiological emergencies and will improve public protection and reduce adverse consequences in the event of an emergency. The changes will deliver a consistent approach to radiation emergency preparedness and response across the civil, nuclear, defence licensed and authorised nuclear, and radiological sectors.

29 November 2018

### **The Building (Amendment) Regulations 2018 (SI 2018 No. 1230)**

The amended Regulations give legal effect to the combustible materials ban announced in the summer. The ban means combustible materials will not be permitted on the external walls of new buildings over 18 metres above ground level containing flats, new hospitals, residential care premises, dormitories in boarding schools and student accommodation.

21 April 2018

### **The Personal Protective Equipment (Enforcement) Regulations 2018 (SI 2018 No. 390)**

These Regulations provide for the enforcement of Regulation (EU) 2016/425 of the European Parliament and the Council of March 2016 on personal protective equipment ("PPE"). It came into force on 21 April in the UK and Europe, repealing Directive 89/686/EC.

Employers have duties in relation to the provision and use of PPE. It is equipment that protects employees against health and safety risks in the workplace, PPE includes items such as safety helmets, gloves, eye protection, high-vis clothing, safety footwear, safety harnesses and respiratory protective equipment. The new Regulations put increased obligations on producers, importers, suppliers and distributors to ensure the PPE they supply meets the necessary standards.

The key changes made by the Regulations are as follows:

- Categorisation has been changed from product related to risk related
- Categorisation has been changed for certain product categories, for example, Hearing Protection has now been moved to category III as 'harmful noise' from category II
- PPE is to be provided with an EC Declaration of Conformity
- New EU Certificates shall have a five year expiry date following which renewal is required

21 April 2018

### **The Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018 (SI 2018 No. 389)**

From 21 April 2018, new gas appliances and fittings used to burn gaseous fuels must comply with the new Gas Appliance Regulations if they are to be imported or sold into EU countries.

The Regulation aims to improve the safety of gas appliances supplied within the EU and addresses failings not caught by the Gas Appliances Directive 2009/142/EC.

EU suppliers, manufacturers, distributors and retailers will be impacted by the new changes brought about by the Regulations.

1 April 2018

### **The Pneumoconiosis etc. (Worker's Compensation) (Payment of Claims) (Amendment) Regulations 2018**

This Regulation came into force on 1 April 2018. This Regulation makes amendments to The Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) Regulations 1988.

The effect of this regulation is to increase the amount of compensation paid under the Pneumoconiosis etc. (Workers' Compensation) Act 1979.

1 January 2018

### **Ionising Radiation Regulations 2017 (IRR17)**

The IRR17 came into force on 1 January 2018. They replaced the existing IRR99 regulations, due to the implementation of the EU Basic Safety Standards Directive.

For those working with ionising radiation, the biggest change relates to how employers submit information to the HSE.

This relates broadly to industry and specifically to those that use X-ray devices, radioactive substances and devices containing such substances, as well as working with radon gas.

1 January 2018

### **Regulation (EU) 2017/852 of European Parliament and of the Council of 17 May 2017 on Mercury**

As previously reported in the last calendar, this Regulation establishes conditions concerning the appropriate usage and storage of mercury effective from 1 January 2018. It applies to any mercury containing mixtures and compounds, the manufacture, use and trade of any mercury containing products, restricts the use of dental amalgam and dictates management of any mercury waste to ensure optimum protection of human health and the environment. Its aim is to fill the gaps in existing EU mercury legislation and to ratify the Minamata Convention on Mercury.

It was implemented in the UK via the Control of Mercury (Enforcement) Regulations 2017. The consultation on the Regulations closed on 21 November 2017.



## 2. Bills before Parliament 2019–2021

2019–2021

### **Draft Building Safety Bill published 20 July 2020**

Following the Grenfell disaster in June 2017, the Government is prioritising the urgent reform of the regulatory system for building.

The Bill will introduce a “new era of accountability”, clearly identifying where responsibility for managing safety risks lies throughout the design, construction and occupation of buildings in scope lies. Central to ensuring the proposed new regime is effective will be a powerful new Building Safety Regulator housed within the Health and Safety Executive. The new Regulator will have responsibility for implementing and enforcing the more stringent regime for higher-risk buildings (including high-rise buildings) and will oversee the safety and performance of all buildings.

Owing to it’s complexity, the Bill has been published for pre-legislative scrutiny before it is introduced to Parliament. Once finalised, the Bill will be introduced into the House of Commons or Lords but the industry is being encouraged to change behaviours now – Dame Judith Hackett states that “[the] industry must be in no doubt that it is not enough to wait for the Bill to become law before they implement changes; we expect them to start taking action now”.

2019–2021

### **New Homes (New Development Standards) Bill 2019–2021**

This proposed Bill requires residential developers to meet minimum standards of provision for insulation, broadband connectivity and electric car charging points in new homes; and for connected purposes. The next stage for this Bill is the second reading on 12 March 2021.

