Safety, Health and Environment ("SHE") Regulatory

CLYDE&CO

Newsletter

Winter 2013

Welcome

Welcome to Clyde & Co's safety, health and environment regulatory newsletter.

Our SHE regulatory team specialises in regulatory defence work and is '*one of the largest health and safety offerings in the UK market*' according to Chambers and Partners UK 2013 whilst we are ranked as a first tier firm by Legal 500 2012, who believe that our practice is '*in the top flight of firms working in this area*'.

Contents

If you wish to subscribe to an electronic version of this newsletter, or if you have any comments or queries regarding the topics covered in this bulletin – please email SHERegulatory@clydeco.com.

Second Northern Irish corporate manslaughter conviction

In only the second case of its kind in Northern Ireland, a company has been convicted and fined for the manslaughter of one of its employees, Mr Porter. The conviction followed a joint Police Service for Northern Ireland and Health and Safety Executive ("HSE") investigation.

A gross negligence manslaughter charge against the 69-year-old director of the company, James Daniel Murray was not proceeded with following the company's guilty plea.

The facts of the matter are that Mr Norman Porter had been working at J Murray & Sons for only eight weeks prior to his death on 28 February 2012. It is believed that the incident was caused either when he fell or alternatively was pulled into an animal feed mixing machine, having caught his clothing on it.

The investigation established that the company had removed safety guards from the top of the mixer in an effort to allow raw ingredients to be easily added and that the machinery had operated in this manner for three years. It was deemed by the Judge that the incident was 'plainly foreseeable' and the machinery could have been modified safely and cheaply. The Judge refused to accept the Defence submission that the machine was never viewed as a potential danger and stated that he considered the director 'deliberately turned a blind eye' to the risk.

Following a guilty plea, the Court fined J Murray & Sons a total of GBP 100,000, together with an order to pay the HSE's costs of GBP 10,450. Significantly, the Court stated this would become payable immediately but, in order to safeguard the 16 jobs at the company, payment could be made in monthly instalments of GBP 20,000. The Judge acknowledged that whilst this could not and would not compensate for Mr Porter's death, it was the only penalty available to 'mark the Court's strong disapproval' of the company's serious and thoughtless negligence.

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Further RIDDOR Reform – what are the changes this time?

Further to our recent update on the proposed revisions to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations ("RIDDOR") 1995, these received Parliamentary approval and were ushered into force on 1 October as RIDDOR 2013.

This article outlines the main reporting changes which affect employers and anyone else with responsibility for health and safety within a workplace.

The Health and Safety Executive ("HSE") has also issued its own guidance on the changes which can be found at http://www.hse.gov.uk/riddor/index.htm.

Background to the changes

The changes to the RIDDOR regime follow on from a recommendation by Professor Ragnar Löfstedt in his report '*Reclaiming health and safety for all: An independent review of health and safety legislation*'.

The alterations are the second set of changes to the RIDDOR requirements within 18 months, following on from amendments made in April 2012 when the key changes to the reporting regime were that employers only had to report over-seven-day injury absences, rather than the previous over-three-day injury absence and the time limit for employers to formally report such an accident was increased to 15 days from 10 days.

What is the purpose of the changes?

The thrust of the amendments see the introduction of further measures which seek to simplify the reporting of workplace injuries and reduce the number of incidents which will be required to be reported in the future. So what are the main changes?

'Specified injuries'

The previous classification of 'major injuries' to workers which fall to be reported under RIDDOR has been replaced with a shorter list of 'specified injuries', namely:

- A fracture, other than to fingers, thumbs and toes
- Amputation of an arm, hand, finger, thumb, leg, foot or toe
- Permanent loss of sight or reduction of sight
- Crush injuries leading to internal organ damage
- Serious burns (covering more than 10% of the body, or damaging the eyes, respiratory system or other vital organs)
- Scalpings (separation of skin from the head) which require hospital treatment
- Unconsciousness caused by head injury or asphyxia
- Any other injury arising from working in an enclosed space, which leads to hypothermia, heat-induced illness or requires resuscitation or admittance to hospital for more than 24 hours

'Reportable work-related illnesses'

In addition, the existing schedule detailing 47 types of occupational disease is being replaced with eight categories of reportable work-related illnesses, namely:

