

LegislationWATCH

THE No.1 RESOURCE FOR WORKPLACE LAW AND HEALTH AND SAFETY

Brexit

The nation is preparing for the EU referendum, but what are the health and safety implications of a possible British exit from the EU?



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Choosing Eye and Face Protection



Car Park Safety and Maintenance



Sub-Standard Washrooms



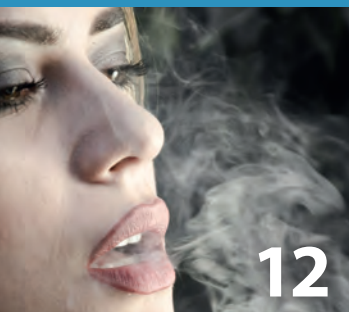
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Letter FROM THE EDITOR



Dear reader,

As the nation prepares for the EU referendum on the 23rd June to decide whether or not we stay in the European Union, there has been a lot of speculation on the implications this will have on health and safety law and the environment. Read the conflicting views from law firms, lawyers and campaigners on page 6.

This quarter's edition also highlights how important it is to choose the correct eye and face protection. With such a wide range of products available, it can sometimes be a daunting task. We need to take into consideration not only the protection level but also how it fits with other PPE, wearer comfort and the working environment. We've created a useful guide on page 8 to help you select the most appropriate protection for your needs.

Don't forget that we offer a completely **FREE Ask the Expert service** where you can have your Health and Safety or Workplace Law questions answered by our IOSH accredited experts, see page 31 for more information.

All of our articles, checklists and training tools are available online for you to access at any time, simply go to www.seton.co.uk/legislationwatch

We hope you enjoy this June edition of Legislation Watch and remember to look out for your next magazine in September.

Cheryl

Cheryl Peacock
Editor

Legal UPDATE



Changes to hazardous waste premises registration

Producers of hazardous waste in England no longer need to notify their premises with the Environment Agency.

The new rules mean that organisations that produce or store 500kg or more of hazardous waste per year will not have to register their premises with the Environment Agency from 1 April 2016.

Defra says it is changing the rules in line with the Government's Strategic Smarter Environmental Regulation Review (Red Tape Challenge). The rule changes only apply in England.

Hazardous waste is defined in the European waste catalogue, which includes a wide range of toxic and other substances such as sludges or chemical waste from refining processes. But it also includes everyday business items such as fluorescent tubes, LCD screens, CFCs, mineral oils and some batteries.

A spokesperson for the Environment Agency said: "By eliminating the need to register with us these changes will reduce the regulatory burden on business and the use of the revised consignee information will help ensure that we can continue to trace hazardous waste back to its source."

<https://www.gov.uk/how-to-classify-different-types-of-waste/overview>



HSE increases cost recovery fees

The Health and Safety Executive (HSE) is to increase its cost recovery fees charge by 4%, with new rates to apply for its Fee for Intervention (FFI) system, as well as the Control of Major Hazards (COMAH) and offshore safety regimes.

The Health and Safety and Nuclear (Fees) Regulations 2016, which came into force on 6 April 2016, revoke and replace the Health and Safety and Nuclear (Fees) Regulations 2015.

The new regulations increase all of the fees charged by the HSE and other licensing authorities by 4%.

A change has also been made to allow the HSE to recover costs of legal advice in relation to disputes under its FFI regime.

The fees for the HSE's FFI cost recovery scheme, which started in October 2012, will increase from £124 to £129 per hour.

The hourly charge for a visit by a COMAH inspector will rise from £155 to £161. Offshore safety inspections will now be £266 per hour (an increase of £10 compared with the former rate).

In a similar manner, the Plant Protection Products (Fees and Charges) (Amendment) Regulations 2016 have amended the Plant Protection Products (Fees and Charges) Regulations 2011 to increase those fees by 4%. The new fees apply from 6 April 2016.

Critics have argued that the rise is higher than inflation, given that the consumer price index rose by 0.3% in February 2016.

It is well known that the FFI scheme is unpopular with some, but it has been argued that FFI has been effective in achieving the overarching policy aim of shifting the cost of health and safety regulation from the public purse to those businesses that break health and safety laws.