2019–2021

### **Anxiety (Environmental Concerns) Bill 2019–2021**

#### **Anxiety in Schools (Environmental Concerns) Bill 2019–2021**

Briefly, the Bill aims to place a duty on the Secretary of State to reduce anxiety about environmental concerns amongst the general population. This is a Private Members Bill proposed to tackle climate change fears and “eco-anxiety”, a recognised mental condition. Sir Christopher Chope, who proposed the Bill, stated that the two Bills will look to address “eco anxiety” and define it.

2019–2021

### **Video Gaming Health and Wellbeing Strategy Bill 2019–2021**

First reading of the Video Gaming Health and Wellbeing Strategy Bill occurred on 20 January 2020. The Bill provides for the Secretary of State to develop and publish a video gaming health and safety wellbeing strategy and provide and develop health and safety advice on video gaming and the provision of further use of visual display units.

2019–2020

### **Environment Bill 2019–2020**

A Bill to make provision about targets, plans and policies for improving the natural environment; for statements and reports about environmental protection; for the Office for Environmental Protection; about waste and resource efficiency; about air quality; for the recall for products that fail to meet environment standards; about water; about nature and biodiversity; for conservation covenants; about the regulation of chemicals; and for connected purposes.

2019–2020

The Bill was introduced in the House of Commons and given its First Reading on 30 January 2020.

The Bill was being considered by a Public Bill Committee but due to COVID-19 restrictions the sittings of the committee have been suspended until further notice. The Committee is scheduled to report by 29 September 2020.

### **Fire Safety Bill 2019–2020**

The Home Office introduced this new bill to improve fire safety in England and Wales in respect of England and Wales. The Bill was introduced on 19 March 2020.

This Bill will amend the Regulatory Reform (Fire Safety) Order 2005.

The Bill clarifies that the responsible person or duty-holder for multi-let, residential buildings must reduce and manage the fire risk for external structures, including cladding and windows and are also responsible for ensuring the fire safety standards applicable to entrance doors to individual flats leading into common parts.

This clarification will allow enforcement action to be taken against building owners if they are not compliant.

The Bill is now due to have its report stage and a third reading on a date to be announced.

# Bills in the 2017–2019 Parliament Session

2017–2019

## **Fire Safety (Leasehold Properties) Bill 2017–2019**

A Bill to require freeholders of certain properties that have failed fire safety tests to carry out remedial work; to make provision for sanctions for such freeholders who fail to carry out such work; to ensure that leaseholders are not held liable for the costs of such work; to make provision for a loan scheme to assist freeholders in carrying out such work; and for connected purposes.

This is a Private Members' Bill and was introduced to Parliament on Wednesday 28 November 2018 under the Ten Minute Rule. The next stage for this Bill will be the Second Reading which is scheduled to take place on a date that has not yet been announced.

*This Bill failed to complete its passage through Parliament before the end of the session, meaning the Bill will make no further progress.*

2017–2019

### **Carbon Monoxide (Detection and Safety) Bill 2017–2019**

According to MP Eddie Hughes, in recent years over 25 people die each year due to carbon monoxide related incidents, 264 people were hospitalised last year and 4000 people go to A&E each year with symptoms of carbon monoxide poisoning. Carbon monoxide is undetectable to the human senses but is easily noticeable by detectors costing less than GBP 15. The Bill proposes to make carbon monoxide detectors mandatory in new build properties and rented properties from social housing to the private rented sector. It further proposes, for the fire authority to have an explicit duty to promote carbon monoxide safety, thereby enshrining current best practice into law.

The Bill was proposed post Grenfell disaster where 80 people tragically lost their lives due to unsatisfactory housing safety.

It had its first reading on Wednesday 13 September 2017 under the Ten Minute Rule, which allows MP's to make their case for a new bill in a speech not exceeding ten minutes. The second reading of the bill was expected on Friday 27 April 2018 however, it was withdrawn.

*This Bill failed to complete its passage through Parliament before the end of the session, meaning the Bill will make no further progress.*

2017–2019

### **Fire Safety Information Bill 2017–2019**

Briefly, the Bill aims to establish requirements for fire safety information of occupants of certain buildings, including high-rise residential buildings. The purpose of the Bill is to require the responsible person for all high-rise residential buildings to hold an annual meeting for all residents to inform them of the fire risk assessment and to address all fire safety issues that may be raised. Currently, the responsible person for any high-rise building is required to have fire risk assessments for the building carried out “regularly”.

The Bill was proposed post Grenfell disaster where 80 people tragically lost their lives due to unsatisfactory housing safety.

The Bill had its first reading in the House of Commons on 20 March 2018.

*This Bill failed to complete its passage through Parliament before the end of the session, meaning the Bill will make no further progress.*

2017–2019

### **Nuclear Safeguards Bill 2017–2019**

Briefly, the Bill aims to establish a domestic nuclear safeguards regime by:

- Creating a legal framework for the operation of nuclear safeguard regimes in the United Kingdom as a replacement for the framework set out from the United Kingdom’s membership to the European Atomic Energy Community (Euratom), used previously;
- Amending the Energy Act 2013 by replacing the current nuclear safeguards purposes of the Office of Nuclear Regulation;
- Providing the Secretary of State with powers to make nuclear safeguards regulations, setting out the details of domestic regimes for nuclear safeguards; and
- Providing the Secretary of State with regulation-making powers to amend certain legislation, which reference parts of existing agreements on nuclear safeguards between the United Kingdom and the International Atomic Energy Agency.