- Carpal Tunnel Syndrome, where the person's work involves regular use of percussive or vibrating tools
- Cramp in the hand or forearm, where the person's work involves prolonged periods of repetitive movement of the fingers, hand or arm
- Occupational dermatitis, where the person's work involves significant or regular exposure to a known skin sensitizer or irritant
- Hand-Arm Vibration Syndrome, where the person's work involves regular use of percussive or vibrating tools, or the holding of materials which are subject to percussive processes, or processes causing vibration
- Occupational asthma, where the person's work involves significant or regular exposure to a known respiratory sensitizer
- Tendonitis or tenosynovitis in the hand or forearm, where the person's work is physically demanding and involves frequent, repetitive movements
- Any cancer attributed to an occupational exposure to a known human carcinogen or mutagen (including ionising radiation)
- Any disease attributed to an occupational exposure to a biological agent

Health and safety

'Dangerous occurrence'

There are to be fewer types of 'dangerous occurrence' which will require reporting. The Guidance gives examples of:

- The collapse, overturning or failure of load-bearing parts of lifts and lifting equipment
- Plant or equipment coming into contact with overhead power lines
- The accidental release of any substance which could cause injury to any person

For a full detailed list, please see the HSE's online guidance at www.hse.gov.uk/RIDDOR.

No change!

It is important to note where there has been no change to the existing requirements, namely:

- No significant changes are to be made to the reporting requirements of fatal accidents
- Accidents involving non-workers (members of the public)
- Accidents which result in the incapacitation of a worker for more than seven days

Conclusion

The amendments to the Regulations were implemented on 1st October 2013. Businesses should be alert to the fact the reforms came into force and ensure that they abide by them.

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A simpler system for First Aid?

On 1 October 2013 the amended Health and Safety (First Aid) Regulations 1981 came into force removing the requirement for the Health and Safety Executive ('HSE') to approve first aid training and qualifications.

Background to the reform

This change is part of the HSE's attempt to make it easier for businesses to understand how to comply with health and safety law, whilst maintaining standards. They apply to businesses of all sizes and from all sectors and follow on from a recommendation by Professor Lõfstedt following his review of health and safety legislation, which was published in November 2011.

The amendment follows two periods of public consultation:

- The first, on this proposed removal, which took place between 22 October and 3 December 2012, and
- A further consultation on the draft guidance to the amendment took place between 25 March and 3 May 2013

What guidance is available?

To assist businesses with this latest amendment, the following are now available on the HSE website:

- 'The Health and Safety (First Aid) Regulations 1981'
- 'Regulations and Guidance (L74)'
- 'Selecting a first aid training provider (GEIS3)'

Guidance document L74 is aimed at all industries and sets out what employer's need to do to address first aid provision in the workplace. It provides guidance on managing the provision of first aid (first aid kit, equipment, rooms etc), the requirements and training for first aiders, and making employees aware of first aid arrangements.

The further publication document GEIS3 assists employers in identifying and selecting a competent training provider to deliver any first aid training, following a first aid needs assessment and includes a checklist for evaluating first aid training organisations, quality assurance systems and training content.

What is not covered by this latest change?

Notwithstanding this latest amendment, employers should note the legal requirement to ensure they make adequate provision for first aid, based upon their first aid needs assessment, remains unchanged.

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New Code, better regulation?

The new Regulators' Code has been published following consultation with national regulators, local authorities, businesses and trade bodies. It has been released at this stage to allow regulators the maximum time to reflect on its content and to prepare for its proposed introduction in spring 2014.

What is the Code?

The Regulators' Code ('The Code') is a statutory code of practice that replaces the Regulators' Compliance Code, which is shorter and clarifies the requirements of regulators.

The document provides a framework for how regulators should engage with those they regulate and also provides an opportunity for businesses to challenge regulators when they fail to follow the Code.

Why is there a new Code?

The Better Regulation Delivery Office (BRDO) undertook a review of the Regulators' Compliance Code and, while it found that regulators had in the main adopted its principles, there were some inconsistencies and overall it had failed to alter culture and practice.

The Regulators' Code is designed to address these issues by improving the way regulation is delivered including stronger relationships between regulators and those they are regulating.

The Code encourages regulators to give businesses an active role in developing regulatory practices and, by doing so, the regulators will gain a better understanding of the needs of those they regulate, while assuring that necessary protections are maintained.

The five main areas for better regulation

The Code's requirements are categorised in to five key areas for better regulatory activity.

1. Supporting compliance and growth
2. Engaging with those who are regulated
3. Basing activities on risk
4. Sharing information with regulators
5. Providing guidance and advice

The Code enables regulators to tailor their service and enforcement policies in a manner which best suits the local needs of businesses and other regulated entities. The purpose of this approach is to strive to build better relationships with business utilising openness and trust.