The HSE says, "The many businesses that comply with their legal obligations will continue to pay nothing."



'Huge impact' expected with new health and safety sentencing rules

The new guidelines on the sentencing of health and safety offences, corporate manslaughter and food safety and hygiene offences formally came into force on 1 February 2016, with legal experts predicting huge impacts as a result of the changes.

The law firm Kennedys recently described the new guidelines as "the most significant development in health and safety law for over 40 years, since the Health and Safety at Work Act came into force in 1974" and predicted they will "dramatically increase fines for companies" and "lower the threshold for custody for individuals".

In practice, prior to the introduction of the new guidelines, the courts have tended to impose fines between around £250,000 to £350,000 on large companies convicted of a health and safety offence causing death.

However, under the new guidelines, the law firm has predicted that, "those same companies can expect a fine of £1.2 million, with a range of £500,000 to £3 million".

The range allows the courts to take into account factors that mitigate or aggravate the offence. Thus it is believed that an equivalent fine for a very large organisation is likely to be significantly increased proportionately "to a range of several million pounds".

In terms of the implications for individuals, Kennedys says that applicable sentence will range at the lowest end from a conditional discharge and/or fine, through to community service and/or greater fine and then up to two years' imprisonment. While companies risk much higher fines under the guidelines, individuals are more likely to get custodial sentences.

Brexit

WHAT IT MEANS FOR HEALTH, SAFETY AND THE ENVIRONMENT



Health, safety and environment lawyers and campaigners are increasingly speculating about the implications of a possible British exit from the EU as the nation prepares for a referendum on the subject on 23 June 2016. The Trades Union Congress (TUC) is arguing strongly that workplace safety and other employment rights underpinned by EU rules would be at risk if the UK votes to leave in the June referendum.

A recent TUC report on the subject says that decisions on which rights to keep — and which to amend or drop altogether — would be left to the government as it reviewed all UK laws linked to the EU.

In particular, the TUC predicts that working time rules and UK health and safety laws covering a wide range of hazards underpinned and extended by EU legislation “could be in the firing line”. Trade unionists believe other safety rights under threat could be those covering young workers, temporary workers and new and expectant mothers.

Patrick McGuire of Thompsons Solicitors said: “Brexit couldn’t remove totally the right to rely on European health and safety laws but it would reduce them to a bare minimum.”

In contrast, the law firm CMS predicts that the implications for health and safety law could be quite complex in the event of a Brexit.

A source at CMS said, “Some UK directors may want to see some EU regulation maintained, and not just because of the amount of work and expenditure it took to achieve compliance with regulation over recent years.

“Sectors populated by large international brands seek, as part of their approach to good corporate governance, to adopt global standards for areas such as health and safety, environment and diversification in the workforce — irrespective of where in the world they may operate.” “Responsible companies are unlikely to welcome too much divergence from EU regulation in this field.”

Leaving the EU would also put Britain’s environment “in a more vulnerable and uncertain position”, according to a report from the Institute for European Environmental Policy (IEEP).

The study says membership of the EU has “a significant positive impact” and argues that “there would be significant consequences for the environment” if the UK decides to leave the EU following the referendum in June.

The IEEP report, which was compiled in collaboration with the Wildlife Trusts RSPB and WWF, looks at both the strengths and weaknesses of EU environment policy across a wide range of issues, and acknowledges that dealing with environmental challenges on a European scale is far from complete.

But the report argues that improvements in air, land and water quality, efficiencies in waste management and recycling and protection of the natural environment in the UK have been significantly enhanced through EU membership.

Former Environment Secretary Owen Paterson dismissed the report’s conclusion as “complete tosh”. In an interview with the BBC, Patterson said it wasn’t true that leaving the EU would harm the environment. “We would do a much better job if we were outside. We would be able to interpret the legislation, such as the Bern Convention (on the Conservation of European and Wildlife Habitats) to our own flora and fauna, while also being an active participant in other bodies.”