Following agreement by both the House of Commons and the House of Lords, the bill received Royal Assent on 26 June and is now an Act of Parliament.

### 3. The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update

It has been four years since the publication of the *"Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guidelines"* for courts in England and Wales, which came into force on 1 February 2016. The Guidelines apply to all offences sentenced after this date, regardless of the date of the offence itself.

It was predicted prior to the coming into force of these Guidelines that they would dramatically increase fines for the relevant offences and this has now been seen coming to fruition. In 2017/18, 517 cases were brought. Numerous fines have been levied against companies in excess of GBP 1m.

In its latest enforcement statistics, the HSE published fines decreased from GBP 72.6m in 2017/2018 to GBP 54.5m in 2018/19. In 2017/18, 11,040 notices were issued by enforcing bodies and there were 364 cases prosecuted or referred to the Crown Office and Procurator Fiscal Service in Scotland where a conviction was achieved. In all circumstances, the courts are placing a significant emphasis on ensuring that sentences for health and safety breaches have a real impact upon the charged party.



## Prosecutions of companies setting the tone since October 2019:

Date of Conviction	Defendant	Fine	Charges	Narrative	Trial/Plea
4 October 2019	Steel manufacturing	GBP 1.8m	Regulation 3 of the Management of Health and Safety at Work Regulations 1999	<p>Two employees were killed and one seriously injured in an explosion. The accident occurred when a flammable atmosphere had developed within the accumulator and the flammable atmosphere was then ignited by an electric heater within the accumulator.</p> <p>The HSE investigation found that the company failed to assess the risks to its employees when draining lubrication oil from the accumulator.</p>	Guilty plea

7 October 2019	Building maintenance	GBP 1m	S2(1) of the Health and Safety at Work etc. Act 1974	<p>An employee was carrying out maintenance and repair work on a dry sided conveyor. Part of the conveyor ran under a centering machine, which was not isolated at the time. Part of the employee's body interrupted the path of the light beam between the sensor's emitter and reflector, which caused the lifting mast to activate and descend. The lifting mast struck the employee and caused fatal internal injuries.</p> <p>The HSE investigation found that the company had failed to ensure the centering machine was isolated prior to the maintenance and repair work being carried out on the conveyor.</p>	Guilty plea
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16 October 2019	Recycling	GBP 1.275m	S2(1) of the Health and Safety at Work etc. Act 1974	<p>An employee's arm was dragged into the in-running nip between a conveyor belt and the powered roller while he was attempting to clear blockages at the company's recycling plant.</p> <p>The HSE investigation found that the company had failed to prevent access to moving parts on the conveyor and the castell key system had been bypassed, allowing the systems to be operated when there was a person within the conveyor enclosure.</p>	Guilty plea
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22 October 2019	Logistics	GBP 2.6m	S2 of the Health and Safety at Work etc. Act 1974 and Regulation 3 of the Management of Health and Safety at Work Regulations 1999	<p>A stack of eight metal containers holding car and truck tyres toppled over, causing the top two containers to fall through the roof of a portacabin office in which four employees were working. One employee was fatally injured, a second suffered a fractured skull and sternum and the two others suffered minor injuries.</p> <p>The investigation by the Council failed to conclusively discover the reason why the containers fell but did identify the company failed to manage health and safety at the site and the accident was the product of a multi-layered systematic failure of the management.</p>	Guilty plea
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4 December 2019	Public services	GBP 1.4m	S3(1) of the Health and Safety at Work etc. Act 1974	<p>An unsecured street bollard fell on a six year old child causing severe head injuries.</p> <p>The HSE's investigation found that the Council had been informed that the 69kg bollard was damaged and unsecured yet inspections failed to identify it. The HSE investigation also revealed that inadequate information, training and instruction were given to the Council's highways inspection team.</p>	Not guilty plea
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9 January 2020	Rail company	GBP 1.2m	S3(1) of the Health and Safety at Work etc. Act 1974	<p>A 13 year old boy suffered life changing injuries after receiving an electric shock when he came into contact with the overhead line equipment at a freight rail terminal. The boy, with a group of friends, accessed the terminal via a broken fence and came into contact with the overhead line when he climbed on top of a train. A second child also suffered burn injuries.</p> <p>The Office of Rail and Road's investigation found that the company was aware that members of the public were gaining unauthorised access to the site and had received a report of youths climbing on trains just days before this incident.</p>	Guilty plea
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21 May 2020	Property	GBP 1.1m	S3(1) of the Health and Safety at Work etc. Act 1974	An engineer fell almost three metres from an internal roof while inspecting a sprinkler system, suffering severe injuries. The HSE's investigation found that the principal contractor, had failed to take reasonably practicable measures to prevent a fall from height.	Not guilty plea
16 July 2020	Construction firms	GBP 1.2m (main contractor) and GBP 80,000 (co-defendant company)	S3(1) and S2(1) of the Health and Safety at Work etc. Act 1974	A mobile elevated working platform (MEWP) with two workers inside was struck by a collapsing reinforcement cage during the construction of a road bypass. The principle contractor and the contractor constructing the bridge had been made aware that the cage was visibly leaning prior to the incident but failed to take action. One employee sustained life changing injuries, another sustained a broken leg.	Guilty plea