Regulators are under an obligation to ensure their approach to the Code is clear and they are required to publish a set of accessible service standards, which set out what those they regulate should expect from them.

In addition, regulators are required to publish, on a regular basis, details of their performance against their service standards, including feedback received from those they regulate. This should include data relating to the number of complaints made about them and appeals made against their decisions.

Conclusion

Subject to Parliamentary approval, the Regulators' Code is expected to be brought into statutory force in spring 2014.

The BRDO is in the process of creating a range of supporting resources, including guidance, tools, templates and case studies to assist regulators and business going forward.

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Is motor manslaughter a myth?

It has often been questioned whether manslaughter charges could follow in the context of a fatal road traffic collision where the death had arisen due to failings of an employer.

Whilst breaches of health and safety legislation in this context have been brought against employers by the Health and Safety Executive, could charges of gross negligence manslaughter attracting life sentences really be used?

A case recently before the Court has put to bed any suggestion that motor manslaughter is a myth.

So what is gross negligence manslaughter?

In order to be convicted of gross negligence manslaughter, proof of the following four elements is required:

- The existence of a duty of care owed by the defendant to the deceased
- A breach of that duty of care
- The breach must be a substantial cause of the deceased's death
- That in all the circumstances the conduct of the defendant amounted to "gross negligence"

This is a very difficult charge for the prosecution to prove as it requires more than mere negligence on the part of the defendant. The defendant's conduct must be so bad that it can only be described as 'criminal'.

So what was the case before the Court?

The case before the Court was *R. v McMurray* (Adrian) Unreported June 28, 2013 (Crown Court (St Albans)).

A father and son who ran a haulage firm were sentenced to a total of 11 years in prison after being found guilty of the manslaughter of one of their drivers who fell asleep at the wheel.

The court heard that the driver was almost certainly asleep at the time of the collision, as he had been required to drive for longer than the legally permitted number of hours in the 24 hours leading up to the incident.

The driver had been working for 19 hours when his 39-tonne lorry crashed into stationary traffic on the M1 in February 2010.

Traffic ahead had come to a standstill because of congestion but, despite braking hard at the last minute, the driver crashed into the lorry in front of him. The vehicle cab was crushed and he sustained fatal head and chest injuries.

The case against the defendants was that management at the haulage firm 'tolerated if not encouraged' their employees to work over and above the hours set out by EU law.

The defendants permitted their employee to continue driving illegally and as a result were found to have exposed him to the risk of death because of their gross negligence.

So what does this case tell us?

This case demonstrates a change in approach by the Police, who are increasingly investigating beyond driver fault in fatal road traffic cases in order to consider whether there is any wrong doing on the part of the employer.

It is now becoming standard practice following a fatal collision for the Police to demand an operator's safety policies, vehicle maintenance records, tachograph records, driver training documents and work rotas.

It is possible that similar cases may result in the business also being prosecuted for corporate manslaughter.

There is yet to be a case of corporate manslaughter against an operator but this case could signal that there may well be one in the near future.

The Crown Prosecution Service provides guidance to Police on when they should consider charging operators, or their directors, for corporate or individual manslaughter. Their guidance specifically advises that corporate or individual responsibility for a death may arise where:

- An operator has no regular system of preventative checks, showing indifference to an obvious risk of injury

– A company director knows about a defect in a vehicle but allows it to go onto the road before the vehicle is repaired
– An operator fails to ensure that drivers work proper hours and have appropriate rest periods

So what lessons can be learnt?

Operators need to ensure that they are providing their drivers with roadworthy vehicles, their drivers are working within the legally permitted number of hours, and that the business has systems in place to reduce the risks associated with driving.

Failure to abide by these requirements could result in a prison term. Do you want to take that risk?

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*STOP PRESS – Victims to be given a bigger say

Victims of crimes will soon be entitled to personally address offenders to explain how a crime has impacted them prior to sentencing. A new Victims' Code will allow victims to read a statement in Court in the presence of the offender.

At present, victims are prevented from addressing the Court in person and can only do so via a written statement.

Damian Green, the Minister for Policing, Criminal Justice and Victims has said that allowing victims to make a statement in Court will make them feel "central" to the judicial process and not just an afterthought.

It will be interesting to see whether this new procedure has an effect on the length of sentences imposed. We will keep you updated.