According to the report, the extent to which current environmental regulations are maintained is an important factor and these are more predictable if the UK stays within the EU. The study also argues that separating UK, EU and international environmental law, built up over four decades, “would be a considerable challenge and a source of significant uncertainty”.

Choosing Eye and Face Protection

There is a wide range of eye and face protection available and it can sometimes be difficult to understand which type is the most appropriate for your needs.

Eye and face protection falls under the Personal Protective Equipment at Work Regulations. When deciding what personal protective equipment (PPE) to use, employers must make an assessment to decide whether the PPE will be suitable. This includes deciding on the risks to be combated, the working conditions and the part(s) of the body to be protected.

The type of PPE selected will depend mainly on the hazards to which the wearer is exposed. Selection must be based on the protection required and compatibility with the work being done and its risks.

What Type of Protection is Needed?

The main types are as follows:

- Safety glasses or spectacles provide protection against impact from small objects. Different levels of impact resistance are available. They are similar to prescription glasses, however they have side shields that provide lateral protection. They are suitable for general working conditions where there may be minor dust, chips or flying particles. They provide little or no protection against liquids or vapours.
- Eye shields are similar to safety glasses, however they have a single frameless one-piece lens. These provide a similar level of protection to safety glasses. Some eye shields can be worn over prescription glasses.
- Safety goggles provide protection for the eyes from all angles as they provide a seal around the entire area of the eyes. They are used when the eyes need to be completely covered but the rest of the face does not need to be protected. Different types of goggles are available to provide protection from liquids, dusts, gases, vapours, molten metal and high impact levels.

There are different designs to help prevent problems with fogging, however they need to be chosen carefully to ensure they are suitable for the work. Goggles can also be obtained with a range of filters to provide protection against lasers and welding.

- Face shields protect the face but do not fully enclose the eyes. They can provide protection against impact, spraying, chipping, grinding or chemical splashes. They are frequently used in conjunction with eye protection, as they are not by themselves protective eyewear. They can include welding filters or reflective metal screens that deflect heat.

For protection against light and other non-ionising radiation (e.g. lasers, UV and welding flashes), it is important that the correct type of filter is selected.

Selecting Suitable Eye/Face Protection

The selection of suitable eye protection depends primarily on the hazard, but comfort and durability should also be considered. Employees should be consulted and involved in the selection process.

Safety glasses are available in a variety of styles, weights and sizes. Most manufacturers offer a range of prescription safety spectacles which are individually matched to the wearer. Eye shields can be useful for visitors and other people who need eye protection

only for short periods as some styles can be worn over prescription glasses.

Goggles are heavier and less comfortable than glasses, however they provide much better protection. They are more prone to misting and should be treated with anti-mist coatings.

Face shields are the heaviest and bulkiest form of protection. However, they should be comfortable if they are fitted with an adjustable head harness.

Eye and Face Protection: Storage and Maintenance

All eye protectors need to be properly cared for and stored.

Personal issue eyewear should be stored in a suitable spectacle case or eyewear container when not in use. Those for visitors should also be suitably stored, e.g. in a purpose made "store-and-issue" wall mounted container.

The lenses of eye protectors must be kept clean; dirty lenses can restrict vision and cause eye fatigue, which can lead to accidents. If eye shields or other eye protection for visitors are provided, they should be thoroughly cleaned before they are reissued.

Suppliers of eye protection will be able to advise on the best ways to clean the lenses of safety eyewear.

Transparent visors and faceshields should be changed if they are scratched or cracked, warped, or have become discoloured or brittle with age. Headbands should be replaced when they are damaged or worn out.

Training TOOLS

This edition... Choosing Eye and Face Protection

Our Training Tools can be used to guide an informal group discussion that focuses on a particular safety issue. They should take no longer than 10-15 minutes and can be delivered by any responsible person.

Choosing Eye & Face Protection

Eye and face protection falls under the Personal Protective Equipment at Work Regulations. When deciding what personal protective equipment (PPE) to use, employers must make an assessment to decide whether the PPE will be suitable. With so many products available, we've put together a useful training tool to help you understand the differences between each type of eye and face protection.