The number of company directors and other senior personnel being sentenced for health and safety failings is on the rise. Recent HSE statistics have shown that 23 senior personnel were prosecuted under section 37 of the Act in 2018–2019. Of the 23 convicted senior post holders, 9 received custodial sentences which ranged from suspended sentences to 10 months incarceration. The Guidelines provide judges with a starting point when sentencing companies and individuals for health and safety offences. Since coming into force, at least 23 individuals have received either an immediate or suspended custodial sentence. The Guidelines have lowered the threshold for custodial sentences, meaning that even “low culpability” offences can result in 26 weeks’ imprisonment.



## Prosecutions of individuals setting the tone since October 2019:

Date of Conviction	Defendant	Sentence	Charges	Narrative	Trial/Plea
October 2019	Director	Fine of GBP 5,000 and ordered to pay costs of GBP 1,000	S37(1) of the Health and Safety at Work Etc. Act 1974	<p>Company and director prosecuted after unsafe demolition work.</p> <p>The HSE investigation found no safe system of work existed. There had been no asbestos survey done before the demolition work began, which meant any asbestos contained materials present, during the demolition, would have caused asbestos fibres to be released and widely spread. The company had not arranged for gas and electricity supplies to be properly disconnected and there were no measures, such as fencing, of the site to prevent access to the dangerous activity.</p>	Guilty plea

October 2019	Director	10 month imprisonment	Sections 7(a) and 33(1)(a) of the Health and Safety at Work Etc. Act 1974	<p>Sole director imprisoned after an employee was killed by an excavator.</p> <p>Work was being carried out by employees to build a wall within an excavation. An employee was pinned against the wall of the excavation pit by the excavator bucket and died of blunt force injuries to his chest and abdomen.</p> <p>The HSE investigation found that the director failed to undertake a sufficient assessment of the risks to those who had been instructed to work with him, he operated a long reach excavator without receiving the appropriate training or certification, and he instructed the employee who died.</p>	Guilty plea
November 2019	Director	10 months imprisonment, suspended for 18 months, 20 hours of unpaid work and ordered to pay costs of GBP 5,428.21	Sections 37 and 2(1) of the Health and Safety at Work Etc. Act 1974	A company director has been sentenced after exposing employees to hazardous substances. The Court held that over a period of time, the director had exposed employees to hazardous substances and deliberately hid unsafe working practices from HSE inspectors.	Guilty plea

November 2019	Director	Six months imprisonment, suspended for 18 months, 190 hours of unpaid work with a further 6 rehabilitation days, and struck off from being a company director for 5 years.	Sections 37 and 2(1) of the Health and Safety at Work Etc. Act 1974	The director of a company was found guilty and banned from being a director after knowingly exposing employees to serious unsafe working conditions. The director allowed the continued use of a seriously damaged machine on the site. He had also been previously convicted by the HSE following a fatality at a previous company of which he was a director and then was served additional enforcement by the HSE on a visit to a new company of which he was a director. Despite this, he allowed unsafe conditions to prevail, presenting a high risk of persons being killed or seriously injured.	Guilty plea
November 2019	Director	12 month community order to carry out 200 hours of unpaid work, ordered to pay costs of GBP 15,000 and a victim surcharge of GBP 60	Regulation 4(1) of the Work at Height Regulations 2005	A company and its director have been sentenced after the director's brother fell from height and suffered fatal injuries.	Guilty plea

November 2019	Director	Fined GBP 3,000 and ordered to pay costs of GBP 1,758.41.	Regulations 6, 11(a) and 16 of the Control of Asbestos Regulations 2012	Two companies and their sole director have been fined after failing to manage asbestos safely during refurbishment of a converted mill.	Guilty plea
December 2019	Director	Six month imprisonment, suspended for 12 months, 200 hours of unpaid work, disqualified from being a director for 3 years, and ordered to pay GBP 4,000 in costs	Section 37 Health and Safety at Work Etc. Act 1974	The director of a roofing company has been sentenced following a HSE inspector finding unsafe work on a roof. Three men were working on a pitched roof of a two-storey house without any edge protection. The HSE investigation found that the company's failure to ensure that work at height was carried out safely was attributable to the director.	Guilty plea

