Safety, Health and Environment (SHE) Regulatory

CLYDE&CO

Newsletter

Spring 2015

Welcome

Welcome to Clyde & Co's Safety, Health and Environment Regulatory (SHE) newsletter.

Our SHE regulatory team specialises in regulatory defence work and has 'one of the largest health and safety offerings in the UK market' demonstrating 'real strength in depth' according to Chambers and Partners UK. We are ranked as a first tier firm by Legal 500 who believe that our practice is 'in the top flight of firms working in this area', with particular praise for our 'fantastic service'.

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. Follow us on Twitter @ClydeCo_SHEReg for the latest news, legal updates and insights in the sphere of regulatory law.

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Latest statistics - GBP 14.2 billion lost in 2013/14 as a result of injury and ill-health

The Health and Safety Executive (HSE) has recently published statistics on workplace injury and illness for the year 2013/14.

The figures released show that too many workers are still being injured or made ill by work. Judith Hackett, the chair of the HSE, said *"These latest figures remind us what health and safety is really about. We should remind ourselves what these numbers actually mean – the number of times in the last year someone went out to work and either did not return home to their loved ones or came home with life changing injuries. We all need to commit to focussing on what really matters – ensuring more people return home from work and enjoy long and healthy working lives"*.

According to the latest annual statistics, an estimated 28.2 million working days were lost due to work related ill health or injury in 2013/14. The cost to society from such injuries and new cases of ill health is an estimated GBP 14.2 billion in 2012/13 (based on 2012 prices) with workplace injuries (including fatalities) accounting for around GBP 5.6 billion and new cases of workplace illnesses around GBP 8.6 billion.

The statistics show that in 2013/14, there were;

- 133 fatal injuries, equating to a rate of 0.44 fatal injuries per 100,000 workers. Of the main industrial sectors, construction, agriculture, and waste and recycling have the highest rates with 42, 27 and 4 fatal injuries to workers, respectively
- 77,593 other injuries reported under RIDDOR, equating to a rate of 304.6 injuries per 100,000 employees
- Two million people suffered during the year from an illness they believe was caused or exacerbated by current or previous employment. This number includes 500,000 people who developed new conditions during the year

Enforcement

- The statistics show 674 cases were prosecuted for health and safety breaches in 2013/14
- These cases led to 636 convictions for at least 1 offence, a conviction rate of 94%
- Total fines received were GBP 18 million
- There were 13,790 notices issued by the HSE and Local Authorities in 2013/14, an increase of 2% from the previous year

The full statistics, including comparisons to previous years, are available **here**.

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Back to page 1

CQC: Revised enforcement policy published

Ahead of significant changes in April 2015 in the regulation of the provision of health and social care services across England, the Care Quality Commission (CQC) have published their revised enforcement policy.

From 1st April 2015 the CQC will become the lead investigator and enforcer in health and social care matters and they will become responsible for deciding whether regulatory action is needed for health and safety incidents that involve people who are cared for by the services that they regulate.

The HSE and Local Authorities will continue to have jurisdiction in relation to matters involving workers, visitors and contractors, as well as people receiving care by services that do not need to be registered.

The new enforcement policy will take effect from 1 April 2015 and will replace the previous enforcement policy, setting out the principles and approach that the CQC will follow when using their enforcement powers.

The Policy confirms that the CQC have two primary purposes when using their enforcement powers, which are:

1. To protect people who use regulated services from harm and the risk of harm, and to ensure they receive health and social care services of an appropriate standard
2. To hold providers and individuals to account for failures in how the service is provided

In using their enforcement powers, the policy confirms that the CQC will be guided by core principles which include being on the side of people who use regulated services, proportionality, consistency and transparency. The document also outlines a wide range of enforcement action available to the CQC, which involve both criminal and civil sanctions.

A copy of the newly published policy can be found **here**.

An improved 'recipe for safety'

A revised version of the publication 'A recipe for safety' guidance (HSG252) has now been released by the HSE, which seeks to provide information on the risks associated with the hazards in the food and drink industries.

The newly published document was created by the HSE with input from key stakeholders within the food and drink manufacturing industry, with the original publication from the 1990's having assisted in reducing the number of injuries and fatal accidents in this particular area of work by 50%.

The publication contains guidance on several key work activities which are likely to expose workers, contractors and visitors to risk within the food and drink manufacturing industry, including machinery, workplace transport, work at height, slips and trips, entry into confined spaces and manual handling.

The document concludes by advocating the initiatives and work done by the Food and Drink Manufacture Health and Safety Forum, which was established in 2004 and seeks to improve health and safety and reduce injuries in the industry. This forum meets twice a year and a list of members is set out within the publication.

A copy of the document can be found **here**.

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Back to page 1

CDM 2015: More relevant and focussed or just more red tape?

6 April 2015, Easter Monday brings another new dawn in the ongoing quest for consistent health and safety management in the construction industry. The introduction of the Construction (Design and Management) Regulations 2015 ("CDM 2015") is long awaited and indeed long overdue; but will it change the underlying approach to managing projects and will its wider reach result in successful application of its provisions? In this article, we will examine the increased scope of the new Regulations and whether the new roles are simply a re-labelling of the old or whether the new regime will see a fundamental shift in methodology.

What was wrong with the old regime?

CDM 2015 will entirely replace the 2007 Regulations of the same name, which have been criticised on numerous levels since their introduction.

The impetus for a CDM overhaul came from various sources. First, the UK legally had to amend the Regulations in order to ensure the original EU Directive was properly implemented. Beyond that, the 2011 Lofstedt Report and the Coalition Government's de-regulation agenda which manifested itself in the "Red Tape Challenge" provided the real motivation for the change.