Food safety

*STOP PRESS – Consultation on food hygiene regulations

A consultation has been launched by the Food Standards Agency ("FSA") on the current draft of the Food Safety and Hygiene (England) Regulations 2013, due to come into force in December 2013, in response to concerns raised by food businesses that it can be difficult to find food safety law and food hygiene law relevant to them.

Currently, there are two key food statutory instruments in England namely:

- General Food Hygiene Regulations 2004 – which cover the requirement to place safe food on the market, the presentation of food and labelling, and other responsibilities for businesses such as the recall of food believed to be unsafe
- Food Hygiene (England) Regulations 2006 – which enforce the hygiene requirements placed on food businesses, including the enforcement actions that be taken, the way food samples are procured, the powers of entry, offences and penalties

For the first time the provisions for enforcement of food safety and food hygiene will be consolidated into one, making them more accessible. Whilst the process does not introduce new requirements for business, it is important to remain abreast of the proposals.

Within three months of the consultation closing, the FSA will publish a summary of responses received. The consultation closed on 14 October 2013. The consultation document can be viewed at http://tinyurl.com/mf7rx2f

*STOP PRESS – Consultation on powers of entry

The FSA has launched a consultation into powers of entry, which allows officials (whether FSA officials or local authority officials) to enter premises to enforce food law.

Justification for retention of powers of entry can be broadly separated into two areas:

- To protect the food chain and ensure that detrimental impacts on consumers and businesses are minimised
- Secondly, to monitor and audit the activities of local authorities to ensure that enforcement is taking place as required

Powers of entry have not until now been reviewed to consider if they are proportionate to the task of enforcing and monitoring food safety and whether they contain sufficient safeguards for the businesses and individuals affected.

The consultation seeks views on proposals to whether such powers should be retained and, if so, whether further safeguards are needed. The consultation closed on 11 October 2013 and can be viewed at http://tinyurl.com/q9jgezz

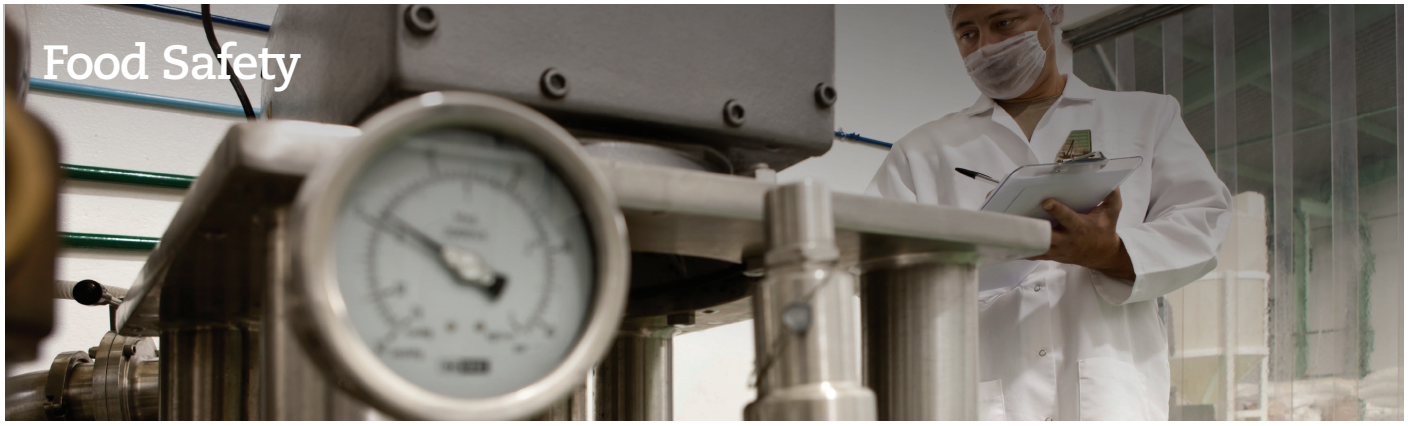
*STOP PRESS – Warning against repeat meat scandal

The National Pig Association ("NPA") has warned that the foundations for another food scandal could be laid if retailers fail to follow through on pledges made in the wake of the horse meat scandal.

A number of retailers which had originally supported a strong British position have now gone back to imported products due to the difference in price. For example, Britain currently imports about 60% of its pork and pork products; however, the NPA argues that this figure could be significantly cut if retailers were genuinely committed to developing shorter supply chain deals with UK producers.