December 2019	Director	18 weeks' imprisonment, suspended for 12 months, 180 hours of unpaid work and ordered to pay a victim surcharge of GBP 115, and full costs of GBP 5,060.69	Section 21 of the Health and Safety at Work Etc. Act 1974	<p>A company and its director have been fined after failure to comply with health and safety regulations and an enforcement notice.</p> <p>The HSE carried out a series of inspections at a construction site following health and safety concerns at the site. During the inspections, the director was served with two Prohibition Notices and the company was served with two Prohibition Notices and two Improvement Notices. The Improvement Notice was not complied with.</p>	Guilty plea
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February 2020	Former Director	Eight months imprisonment suspended for two years, 200 hours of unpaid community work and ordered to pay costs of GBP 5,000	Regulation 6(3) of the Work at Height Regulations 2005, S22 of the Health and Safety at Work Act 1974	<p>The former director of a construction company has received a suspended prison sentence after failing to comply with Prohibition Notices and for carrying out unsafe work at height during roofing work on new build houses.</p> <p>The HSE carried out inspections following reports of unsafe work at height on the roofs in 2018. Prohibition and Improvement Notices were issued in 2018 for multiple safety failures. A further investigation found that there had been no compliance with the Notices issued in 2018 and that the Director had failed “to take suitable and sufficient measures to prevent falls from height during the roof work”.</p>	Guilty plea
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March 2020	Landlord	15 weeks in prison for each offence, both suspended for 18 months, in addition to GBP 1,500 of costs	Regulations 36(3)(a) and 36(2)(a) of the Gas Safety and (Installation and Use) Regulations 1998	Landlord has been sentenced after failing to maintain gas appliances and failing to instigate gas safety checks in rental properties.	Guilty plea
June 2020	Consultant	Fined GBP 1,400	Section 3(2) of the Health and Safety at Work Act	A self-employed health and safety consultant provided inadequate and advice to small and medium businesses on the management and control of risk in relation to hand arm vibration, work place noise and the control of hazardous substances.	Guilty plea

## 4. 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 the 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 eleven 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.

Besides Registration, REACH introduces requirements of evaluation, authorisation and information exchange. Evaluation allows authorities to require registrants or occasionally downstream users, to provide further information as regards their dossier to examine proposals for testing and check compliance with the registration requirements or conduct substance evaluations if there are suspicions that a substance may pose a risk to human health or the environment. Applications for authorisation are required where affected companies use and place in the market, substances with properties of very high concern. Sharing information about substances imported, manufactured, used in the EU and placed on the market is a fundamental aspect of REACH. The two mechanisms for data sharing are substance information exchange forums (SIEFs) for existing substances and injury for new substances. Risk reduction measures should be developed by manufacturers and/or importers for all known uses of chemicals, including downstream uses. Details of these should be provided to their suppliers encouraging information exchanges.



## REACH – KEY DATES

1 June 2018

### 'Phase 3'

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

*As of June 2018, the registration of phase-in substances was complete. Companies should continue to constantly monitor additions to the REACH scope via the ECHA's website, as the list of harmful substances is continuously growing. 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.*

REACH has been subject to a 'REFIT' evaluation following the second review of the Regulation by the European Commission. Under REACH, the Commission is required to report on the achievement of the Regulation's objectives every five years.

Before the implementation of REACH, there were concerns that chemicals being used and marketed in the European Union were not being managed or investigated properly. The aim of REACH is to address these concerns by shifting the burden of the responsibility from the regulators to those manufacturing and/or importing goods containing chemicals. The World Summit for Sustainable Development is due to take place in 2020 and REACH needs to achieve its objectives to ensure it promotes the EU as a frontrunner in improving the protection of human health and the environment and promoting alternatives to animal testing.

The REFIT evaluation has allowed the Commission to present an action plan for a potential overhaul of the Regulation, including simplifying authorisation procedures, assisting SMEs with compliance and strengthening enforcement. The review has taken place in parallel with the fitness check on the most relevant chemicals legislation, excluding REACH.

The latest REFIT results were published on 5 March 2018 in a Commission report, alongside a comprehensive evaluation report. The Commission report acknowledges that achievement of REACH objectives has been lagging behind initial expectations, although it notes that a steady improvement has been made. Supply chain costs in relation to registration and communication of information have been higher, up approximately EUR 0.9bn more than the originally anticipated EUR 1.7bn. The findings state these higher costs are justified by the results observed and benefits that are beginning to materialise, but more efficiency is required in dealing with the information passing through the supply chain, particularly for SMEs. The EU executive has said that *"the estimated scale of potential benefits for human health and the environment remains in the order of EUR 200bn over 25–30 years"*.

The report notes the key issues that have impeded the progress of REACH objectives and improvements have been identified. These improvements include extended Safety Data Sheets, evaluation, authorisation and restriction. Issues requiring the most urgent action have been recognised as:

1. non-compliance of registration dossiers;
2. simplification of the authorisation process;
3. ensuring a level playing field with non-EU companies through effective restrictions and enforcement; and
4. clarifying the interface between REACH and other EU legislation, in particular on occupational safety and health (OSH) and waste.

## **Implications of Brexit**

The HSE has stated that the health and safety responsibilities will not change when the UK leaves the EU, however this guidance is under review.

### **REACH etc (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/758)**

These Regulations were laid in exercise of legislative powers under the European Union (Withdrawal) Act 2018 in preparation for Brexit. The Regulations amend and revoke subordinate legislation and retain direct EU legislation relating to REACH in order to correct deficiencies in retained EU law to ensure that the EU legislation will operate effectively in the domestic context after the UK leaves the EU. The Regulations were signed on 29 March 2019 and will come into force at the end of the transition period.