Research found that CDM 2007 encouraged an overly "bureaucratic" approach to safety management and had failed to provide a workable regulatory framework for smaller sites. Whilst large organisations were appropriately resourced to deal with the obligations of the regime, SMEs in the construction industry were failing to comply. Furthermore, "competence", the cornerstone of CDM 2007, was poorly understood and assessment of it problematic with overall health and safety co-ordination often ineffective and inconsistent.

What are the objectives of CDM 2015?

The changes introduced by CDM 2015 reveal the following key drivers:

- Safety management needs to be simplified and targeted to enable a wider understanding of CDM and a greater level of success in its application
- The concept of "competence" has been poorly understood and assessment of competence difficult to administer. CDM 2015 therefore moves towards a system whereby the foundations of competence are identified (training, experience, knowledge and skills) in the hope this more specific approach will make competence checking easier to achieve
- Clients have a huge influence on projects, from budgeting and programming to engaging the project team. Due weight is given to this vital role in CDM 2015 with all Client responsibilities now mandatory and central to effective management
- The role of the CDM Co-ordinator ("CDMC") was not always introduced to projects early enough leading to a disjointed approach to safety management
- Health and safety management on smaller sites is not working. Sites where fewer than 15 people are working now account for more than two thirds of fatal accidents in the construction industry; a disproportionate figure on any assessment
- Domestic projects are to be encompassed within the ambit of CDM to ensure the UK accurately transposes the original EU Directive (92/57/EEC), which specifically included domestic work, whereas our legislation has always specifically excluded these projects. CDM will therefore apply to domestic projects where more than one contractor is to be engaged, thus recognising the huge industry in domestic construction and renovation currently largely unaffected by the specifics of CDM

Back to page 1

Roles and Responsibilities

CDM 2015 places responsibilities on the following people:

- Clients (see regulations 4 – 7)
- Principal Designers (see regulations 8 – 12)
- Principal Contractors (see regulations 8 and 12 – 15)
- Designers (see regulations 8 – 10)
- Contractors (see regulations 8 and 15)

The key roles are played by the Clients, Principal Designers and Principal Contractors with the fourth title currently in place, the CDMC, being abolished altogether and its responsibilities being placed with the new Principal Designer remit.

The removal of the CDMC addresses a perception that CDMCs were often appointed too late, missing the opportunity to embed health and safety within the ethos of the project from the outset. The HSE believes that placing these responsibilities with the Principal Designer deals with this concern, ensuring pre-construction co-ordination is incorporated from day one. However, question marks remain over the appetite and competence of Designers to fulfil this role and indeed many wonder whether they will simply resort to external advice (from current CDMCs) in discharging this role in any event.

Of real interest is the increased burden placed on Clients, whom it was felt were so influential in the life of a project that their obligations should be made mandatory. Accordingly, the drafting of CDM 2015 represents a stark contrast to its predecessor, which required Clients to, "take reasonable steps" to discharge their duties; instead, they now "must" do so.

The non-delegable tasks allocated to the Client also includes filing the F10 form notifying the HSE of the project where it is either scheduled to last longer than 30 days and have more than 20 workers working simultaneously or where it will exceed 500 person days. The fact of notification is no longer a significant threshold as it has been previously as CDM 2015 applies wholesale where a project has more than one contractor and there are no increased duties imposed upon those working on a project where an F10 has been submitted.

Whilst CDM 2015 will apply to domestic projects, the Client in those situations is not required to discharge the key management duties outlined in regulation 4 or indeed to notify the project to the HSE where that threshold is met. Instead, those duties "must" be carried out by one of the professional appointees on site.

What does competence mean?

CDM 2007 placed huge emphasis on the competence of the appointees who were not to be engaged unless "competent" and who were not to accept the role unless they too agreed they were "competent". However, the concept of competence was not defined and little guidance could be discerned from the supporting Approved Code of Practice ("ACoP") leading to concerns about the real tenets of the notion of competence and countless hours of expert evidence before the courts.

CDM 2015 looks to address this by identifying the planks of competence; skills, knowledge, training, experience and (in the case of a business) organisational capability. These must be present in those appointed to a project to enable the roles to be discharged in a manner that secures the health and safety of those involved in or affected by the project. The supporting guidance (see below) provides useful practical examples to assist with the assessment of competence, representing a significant improvement on the unsatisfactory position under CDM 2007.

Is this really a change?

On the face of it; yes! A streamlining of the appointment holders and clearer, more focussed guidance is a welcome development, which will hopefully encourage the consistent and coherent incorporation of health and safety within projects from the very outset. Whether the abolition of the CDMC will translate in reality, time will tell. As Principal Designers come to the fore, we will learn more about whether they can discharge this significant new role alone or whether those currently acting as CDMCs will end up supporting the Principal Designer on a consultancy basis.

Clearly the application of the CDM regime to the domestic setting is a considerable change and one which will require some clear and strong guidance from the regulator as SMEs get to grips with their new responsibilities.

Back to page 1

What happens to ongoing projects?

A six month transitional period has been accounted for, during which special provisions will apply. This will run to 6 October 2015, following which CDM 2015 will apply across the board.

In summary, where projects begin before 6 April 2015 but the construction phase has not yet begun and no CDMC has been appointed, the Client must appoint a Principal Designer as soon as practicable. If the CDMC has already been appointed, a Principal Designer must be in post to replace that CDMC no later than 6 October 2015.

You can visit **http://www.hse.gov.uk/construction/cdm/regulation-changes.htm** for more details on the transitional arrangements.