The warning comes following a full review of the scandal by the Food Standards Agency and the renewed commitment from Local Authorities to carry out rigorous testing of meat products.

Food Safety



*STOP PRESS – FSA publishes further beef testing results

The FSA has published the results from its second quarterly testing of beef products for horse meat or horse DNA. The extensive programme of testing comes in the wake of the scandal and is to check that beef products on sale or supplied into the UK food chain were accurately labelled and did not contain horse meat/DNA.

No results found horse meat/DNA at or above the 1% reporting threshold. These figures include all test results submitted since the compilation of the first quarterly report, which was published in mid-June and reported in the last edition of our newsletter, which can be found at http://tinyurl.com/p4uzsl6.

*STOP PRESS – Restaurant boss jailed for serious hygiene offences

A Coventry restaurateur has been jailed for 27 weeks after pleading guilty to 16 breaches of food hygiene regulations at the Bab E Khybar restaurant and takeaway. The condition in the kitchen had previously been described as “disgraceful, repellent, disgusting”.

It was Akbar Jan’s fifth conviction for food hygiene offices and at the time of the inspection he was already serving a ban from running food premises.

Following previous inspections, the Court heard that when inspectors returned to the restaurant they found their advice had not been heeded. Food was stored in an unhygienic manner and at the wrong temperature, the surfaces were dirty, dead flies were visible, and rat droppings were found on stored food.

Mr Jan’s junior business partner was also given a six-month suspended prison sentence and ordered to do 180 hours of unpaid work, after he had admitted a number of hygiene offences.

This case is a reminder to all food businesses that the Courts will not shy away from imposing prison sentences for the most serious offenders.

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***STOP PRESS – Update on the proposed sentencing guidelines**

Following our previous article on the Sentencing Council's consultation on environmental sentencing guidelines (click **here** to read the article), we have now heard from the Sentencing Council that the defining guideline will be issued in early 2014, and there will then be a short period before it comes into effect.

Cracking down on waste crime: the waste crime report 2012/2013

In recent years, the Environment Agency ("EA") has made no secret of its "war on waste", investing huge sums in rooting out and punishing those in breach of their waste management obligations and prioritising the organised criminals operating in this sphere. It was no surprise then that the EA's recent waste crime report delighted in detailing a dramatic increase in the levels of illegal site closures, which equated to 25 each week. In this article we will look at the key findings of the waste report, whilst looking forward to the next 12 months in waste regulation.

What is waste crime?

In theory waste crimes are committed every time a business or individual fails to adhere to their legal responsibilities in the storage, treatment, carriage and disposal of waste. However, the EA's initiative specifically targets those operators who deliberately breach the law. This means dealing with illegal waste sites, large scale illegal dumping and illegal exports.

Where does it happen?

Waste crimes can happen anywhere. EA data shows that it is still a blight on our urban areas with most known illegal operations sited close to our towns, cities and motorways. However, rural communities are also affected, albeit to a lesser extent.

What were the EA's priorities for action?

The clearly identified strategy for 2013-2013 was to:

- Identify, disrupt and take effective action against priority offenders
- Reduce the overall risk presented by illegal waste sites
- Prevent and take action against those involved in the illegal export of waste
- Prevent illegal dumping taking action against those involved

How successful were the EA in the last 12 months?

Very!

The EA stopped illegal activity on 1,279 sites, a record in a single 12 month period. This equates to a stoppage every 90 minutes of each working day in the year!

They credit the increased strike rate on better use of intelligence and improved partnerships with the likes of HM Revenue and Customs, Interpol, the Borders Agency, VOSA, the Department of Work and Pensions and the Police. These agencies have a key role to play as experience suggests that many of those involved in large scale waste crimes are also embroiled in other criminal activities.

Which waste streams are usually involved?

EA statistics show that most illegal sites had construction and demolition waste as their main waste type, followed closely by end of life vehicles and household/commercial waste.

Environmental

Enforcement

The EA's emphasis changed in the past year, from reacting to reports of waste crime to proactively targeting particular offenders. This has led to a reduction in the number of prosecutions. That said, the EA pursued 171 successful prosecutions last year and issued 62 formal cautions for waste offences.

These prosecutions yielded a range of sentences:

- Total fines reached GBP 827,940
- The highest fine was GBP 75,000
- The average fine was GBP 7,137
- There were five custodial sentences of which the longest was 18 months
- Five defendants received suspended sentences

The EA also looked to other enforcement tools during the year including stop notices, injunctions and bail conditions as well as continuing to seek confiscation orders under the Proceeds of Crime Act.