The regulations were amended on 11 April 2019 by the REACH etc. (Amendment etc.) (EU Exit) (No.2) Regulations 2019 and on 18 July 2019 by the REACH etc. (Amendment etc.) (EU Exit) (No.3) Regulations 2019.

## 5. Current and Completed Consultations

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

Completed

### **CD288 – Consultation Questionnaire on the amendments to Mines Regulations 2014 (MR2014)**

This consultation relates to proposed amendments to the Mines Regulations 2014 (MR2014) to apply a new binding limit for respirable crystalline silica (RCS) of 0.1mg/m<sup>3</sup> below ground in coal mines.

MR2014 imposes duties on mine operators to protect persons at work from the risks to their health arising from exposure to inhalable and respirable dust and RCS below ground in coal mines.

The consultation began on 4 November 2019 and ended on 2 December 2019.

Completed

### **CD287 – Carcinogens and Mutagens – Revision of limit values in EH40/2005 “Workplace Exposure Limits”**

The Health and Safety Executive (HSE) consulted on the implementation of Directive 2017/2398 which amends Directive 2004/37/EC and introduces 11 new occupational exposure limits values (OELVS) and amends 2 existing OELVs for substances to help protect workers from the ill-health effects of exposure to carcinogens and mutagens in the workplace.

The consultation focused on the initial limits which come into effect in January 2020 and set out the HSE's proposals for establishing Workplace Exposure Limits for substances listed in the Directive and sought views on them from stakeholders, subject to the ongoing negotiations on the UK's relationship with the EU.

Complete

Following consultation, the HSE will make a recommendation to the Secretary of State on the best way forward.

The consultation began on 15 April 2019 and ended on 7 June 2019.

### **Radiation (Emergency Preparedness and Public Information) Regulations 2019 – Consultation on proposed Approved Code of Practice**

The Office for Nuclear Radiation (ONR), on behalf of the HSE, consulted on the proposed Approved Code of Practice that will support duty holder compliance with the new Radiation (Emergency Preparedness and Public Information Regulations 2019 (REPPIR). The Approved Code of Practice will be approved by the Board of the HSE and issued as part of a supporting publication that includes good practice guidance.

REPPIR 2001 has been repealed and replaced as part of transposing the emergency preparedness and response requirements of the Basic Safety Standards Directive 2013 made under the Euratom Treaty. REPPIR 2019 is made under the Health and Safety at Work etc. Act 1974. REPPIR 2001 was supported by Guidance on Regulations but there was no Approved Code of Practice. The decision to introduce an Approved Code of Practice to support REPPIR 2019 reflects changes to the policy intent for nuclear and radiological emergency planning in Great Britain and associated changes in the Regulations.

The Approved Code of Practice is statutory guidance and if a duty holder follows the code, they will be meeting their statutory duties. A duty holder can still meet their statutory duties without following the code but will be required to demonstrate the approach they have taken is in line with the

Completed

standards required by the code. The Approved Code of Practice is designed to provide users with confidence in how to comply with REPIR 2019.

The consultation began on 10 April 2019 and ended on 27 June 2019.

### **CD286 – Review of the Adventure Activities Licensing Authority (AALA)**

The Health and Safety Executive (HSE) reviewed the delivery and scope of the AALA on behalf of the Department for Work and Pensions. The review aimed to ensure the provision of licensing adventure activities is delivered in a sensible, proportionate and cost effective manner.

Adventure Activities Licensing legislation is separate from and additional to the Health and Safety at Work etc. Act 1974. However, the criteria in which adventure activity providers are assessed are the same as that required under health and safety at work law.

The aim of adventure activities licensing was to provide assurance to the public. It was also expected that young people would also enjoy outdoor activities without being exposed to the risks of death or disabling injury.

The licence scheme was reviewed under the consultation as it was found to be a cost and burden to businesses and added little to the health and safety of young people undertaking adventure activities.

The consultation began on 12 January 2018 and ended on 9 March 2018.

Completed

### **CD283 – Consultation on implementing new and revised Workplace Exposure Limited**

The Health and Safety Executive (HSE) consulted on the implementation of new and revised Indicative Occupational Exposure Limit Values (IOELVs) for thirty-one chemical substances to help protect workers from the ill-health effects of exposure to hazardous substances in the workplace.

The consultative document sets out HSE's proposals for establishing workplace exposure limits for the substances listed in the 4th Indicative Occupational Exposure Limit Values (IOELVs) Directive 2017/164/EU, in order to implement it in Great Britain.

The consultation began on 10 November 2017 and ended on 2 February 2018.

Completed

### **Revised Requirements for Radiological Protection: Emergency Preparedness and Response**

The Euratom/European Union Basic Safety Standards Directive 2013 (BSSD 2013) establishes updated safety requirements for the radiological and nuclear sector. It sets out five work streams namely: emergency preparedness and response, medical exposure, public exposures, occupational exposures, and air and space crew.