What guidance is available?

The HSE has issued draft guidance on CDM 2015 and this is freely available to download on the Executive's website (http://www.hse.gov.uk/pubns/priced/draft-l153.pdf). Unlike previous incarnations of CDM, which were supported by an ACoP, CDM 2015 is the subject of legal guidance (within the HSE's "L" series). The guidance will be finalised with the passing of CDM 2015 but has been published in draft to assist organisations as they prepare for the new regime.

As part of the drive to achieve a more focussed approach, the Construction Industry Training Board has published a series of targeted guidance documents written by members of the Construction Industry Advisory Committee. This suite of documents covers:

- **Clients**
- **Principal Designers**
- **Principal Contractors**
- **Designers**
- **Contractors**
- **Workers**

Each booklet provides clear summaries and bullet points relevant to the particular role in question and avoids the need for many involved with projects to navigate the Regulations themselves and the HSE's lengthy guidance.

Where can I find out more?

Clyde & Co is pleased to announce that it will be running a seminar on CDM 2015 on 14 April 2015 at 4:00pm. Taking place at our office in the heart of the City, our construction and health and safety specialists discuss the regulations as well the criminal enforcement ramifications of failing to comply with these new regulations. Click **here** to read more and register your interest in attending the seminar.

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Back to page 1

Businesses continue to struggle with Fire Safety

Following our article in July, recent figures released by the Government suggest that more than a third of non-residential properties audited remain non-compliant with the Regulatory Reform (Fire Safety) Order 2005 (the "RRO").

Action was taken in 12,932 premises as a result of non-compliance and the worst performers were licensed premises with only 52% of 8,200 premises being "satisfactorily compliant". 30% of 4,900 offices and 29% of 6,000 factories and warehouses were also found to be non-compliant. The figures are particularly stark when the data is considered more closely; just 3% of premises in England and Wales were checked last year. This means there could be hundreds of thousands of non-domestic premises which are breaking the law, placing the safety of workers and the general public at risk, invalidating their insurance and leaving themselves open to huge fines before the criminal courts.

The areas in which premises were most commonly non-compliant were:

- Article 9 – risk assessment
- Article 14 – emergency routes and exits
- Article 17 – maintaining precautions

Clearly something is failing but what can the health and safety industry do to change this? The RRO made significant improvements in consolidating the previous collection of regulations, but is it still too confusing for businesses? Or is it the case that businesses believe they are outside the scope of the regulations or simply can't afford to allocate sufficient funds to this crucial area of safety?

Legal requirements

The RRO requires all employers, business owners, or landlords to take responsibility for fire safety in the workplace. This includes:

- Carrying out a fire risk assessment of the workplace, taking into account all employees and all those who may be affected by a fire in the workplace
- Identifying the significant findings of the assessment and the details of anyone who might be especially at risk in case of fire. Where a business employs more than five people then these must be recorded
- Providing and maintaining such fire precautions as are necessary to safeguard those who use the workplace
- Informing, instructing and training employees about the fire precautions in the workplace

Failure to comply with fire safety legislation can lead to huge fines or even prison sentences. It is therefore imperative all those with obligations under the RRO revisit the legislation and understand their role.

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Back to page 1

E-Cigarettes – A Fire Risk?

E-Cigarettes have grown in popularity since they emerged as a safer and healthier option to their tobacco containing counterparts.

What is an E-Cigarette?

An E-Cigarette is usually made up of: a rechargeable lithium-ion battery, an atomiser and a replaceable or refillable cartridge containing liquid nicotine, flavours and other chemicals. The battery heats up a coil attached to a wick, which heats liquid containing nicotine, creating vapour that is then inhaled.

Smoking an e-cigarette is more accurately described as 'vaping'. It is claimed that 'vaping' is safer than smoking because of the absence of tobacco and smoke.

In a market worth GBP 90 million, there are approximately 1.3 million users of E-Cigarettes in the UK, a figure which is expected to increase rapidly over the next few years.

What are the fire risks?

E-Cigarettes are a relatively new product and therefore their risks, including their fire risks, are not yet fully understood. Despite the fact that you do not light an E-Cigarette, there are still fire risks associated with this product.

One of the fire risks associated with E-Cigarettes is the potential to overheat, catch fire and even explode whilst charging; such incidents have caused several minor fires across the UK in the last year. These fires have resulted in a number of injuries, including first and second degree burns and one incident tragically resulted in the death of an elderly lady. It has also been reported that an E-Cigarette exploded whilst a man was 'vaping', causing injury to his tongue.

Many of the batteries within these devices do not have over-current protection which is found in mobile phones, meaning the E-Cigarette will continue to charge even when fully charged.

In order to minimise the risk of fire, it is advisable to only use the charger supplied with your E-Cigarette and avoid leaving E-Cigarettes on charge overnight or for long periods of time whilst unattended.

Is there any regulation of this fire risk?

Currently, there is no regulation of the fire-risks associated with E-Cigarettes, nor are there any plans to introduce such regulation. As it stands, the fire safety of E-Cigarettes remains uncertain and extreme care should be exercised with a product so new to the UK marketplace.

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Back to page 1

Fire Safety in The Workplace
Do You Know Which Extinguisher To Use?

Every year billions of pounds are lost due to fire; many of which are caused as a result of negligence. However, the effects can often be worse due to a lack of understanding over fire safety measures, in particular, the type of fire and the correct extinguisher to use.