The financial cost

The EA's figures indicate a spend in the last 12 months of approximately GBP 17 million on tackling waste crime, which equates to around 7% of their annual environmental protection budget.

However, these sums pale into insignificance when you consider that it is estimated waste crime diverts as much as GBP 1 billion each year from legitimate business and HM Treasury (see EA report "The Economic Impact of Illegal Waste").

What can we expect in the coming 12 months?

The EA are currently aware of more than 800 illegal waste sites, all of which are being actively investigated. A new partnership with Crimestoppers has also been launched to encourage the public to report waste criminals whilst protecting their anonymity.

The last word…

Ed Mitchell, the EA's Director of Environment and Business said:

> *"Waste crime puts people and the environment at risk and undermines the legitimate waste industry. We are taking tough action to deal with this problem, through the improved use of intelligence and stronger partnerships with the police and other enforcement bodies. The two year illegal Waste Sites Taskforce has been hugely successful in slashing the number of illegal waste sites operating in England."*

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The Regulation of "unconventional" gas exploration & extraction: controlling fracking & other new technologies

The thorny issue of shale gas extraction is never far from the headlines at present, occupying column inches locally, nationally and internationally. As we look for new sources of energy, this article looks at the regulatory framework within which these new energy explorers operate, summarising the key roles and responsibilities of those organisations with jurisdiction over the new technologies.

What is "unconventional" gas?

Predominantly (and of course publically) we are concerned with shale gas. However, the term also applies to coal bed methane and underground coal gasification. In short, unconventional gas is gas trapped in deep underground rock beds. This is to be contrasted with conventional gas, which is usually found in more accessible rock layers.

Why do we need this gas?

The Government believes shale gas in particular has the potential to provide the UK with energy security as fears grow of a looming energy shortage. Positive side effects include likely economic growth and associated job creation.

How do we get to the gas?

In the case of shale gas, this is via the controversial means of "fracking", the hydraulic fracturing of rock using water pumped at high pressure into the rock to create small fractures, which in turn provide a path for the gas to flow into a well bore and then to the surface.

What are the safety and environmental impacts of fracking?

In brief, fracking has raised the following concerns:

- Earth tremors
- An escape of gas into drinking water supplies as it rises to the surface
- Contamination of water supplies via poorly constructed wells
- Noise and pollution of the countryside
- The large quantities of water required to sustain the process
- An escape of methane and potential greenhouse gasses

Various studies have been carried out in relation to some or all of the above, for example this study from the Royal Society and the Royal Academy of Engineering http://royalsociety.org/uploadedFiles/Royal_Society_Content/policy/projects/shale-gas/2012-06-28-Shale-gas.pdf

This report concluded that, "*the health, safety and environmental risks associated with hydraulic fracturing…as a means to extract shale gas can be managed effectively in the UK as long as operational best practices are implemented and enforced through regulation*".

So who is in charge of regulation?

Ultimately, permission to carry out fracking operations is granted by the Department of Energy and Climate Change ("DECC"). DECC administers a licensing system for all drilling activities and it is not possible even to commence exploration without such a licence.

At an early stage, an operator will also need permission from the local minerals planning authority, usually the county or unitary local authority, who also oversee any planning permissions needed for the site.

In terms of ongoing regulation, the Environment Agency ("EA") and the Health and Safety Executive ("HSE") work together pursuant to a joint memorandum of understanding (available at http://www.hse.gov.uk/aboutus/howwework/framework/aa/hse-ea-oil-gas-nov12.pdf). The joint approach is founded on the principle that the two regulators will collaborate to ensure fracking operations are effectively regulated to protect people and the environment.

Environmental

What are the EA's responsibilities?

Shale gas operators are likely to require an Environmental Permit and as such will be subject to the same regime as any other operator caught by the provisions of the Environmental Permitting Regulations 2010. In particular, the EA will be concerned with managing water resources, flood risk, issuing Permits and groundwater discharges.

The EA will adopt compliance assessment plans for each site setting out how they propose to measure the operator's compliance and ensure environmental risks are appropriately managed. Thereafter, the EA will conduct audits, site visits and monitoring and sampling activities as well as reviewing the operator's records and procedures.

What are the HSE's responsibilities?