The consultation related to implementing the emergency preparedness elements of the BSSD 2013. It aimed to inform and seek the views of the public on the government's proposals regarding:

- *Outcome-focused planning* whereby planning efforts are to focus on places where impacts of an emergency are most likely to be felt, most severe or where the potential benefit is greatest;
- *Commensurate planning* that will aid the civil and defence nuclear and radiological sectors to prepare for the full range of emergencies through proportionate and flexible planning. Where emergencies are more severe or likely, more detailed plans should be created;
- *A graded approach* to be implemented ensuring that the most comprehensive emergency response and preparedness requirements are focused on the most hazardous activities;
- *Transparency and Consistency* in threshold calculations to ensure that all planning decisions can be justified due to proportionate planning as well as standardising key elements of the methodology regarding planning countermeasures and distances;
- *Flexibility* in planning and responding to radiological and nuclear emergencies to facilitate pragmatic and effective decisions; and
- *Continuous Improvement* by updating the supporting Code of Practice that aims to guide duty holders in fulfilling the requirements of the regulations, to account for changing good practice without amending the underlying regulatory regime.

The Consultation closed on 15 November 2017. The deadline for the Directive to be implemented into UK law was 6 February 2018.



## 6. Current and Completed Campaigns and Initiatives

Current

### **“Work Right” Campaign**

The ‘Work Right’ campaign has been implemented to encourage entities to think about and consider health and safety and how it applies to their businesses. The campaign looks to maximise participation and compliance by combining practical advice with simple actions businesses can take to manage workplace risk. Especially with the COVID-19 pandemic, businesses and workplaces have had to adapt to a new working environment. The Work Right Campaign’s main call is for employers and entities to share what the organisation is doing to manage the COVID-19 risk and help businesses to ensure every business is “COVID-19 secure”.

More information can be found here: [www.hse.gov.uk/campaigns/index.htm](http://www.hse.gov.uk/campaigns/index.htm)

Current

### **Risk Reduction Through Design Awards**

Musculoskeletal Disorders (“MSDs”) are consistently one of the most common causes of ill-health in Britain’s workplaces every year, making them a priority issue at HSE.

Working in partnership with the Chartered Institute of Ergonomics and Human Factor, HSE launched the “Risk Reduction Through Design Award”, a competition aimed at encouraging employers to think of innovative ways to manage the risk of workers developing MSDs, rather than relying on off-the-shelf manual handling.

Nominations for the 2019 award were submitted by January 2020. More information can be found here: [campaigns.hse.gov.uk/spotlight/hses-risk-reduction-through-design-award/](http://campaigns.hse.gov.uk/spotlight/hses-risk-reduction-through-design-award/)

Current

### **Go Home Healthy campaign**

The HSE continues its 'Go Home Healthy' campaign, providing guidance and information on the HSE's three areas of priority: occupational lung disease, musculoskeletal disorders and work-related stress.

The campaign aims to reduce cases of work-related ill-health. Employers have been urged to "shine a light" on hazards in their workplaces, and to do the right thing, expressed by the hashtag #workright.

The HSE's microsite, provides further information for both employees and employers. It includes links to guidance, case studies, videos and thought leadership.

More information can be found on the HSE's Go Home Healthy microsite: [www.hse.gov.uk/gohomehealthy/](http://www.hse.gov.uk/gohomehealthy/)

Current

### **Healthy Workplaces Manage Dangerous Substances**

The European Agency for Safety and Health at Work ("EU-OSHA") has launched a campaign to highlight the risks that workers face from dangerous substances. The two-year campaign, called '*Healthy Workplaces Manage Dangerous Substances*' will promote the best ways to deal with the risks posed by dangerous substances, from those found in bakeries, to those substances found on building sites.

The campaign hopes to dispel the common misunderstandings around dangerous substances and raise awareness of the importance of preventing risks from those substances. It also aims to promote risk assessment practices by providing information on practical tools and encouraging good practice. The risk assessment focus would be on eliminating or substituting dangerous

substances and the hierarchy of prevention methods adhered to by following the correct legislative measures.

The campaign will also aim to heighten awareness of the risks linked to exposure to carcinogens, target workers who are at particular risk and increase knowledge of the legislative framework as well as highlighting policy developments.

More information can be accessed on the EU Healthy Workplaces microsite: [healthy-workplaces.eu/en/what-issue](https://healthy-workplaces.eu/en/what-issue)

### **Healthy Work Places for All Ages**

Stemming from the EU-OSHA's Healthy Workplaces Campaign 2016–2017, the healthy workplaces for all ages campaign encourages employers to account for diversity and ensure that elderly workers get the support they require in the context of an ageing workforce.

Estimates show that by 2030, 30% or more of the workforce in many European countries will be aged 55–64. As retirement age increases, efforts must be made to ensure healthy and safe conditions throughout working life.

The campaign promotes the following:

- Health in later life is affected by working conditions in earlier life;
- Holistic approach to occupational safety and health (OSH) management;
- Human resources (HR) policies; and
- Rehabilitation and policies on return to work.