Broadly speaking there are 6 different types of fire, classified on the basis of the material / cause of the fire:

- Type A – flammable solids, e.g. wood, paper, fabric and plastic
- Type B – flammable liquid, e.g. petrol
- Type C – flammable gases, e.g. propane
- Type D – combustible metals, for example, magnesium and titanium
- Type E – electrical equipment and appliances
- Type F – fires involving cooking fats or oil

It is not always possible to control a fire simply with water and an alternative extinguisher should be used. For example, water is one of the best conductors of electricity. Likewise, with a fire involving cooking fats or oil, water will actually evaporate and spread the flame into the air.

So, which extinguisher should you use for which fire? The table below hopefully provides your employees, and thereby your business, with a helpful overview;

Type of extinguisher	Class of fire	Colour of extinguisher
Water	A	Red
CO2	B, C & E	Black
APP Foam	A, B, C & F	Beige
Powder	A, C, D & E	Blue
Wet Chemical	A & F	Yellow

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Back to page 1

Illegal Cigarettes a Major Fire Risk

With cigarettes already the single biggest cause of fire deaths in the UK, a recent study has revealed that fake cigarettes filtering onto the market pose an even bigger danger.

Since November 2011, every cigarette sold in the EU must meet a reduced ignition propensity (RIP) requirement by having ultra-thin bands of slightly thicker fire-retardant paper at intervals down the length of the cigarette so that, once lit, it will self-extinguish if not actively smoked. This reduces the fire risk from them being left burning in an ashtray, dropped, or from the smoker falling asleep, for example.

It is estimated that the implementation of this legislation and the creation of fire-safe cigarettes could prevent 1,800 fires, 67 fire deaths and 600 casualties a year in the UK, or one life every five days.

However, the active word above is 'sold', meaning sold legally. What about the increasing numbers of counterfeit cigarettes smuggled into the country as the price of legal brands continue to rise? And it is not just fake cigarettes bought in pubs or on the street which pose a risk. Raids recently conducted by trading standards officers on nine shops in Derbyshire revealed that only one of 18 samples tested features the mandatory RIP bands.

Apart from the obvious fire risk, fake cigarettes also carry huge health risks and are even more toxic than genuine brands, often containing noxious cancer-causing chemicals such as arsenic, lead, cadmium, benzene and formaldehyde, sawdust, tobacco beetles and, in some cases, rat droppings.

Consumers should therefore check the cigarettes they buy carefully. Genuine, legal packets of cigarettes or hand rolled tobacco should have the words 'UK DUTY PAID' on the packs. All the wording should be in English and there should be health warning messages on both the front and back of the packet.

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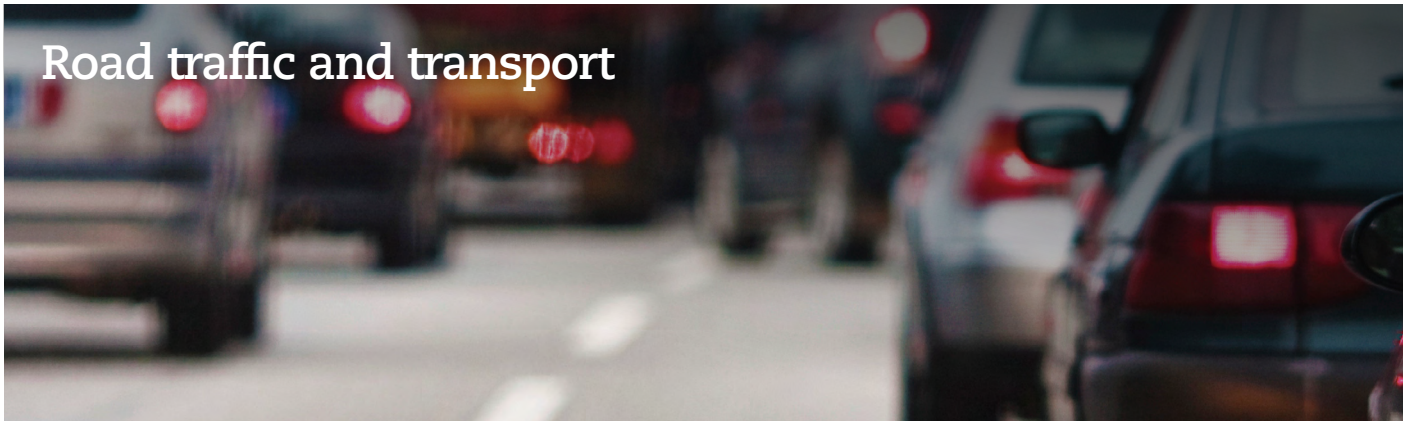
Back to page 1



Honesty Really is the Best Policy

A new crackdown has been launched to combat drivers who fail to declare endorsements on their licence when taking out car insurance.

Figures from the Driver and Vehicle Licensing Agency (DVLA) show that 16 per cent of the UK's estimated 35 million motorists fail to disclose their driving record accurately, including disqualifications and serial speeding convictions.

The deception is usually committed by drivers who fear their insurance policy may be refused or made too expensive if they told the truth. However, if they have an accident, the failure to declare can make their policy invalid.

So how will insurers check drivers' honesty?

The new licence-checking system called 'MyLicence' involves a partnership between the Motor Insurers' Bureau (MIB) and the Driver and Vehicle Licensing Agency (DVLA). The two groups will supply a data-sharing service to the motor insurance industry with insurers able to use accurate information about drivers' records to assess risk and prevent fraud at the point of quote or renewal.

It was developed in partnership with the Association of British Insurers (ABI) in response to the Government's Insurance Industry Access to Driver Data programme and the DVLA's aim to digitalise the data it holds.

So what has been said about this new system?