All shale gas wells must be constructed subject to the standards contained within regulations governed by the HSE. In particular, the HSE will assess the design of the wells prior to and during construction based upon weekly reports provided by the operator. This is with a view to ensuring the construction phase mirrors the design intent. There will also be regular site visits to inspect well integrity during operation.

The HSE will of course also take primacy over any issues regarding the safety workers and others likely to be affected by the development at all stages from design through construction to operation.

What is the enforcement regime?

Operators undertaking shale gas extraction will be subject to the same safety, health and environmental regulatory regimes as any other commercial operator in England and Wales. Specifically, breaches of the relevant legislation will constitute criminal offences and will be punished accordingly.

Both the EA and the HSE will need to closely monitor the developing industry in unconventional gas, remaining abreast of technology and learning lessons as more is discovered about these emerging methods of gas extraction. Such close attention is essential if sections of the public and the media are to be persuaded that fracking is safe and has a place in the UK's energy policy going forward.

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***STOP PRESS – Changes to the Consumer Protection from Unfair Trading Regulations 2008**

Changes are currently being debated which propose to empower consumers, reduce regulatory costs for business, lighten the burden on the Office of Fair Trading and provide a range of economic benefits.

New legislation in the form of the draft Consumer Protection from Unfair Trading (Amendment) Regulations 2013 proposes to afford consumers protection by:

- Introducing a new direct civil right of redress for a consumer in respect of misleading and aggressive practices, including demands for payment. This means that consumers will be able to seek redress from traders directly
- Extending the scope of consumer law to cover misleading and aggressive demands for payment
- Introducing new definitions for "trader", "consumer", "business", "digital content", "goods", "product" and replacing the expression "undue influence" with the expression "abuse of position"
- Extending the definition of "trader" to include Government departments and local and public authorities

The Government has yet to announce a date when the new draft Regulations will come into force. However, as the Regulations will apply to commercial practices which began before the coming into force date, and which continue after that date, businesses should remain appraised of the changes.

We shall continue to monitor the progress of this legislation and keep you updated.

Is the OFT disappearing?

The law involving consumers is undergoing very many changes after a period of stagnation where little of major significance has happened since the introduction of the Consumer Protection of Unfair Trading Regulations 2008 ("CPRs") in May 2008. However, that may be about to change with the proposed abolition of the Office of Fair Trading ("OFT") on 1st April 2014.

What is the current position?

The Consumer Credit Act 1974 ("the Act") requires businesses that lend money to consumers or offer goods or services on credit or engage in certain ancillary credit activities to be licenced by the OFT, known as a Consumer Credit Licence ("CCL"). Trading without a CCL in such cases is a criminal offence and can result in a fine and/or imprisonment.

The OFT has the responsibility of administering the Act and, together with Trading Standards Departments, enforcing it.

So what will happen once the OFT is abolished?

Leaving aside the OFT's competition role, the consumer side will divide roughly into two with consumer credit regulation going to the Financial Conduct Authority ("FCA") (the former Financial Services Authority), with enforcement remaining with Trading Standards Departments. The changes to consumer credit law are likely to be minimal since it is proposed that the FCA will simply adopt much of the existing OFT guidance on consumer credit.

All businesses currently holding a CCL will only be able to trade under their existing CCL until 31 March 2014. All CCLs expire on this date so make sure your business takes action otherwise it will not be able to continue with licensable activities.

Trading law

All firms which wish to continue trading after March 2014 will need to be registered with the FCA. From September 2013, current OFT licence holders can register with the FCA for "interim permission" which lasts for two years whilst full authorisation is obtained.

Are there any other changes?

In addition however, another new body, the Competition and Markets Authority ("CMA"), has indicated that it will also have a role in acting where the CMA's statutory function of promoting competition for the benefit of consumers would include enforcing unfair terms legislation and the CPRs. In addition, Trading Standards will also have this enforcement role.

What should you do?

Any business which comes under the Act should ensure it is ready for the key changes. Further information can be found at http://www.oft.gov.uk/OFTwork/credit-licensing/credit-changes/, with options to register to email updates, so make sure your business isn't left behind.

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"All businesses currently holding a Consumer Credit Licence will only be able to trade under their existing CCL until 31 March 2014."

"Trading without a Consumer Credit Licence in such cases is a criminal offence and can result in a fine and/or imprisonment."

Lawyer in the news

1. Who are you?

I am Nathan Buckley and I am a senior associate in the safety health and environment regulatory team.

2. Why did you choose the law?

I was fascinated by court room dramas and I got hooked from there.