The aim is to clarify the common misconceptions regarding the elderly working population. For instance, key cognitive elements required for work in the work place do not show any degradation until the age of 70. Further, the campaign aims to inform employers on the legislation regarding this issue.

More information can be accessed on the HSE microsite: [healthy-workplaces.eu](https://healthy-workplaces.eu)

### **Vehicle Load Safety campaign**

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

This 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/index.htm](https://www.hse.gov.uk/workplacetransport/loadsafty/index.htm)) provides detailed guidance and links to Department of Transport guidance on specific load types and vehicles.

### **'Make the Promise. Come Home Safe' campaign**

With 3 deaths per month, the farming industry has one of the highest rates of death and serious injury in the UK. The HSE reports that a farmer is two and a half times more likely to die in the workplace than in a car accident. The HSE notes that the following factors are responsible for this increased risk: farmers are an ageing workforce; many farmers work alone; and the machinery used is very powerful.

Seeking to mitigate this risk, this initiative produces health and safety guidance for farmers, organises free health and safety awareness days and provides advice through telephone or farm visits. In addition, it encourages farmers to make the pledge to return safely for themselves and their families.

The campaign focuses on encouraging farmers to share their promise by working with stakeholders to reach new farmers and act as ambassadors. Farmers are encouraged to host events such as get-togethers and question answer sessions.

The initiative has received high profile support from the National Federation of Young Farmers' Clubs and Co-operative Farms. More information can be accessed on the HSE microsite: [www.hse.gov.uk/agriculture/makethepromise/index.htm](http://www.hse.gov.uk/agriculture/makethepromise/index.htm).

### **Hidden Killer / Beware Asbestos campaign**

Asbestos is the single biggest cause of occupational-related deaths in the UK. Therefore, the HSE's Beware Asbestos campaign, launched in 2014, aims to encourage safe working practices among those workers most at risk, i.e. tradespeople working on small sites and projects in the construction and maintenance industries.

In order to raise awareness and encourage safer working practices, HSE teamed up with TradePoint (the trade-only outlet of B&Q) to distribute free asbestos safety kits directly to tradespeople in the UK, which included free Type 5 safety overalls.

Another key feature of the campaign was the introduction of a free Beware Asbestos web app designed to help tradespeople easily identify where they could come into contact with asbestos and give them tailored help on how to deal with the risks.

More information can be accessed on the HSE microsite: [www.hse.gov.uk/asbestos/tradesperson.htm](http://www.hse.gov.uk/asbestos/tradesperson.htm).

### **Safe & Sound at Work (do your bit)**

The campaign aims to provide a new website and training for small to medium sized enterprises (SMEs) to help improve worker involvement through active engagement. The aim is to illicit essential input from staff through communication and consultation.

Employees often have the best understanding of risks in their workplace and thoroughly influence health and safety through their actions. Involving employees has shown to lower accident rates and increase productivity, efficiency and quality in many cases.

The Campaign is underpinned by:

- The Health and Safety (Consultation with Employees) Regulations 1996; and
- The Safety Representatives and Safety Committees Regulations 1977;

which both set out employer's duties to consult their workforce on health and safety issues.

The following HSE microsite provides more information:  
[www.hse.gov.uk/involvement/doyourbit/index.htm](http://www.hse.gov.uk/involvement/doyourbit/index.htm).

## EU Legislation 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)1224 267151 or 07811 362201; or email [jan.burgess@cms-cmno.com](mailto:jan.burgess@cms-cmno.com)

If your company has a health and safety emergency, you can contact us on:

**0333 20 21 010 – Emergency Response Hotline**  
**(available 24 hours a day, 7 days a week)**

**Disclaimer** – 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, but only major health and safety issues.



## Health and Safety – what we do

CMS 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:

- Construction
- Communications
- Energy
- Global health and safety advice
- Leisure, Hotels & Sports
- Manufacturing
- Renewables
- Transport

Regrettably, accidents at work can be serious and sometimes 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 practice in England, Wales and Scotland but also regularly advises clients in relation to international working practices and health and safety matters in other jurisdictions. We are available for health and safety emergencies and advice; along with any other related urgent matters. In the event of an emergency the team will ensure a swift and efficient response to client queries, irrespective of the time of day or day of the week.

If your company has a health and safety emergency, you can contact us on:

**0333 20 21 010 – Emergency Response Hotline**  
**(available 24 hours a day, 7 days a week)**

## **Kelvin TOP-SET Senior Investigators**

We have specialised knowledge and training to investigate serious accidents or near-miss events under the Kelvin TOP-SET incident investigation system. This is a well-known investigation qualification, regularly used by many industries in the UK and abroad. The system is designed to ensure a bespoke but swift and systematic investigation of any incident incorporating root cause analysis and identification of remedial measures.

### **Our clients come to us for advice on:**

- Emergency Response and Crisis Management
- 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 Justiciary.
- 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 HSE 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.
- Carrying out Health and Safety audits.
- 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.
- Advising clients in the immediate aftermath of an incident and providing emergency response services.
- Advising clients in relation to protestor action and possible responses thereto.
- Successfully defending environmental prosecution.

**For more information, please contact:**



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