A spokesman for ABI said it will allow the motor insurance industry to have 'instant access to accurate driving history data' via a secure MIB hub and the use of a driving licence number.'

ABI Policy Director and Deputy Director General, Huw Evans, added that the new system was the latest in a series of legal reforms designed to crack down on fraudulent insurance claims and practices which had led to the motor insurance claims system being branded as 'dysfunctional' and Britain 'the whiplash capital of Europe' by MP watchdogs.

So will this system be able to combat all types of dishonesty?

Insurers say the system will not identify the millions more drivers who tell 'little white lies' to cut the cost of their premiums – such as stating a vehicle is parked in the driveway when in reality it is parked out on the road.

So is this good news for honest drivers?

Transport minister Claire Perry said: "MyLicence is good news for motorists and good news for the motor insurance industry."

"This Government is investing in the service which will allow insurers to price much more accurately and should reduce premiums for honest motorists."

So will the savings be passed from the insurers to honest motorists?

Whilst this remains to be seen, the money raised by insurers from the crackdown should be used to cut up to GBP 50 from the premiums of honest law-abiding motorists and reduce the bills of over two million motorists who make the mistake of 'over-declaring' convictions that may be spent.

So what message does this crackdown send out?

Honesty really is the best policy when it comes to declaring your driving licence accurately. Those who don't run the risk of being prosecuted for fraud.

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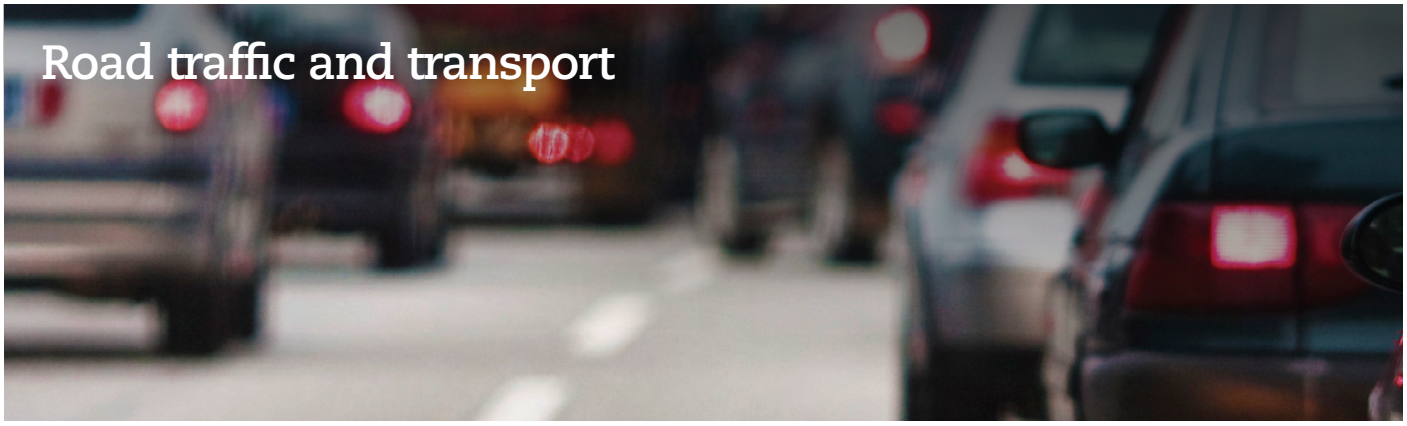
Back to page 1



Drug Driving - Do You Know the Limits?

A new anti-drug law will come into effect in England and Wales on 2 March 2015.

So why is this new legislation being introduced?

The new law aims to catch and punish those who put the lives of others at risk while driving under the influence of drugs.

So is it just illegal drugs that the new law will outlaw?

No, as well as banning driving while under the influence of illegal drugs, the new law will include some prescription medicines.

So how do I know whether the new laws will affect me?

The new legislation sets very low levels for eight well known illegal drugs, including cannabis and cocaine, but also includes eight prescription drugs, where the levels have been set much higher.

Most of them, including Temazepan and Diazepam, are used for treating conditions such as anxiety but the list also includes methadone, a heroin substitute and pain medication, and morphine, a powerful opiate also used for pain relief.

The good news is that prescribed doses do not exceed the limits for legal drugs, so most patients should still be safe to drive.

Those who are unsure are advised to seek the advice of a pharmacist.

So what recourse would a driver have if a prescribed dose caused them to fall foul of this new legislation?

The new legislation will provide drivers with a medical defence if they have been taking medication as directed and are found to be over the limit but not impaired.

Road Safety Minister, Robert Goodwill, said "Drivers who are taking prescribed medication at high doses [are advised] to carry evidence with them, such as prescriptions slips, when driving in order to minimise any inconvenience should they be asked to take a test by the Police."

So is this new legislation being welcomed?

Ed Morrow, Campaigns Officer for road safety charity Brake said: "This much needed progressive move by Government will make it much easier for Police to deal with illegal drug-drivers".

"We are confident that the necessary measures are in place to ensure drivers who take prescription medication are not unfairly penalised".

"However, many prescription medications can have a negative effect on your ability to drive safely, and there is a worrying lack of awareness of this among the public."