3. What appealed to you about this career?

I wanted to do something that challenged me.

4. What personality traits make a good lawyer?

Good people and communication skills, an analytical mind and an ability to remain calm under pressure.

5. How would your colleagues describe you/how would you describe yourself?

I would like to think that they would say I was fun and good to be around.

6. Have you had any particularly interesting cases recently?

The area of work we do means that the vast majority of our cases are interesting. One recent case included the representation of a farmer whose son died in a grain bin. He was subject to a joint investigation by the Police and the HSE and I provided him with representation at the inquest.

7. What was the outcome?

No action was taken against my client. Whilst there was sufficient evidence to prosecute him for a number of matters, I successfully argued that a prosecution would not be in the public interest.

8. What did you learn?

It reinforced to me the importance of building a good relationship with the investigators. Whilst in some cases this is not possible, I believe it is an approach which often serves clients well.

9. What has been your career highlight so far?

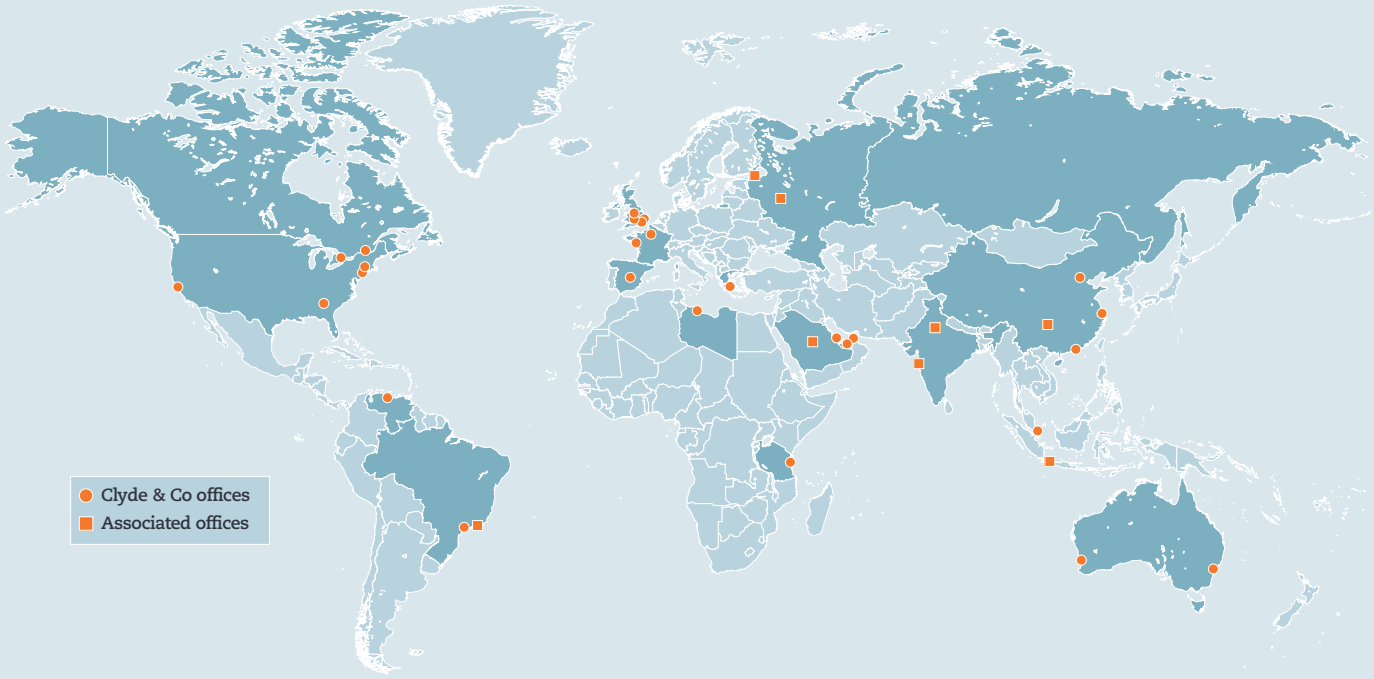
The highlight of my career involves the successful acquittal of a sole trader following a two week trial at Manchester Crown Court for breaches of health and safety legislation, arising out of a fatal incident.

The co-defendants were convicted unanimously by the jury, while our client walked away with no convictions.

10. What is your favourite holiday destination?

Thailand.

Our offices



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Further advice should be taken before relying on the contents of this summary.

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CC004238 - November 2013