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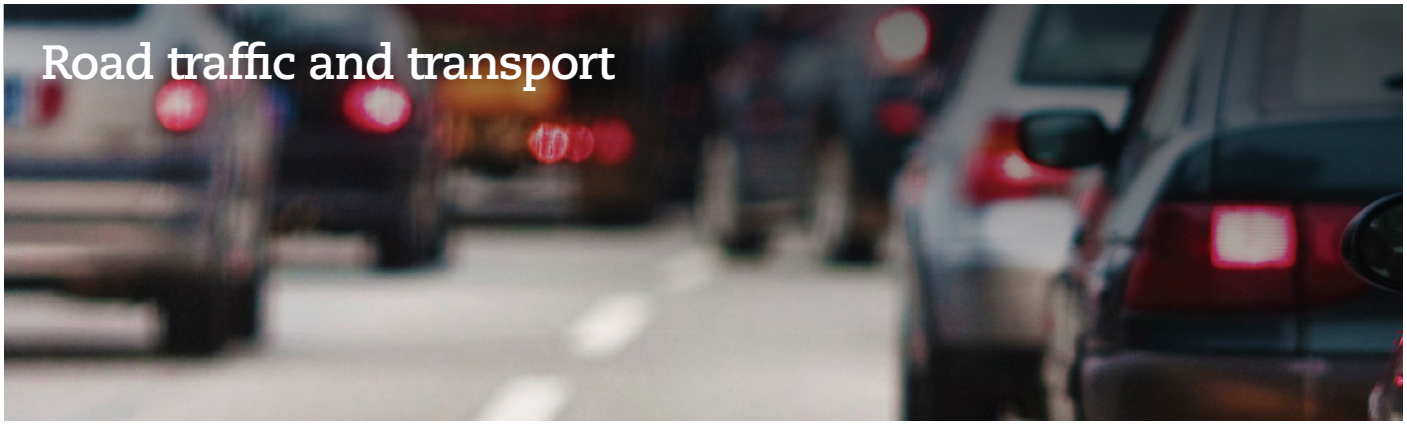
Back to page 1



Parking Penalties Could Become a Thing of the Past

Millions of pounds of parking penalties could have been charged illegally, according to the RAC Foundation ("Foundation").

Penalties for overstays in car parks on private land in England and Wales could in some cases be unenforceable in court, the Foundation said.

So on what grounds could the penalties be deemed illegal?

The Foundation claims the penalties are much more expensive than compensation for a genuine loss incurred by landowners.

The Foundation's report said parking companies were levying charges on drivers which were disproportionate to the losses suffered by landowners as a result of motorists' actions.

The report also said European legislation, which requires contracts to be fair, meant so-called "early payment discounts of penalty charges could also be unlawful because they constitute a "price escalation clause".

So what opposition has there been to the Foundation's report?

The Independent Parking Committee ("IPC") claim the penalties are the only protection landowners have against losses.

John Davies, director of IPC, said that parking charges were now "the only protection that landowners have short of installing expensive barrier equipment and that people who did not accept parking terms set out clearly on signs had "the choice not to park".

In addition, Patrick Troy of the British Parking Association, which represents private parking companies, said people were already able to appeal to the Parking on Private Land Appeals (POPLA) body to address incidents of perceived unfairness.

So what action is the Foundation calling for?

The Foundation has called for the Government to ensure that extra parking charges are "reasonable and enforceable" and wants to see its argument tested in court so that a binding precedent is set.

So what happens if a binding precedent is set?

Stephen Glaister of the Foundation said: "Millions of drivers could be in line for a refund. We estimate that in 2013 alone drivers might have been overcharged by some 100 million".

Watch this space! The dreaded parking penalty could soon be a thing of the past.

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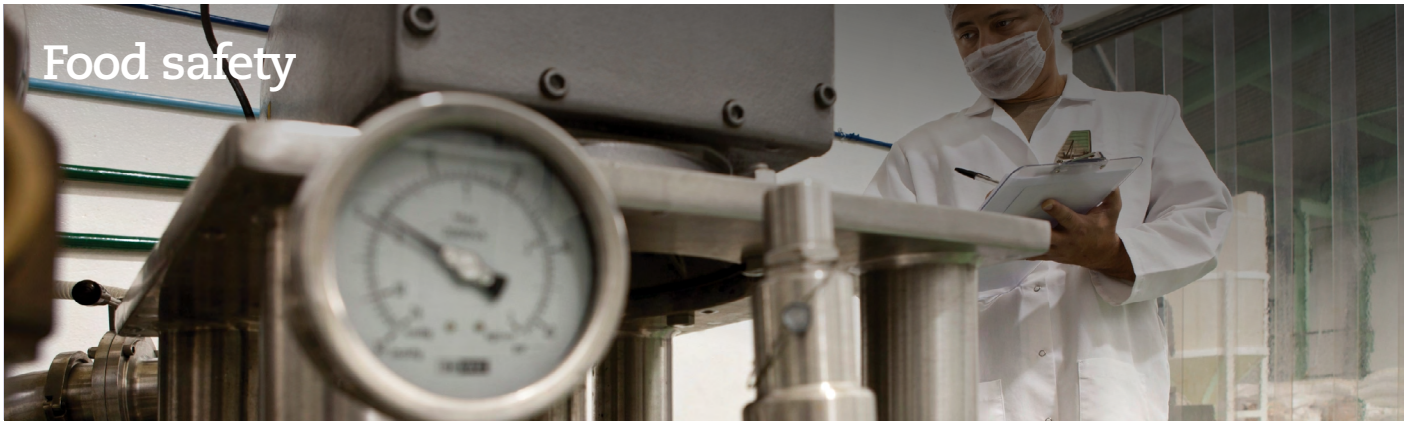
Back to page 1



Food Security Co-ordinator to target food waste

A new report into food security has been published by the Environment, Food and Rural Affairs Committee recommending the appointment of a food security co-ordinator to tackle food waste.

The role of a "Food Security Co-ordinator" would be to bring together key agencies to develop effective systems to distribute food that would otherwise go to waste. According to the report, 9 million tonnes of the UK's annual 15 million tonnes of food waste could have been eaten at some point.

The publication follows the British Retail Consortium's (BRC) report which revealed the combined food waste figures of the UK's top seven supermarkets, stating that the retail sector wastes 200,000 tonnes of food per year, equating to 1.3 percent of the 15m tonnes of food wasted each year in total.

Household waste equates to half the total, at 7m tonnes, manufacturing 3.9m tonnes and farming 3m tonnes. Hospitality and food services equate to 900,000 tonnes of food wasted, according to the BRC.

The Government has pledged to consider the recommendations in the report and provide a full response in due course.

Inquiry means closer scrutiny for big retailers

The first formal investigation by the grocery industry watchdog has been launched following allegations by the Groceries Code Adjudicator that supermarket giant Tesco may have breached the Grocery Supply Code of Practice.

The Code is designed to regulate the relationship between supermarkets and their suppliers but since its introduction in 2009 has, in reality, had limited impact. However, that could be about to change with this investigation.

The investigation will focus on supposed delays to payments made to suppliers and also payments allegedly made by suppliers to secure better shelf positioning. The inquiry will focus on Tesco only at this stage.

At present, the adjudicator's powers are limited to naming and shaming retailers and to recommending improved practices for the future. However, the Government has recently published plans to give the adjudicator the power to fine retailers up to 1% of their annual UK turnover.

This of course will be of concern to all the big retailers, not only in terms of the potential levels of penalty but particularly the adverse publicity. Indeed, given the changing retail landscape and the growing competitive threat from the discounters, the immediate adverse reputational harm of being caught in the adjudicator's spotlight may be more of a deterrent than the risk of a fine.

The inquiry is likely to take around six months unless it is broadened, in which case it could take about nine months. We will continue to monitor and a further update will follow in due course.

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Back to page 1

EA launches free online IsItWaste tool for businesses

A free, easy-to-use assessment tool designed to help businesses be more resource efficient by putting their waste back to work has been launched by the Environment Agency (EA) in conjunction with waste organisations.

What is it?

The IsItWaste tool will enable businesses to check whether a waste or surplus material is a by-product or whether it achieves end-of-waste status and can therefore be considered as a product. The tool provides step by step instructions that take users through key decision stages including material composition, risk assessment, product use and end markets. It can also be used to submit an application to the EA's Definition of Waste Panel for a formal decision if required.

The aim is to remove high quality products derived from waste from the scope of waste legislation to allow businesses to be more resourceful and competitive.

What are the benefits?

Waste derived products can improve business resource efficiency and competitiveness, reduce reliance on landfill and help to conserve virgin raw materials.

Paul Leinster, chief executive of the EA said "The IsItWaste tool helps businesses navigate a complex area of legislation as they seek to transform their waste into useful products. This has environmental and economic benefits."

Resource Minister, Dan Rogerson has also said "We all have a responsibility to tackle waste and I congratulate the EA and their partners on the new IsItWaste service which can help businesses save money and create new products from existing materials to generate growth and new jobs".

Other business support measures introduced by the EA within waste legislation include Quality Protocols which set out the quality requirements for certain waste derived products to achieve end-of-waste status. To date the Quality Protocols programme has resulted in:

- Circa 40 million tonnes of material diverted from landfill
- Savings of around 77 million tonnes of virgin raw materials
- Circa 306,000 tonnes of carbon avoided

The latest estimates suggest that by 2020, around GBP 3.5 billion in terms of increased sales and GBP 1.5 billion in terms of reduced regulatory burden will be realised.

The IsItWaste web tool and accompanying guidance can be accessed **here**.

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Back to page 1

Government crackdown on waste crime

On 26 February the Department of Environment, Food and Rural Affairs (Defra) and the Welsh Government opened a joint consultation on new Regulations aimed at tackling waste crime which costs the UK over GBP 500 million per year.

What is 'waste crime'?

'Waste crime' covers a wide-range of activities, including organised fly-tipping, illegal dumping of waste, illegal operation of waste management sites (such as non-compliance with permits) and the deliberate mis-description of waste to evade landfill tax.

Why have Defra opened a consultation?

The consultation follows a recent emphasis on the crackdown of waste crime by the Government, including Defra's Waste Crime Action Plan which aims to bring about increased enforcement against waste crime and widens the EA's powers in relation to this.

The latest figures from Defra show a 20% increase in the number of fly tipping incidents dealt with by Local Authorities, leading to a 24% increase in costs to almost GBP 60 million.

In September 2014, Defra minister Dan Rogerson confirmed the Government's commitment to tackling waste crime in a letter to industry. The letter asked for responses to proposals to combat non-compliance with waste regulations. The proposals included:

- Limiting the chance to appeal decisions to suspend environmental permits
- Increasing EA intervention at poor performing sites
- Improving co-ordination between the EA and HM Revenue & Customs (HMRC) to deal with non-compliance linked to tax evasion

GBP 5 million in funding was also secured in the Spring Budget to tackle waste crime, but Local Authorities say the recent rise of fly tipping, following a decline in previous years, illustrates the impact of council cutbacks and more help is needed to fight waste crime..

The above initiatives in conjunction with this consultation aim to bring about speedier and tougher enforcement approaches to reduce waste crime.

What is in the consultation?

The consultation is split into two parts. Part one seeks comments on proposals to enhance regulators' powers and part two calls for evidence on further enforcement actions that could be taken to cut down on waste crime.

The aim of any new Regulations which result from the consultation is to make it easier for the EA and other regulating authorities to prosecute waste crime offenders by enhancing their existing enforcement powers. The proposals outlined in part one include:

- Suspend site licences where there is risk of harm or pollution or an operator has failed to meet the conditions of an Enforcement Notice
- Issue Notices which require action to prevent the breach of a permit getting worse
- The EA will be given increased powers of intervention at sites which are believed to be at risk of non-compliance due to poor performance
- Regulators will be able to take physical steps to stop waste entering sites that are not complying with their permits
- Waste sites will be charged for the clean-up costs of any illegal waste

The proposals in the consultation aim to allow regulators to take 'swift enforcement action' before a situation develops that poses a significant risk to the environment and to reduce harm to local communities.

Part 2 calls for evidence on:

- Fixed penalty notices for fly-tipping
- Operator competence – to include technical competence, operator performance record, relevant convictions, and management systems
- Options to address abandoned or orphaned waste management sites
- Powers to recharge for pollution works

Back to page 1

What are the views on this consultation?

Commenting on the upcoming consultation, Dan Rogerson stated: "Waste crime blights communities and we support the Environment Agency in taking swift, tough enforcement action against those who flout the law or operate to poor standards".

He also said "I am determined that we see those responsible properly held to account for the damage they inflict on local communities".

Sam Corp, head of regulation at the Environmental Services Association (ESA) has also commented: "It is encouraging that there does now appear to be a genuine desire by Government and other stakeholders to tackle this issue".

The consultation closes on 6 May 2015. We will provide an update once responses to the consultation have been gathered and results have been published.

To access the consultation document, please use the following **link**.

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Enforcement undertakings extended to cover environmental permitting offences

The Government has recently laid the draft Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2015 before Parliament, which give the Environment Agency (EA) the power to accept enforcement undertakings for certain offences under the Environmental Permitting (EP) Regime. The Regulations are due to come into force on 6 April 2015 and will only apply to England.

Enforcement undertakings are civil sanctions; they provide regulators (such as the EA) with greater flexibility in ensuring compliance with the EP Regime. In giving an enforcement undertaking, an offender will voluntarily approach the regulator with an offer to remediate any damage they have caused. This approach is beneficial to the offender as it avoids being convicted of a criminal offence. However if the offender fails to comply with the undertaking, the regulator will still have the ability to prosecute the offender for their original offence. Enforcement undertakings will be available for all of the main environmental permitting offences, excluding breaches of enforcement notices and any offence involving deception or fraudulent mis-reporting.

For the EA, the new Regulations will simply enable them to accept enforcement undertakings where they have been voluntarily offered by the offender. For businesses, the benefits are numerous. The Regulations enable offending companies to deal with a breach in a more cost and time effective manner, whilst avoiding the potentially damaging stigma of a criminal conviction.

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Back to page 1

Energy companies appeal Ofgem's price controls

Three energy companies (Northern Powergrid (Northeast) Limited and Northern Powergrid (Yorkshire) plc and British Gas Trading Limited) have sought permission from the Competition and Markets Authority (CMA) to appeal against Ofgem's price controls for electricity distribution companies.

The price controls were announced back in November 2014 and will see the big six energy companies spend around GBP 24 billion in total to renew, maintain the electricity network and connect small-scale renewable generation. The current price controls expire on 31 March 2015, with the new controls set to run from 1 April 2015 - 2023.

Ofgem also set challenging targets for all companies to continue improving reliability, speed up new connections to the network and increase their work with vulnerable consumers.

The CMA must now decide whether to grant permission to appeal, and if it does so, it then has six months to determine the appeals. A further update will follow in due course.

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Back to page 1

CMA opens consultation on draft guidance on power to approve redress schemes in competition cases

The Consumer Rights Act 2015 is expected to come into force in October 2015 and will give parties to competition investigations who have breached the law the power to submit a voluntary redress scheme to the Competition and Markets Authority (CMA) for approval. The CMA is now seeking views on the draft guidance published on the operation of this new power.

What will the new power allow?

Anyone harmed by Competition Law infringements has the right to full compensation for the harm suffered. This potentially covers compensation for actual loss, loss of profit, plus the payment of interest.

It is intended that in appropriate cases the CMA's new power will make it easier for parties to provide, and consumers and businesses to gain access to, redress where harm has been caused by a competition infringement. As such, the power is designed to encourage parties to resolve disputes voluntarily as an alternative to court proceedings.

Any business considering setting up a redress scheme it wishes the CMA to approve should approach the CMA at the earliest opportunity for an initial discussion, in order to avoid wasting resources. The CMA has discretion whether or not to consider schemes for approval.

Importantly, the CMA does not expect to publicise that an application for approval of a scheme has been submitted during the course of an ongoing investigation. Neither does it expect to publicise any preliminary intention to approve or reject such an application. Similarly, parties are expected not to disclose that they have applied, or taken steps to apply, to the CMA for approval of a scheme without first consulting the CMA.

Moreover, when considering approving a scheme, the CMA will note whether it would be appropriate to make a penalty reduction in light of the infringing party's voluntary provision of redress. While there is no right to a penalty reduction, the CMA expects that in the majority of cases where it approves a scheme it will reduce the penalty it would otherwise have imposed to recognise the provision of redress through the setting up of the scheme.

How can I respond?

The new power could certainly present an attractive alternative for businesses who find themselves in the midst of potential regulatory infringements and therefore is worth careful consideration.

The consultation will run for four weeks, from 2 March to 29 March 2015. A final version of the guidance, taking into account consultation responses received, will be published in due course. If you are interested in responding to the consultation, then please follow this **link**.

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Back to page 1

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

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