This downloadable training tool covers:

- Hazards to eyes
- Legislation
- Types of protection
- Selecting suitable protection
- Storage, cleaning and maintenance

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E-cigs

Vaping to become regulated?

Electronic cigarettes or e-cigarettes are designed to deliver nicotine into the lungs. Many are designed to look and feel like cigarettes, satisfying similar needs. However, they are not cigarettes, do not contain tobacco and do not produce smoke. Using them — described as “vaping” — is therefore not smoking in law and smoke-free legislation does not apply. Proponents of e-cigarettes argue that they help people to quit smoking. However, they are also marketed as a “safer” alternative to smoking in their own right. The rapid rise in their use has led to fears that

vaping might make smoking a more socially acceptable habit again, that it could become popular among children who may then move on to conventional cigarettes, and that it even poses a possible direct health risk due to the chemicals it involves.

Increased Regulation

Increased regulation for e-cigarettes seems likely in the future. For instance, in Wales, 2016 saw a ban on e-cigarettes in public places added to a Public Health Bill. The decision by the Welsh Government to move away from the rest of the UK and to ban e-cigarettes in enclosed spaces has been noted by HR and health and safety experts as a possible answer to employers' problems with e-cigarettes in the workplace. Currently, electronic cigarettes are regulated as general consumer products. From May 2016, electronic cigarettes containing up to 20mg/ml of nicotine will require authorisation as medicines. The Children & Families Act 2014 gave the Government powers to ban the sale of electronic cigarettes to persons under the age of 18 and a consultation on further draft regulations is expected. The World Health Organisation has recommended a legal ban on the indoor use of e-cigarettes.

Employers are advised to clarify their approach to e-cigarettes within their smoking policy. While acknowledging that these devices are likely to be less harmful than conventional smoking, and may even encourage people to stop smoking, most employers do not want their staff using them at work and effectively ban them along with tobacco products.

Employer Factsheet: Electronic Cigarettes

- Electronic cigarettes (e-cigarettes) have become popular substitutes for smoking tobacco. It is estimated that there are around 700,000 users of e-cigarettes in the UK
- The devices consist of an electronic inhaler that vaporises a liquid — which may or may not contain nicotine — and allows the user to inhale an aerosol mist
- Manufacturers of e-cigarettes provide different “flavours” of liquids (menthol, vanilla, coffee, etc.) so that users can choose the taste that they prefer. The “flavours” are usually in a solution used in inhalers for medical purposes, i.e. for asthma. This provides the simulation of smoking



- The e-cigarettes normally have an LED light on the tip to identify when the device is being used. The colour is usually blue so that it can be distinguished from tobacco cigarettes
- Manufacturers have provided liquids that can contain different quantities of nicotine. Hence these can assist tobacco smokers to use an alternative nicotine replacement therapy. In tests, people inhaling the aerosol from liquids containing nicotine have been found to have similar amounts of the substance in their blood as those people using nicotine patches
- Manufacturers also supply liquids without any nicotine in them, as some users see the psychological habit of "smoking" more critical than simply the nicotine effect itself
- Currently there is very little information about the long-term health effects of using e-cigarettes. It is clear that there is no combustion of tobacco, so substances like tar do not exist. Hence they appear to offer a safer alternative to tobacco for both the user and those around them. Nicotine is addictive but in the amounts used in e-cigarettes it is thought to be no more harmful than the quantities released in nicotine patches, for example
- In a recent study published in the Pediatrics medical journal, researchers found that admissions into hospital in England of children suffering asthma significantly reduced following the introduction of the smoking ban in 2006
- The World Health Organization acknowledges that e-cigarettes are likely to be less harmful than conventional smoking, but warns that their use may potentially increase the background air levels of nicotine and other substances that could be harmful to adolescents and pregnant women. It also points out that e-cigarettes have not been subjected to many independent tests and that any impact on health arising from their use may not become obvious for some years. It, therefore, recommends a legal ban on the indoor use of e-cigarettes and other such devices

- Given the known health effects of smoking tobacco, the use of e-cigarettes has obvious benefits. In the EU there are proposals to regulate tobacco alternatives that contain nicotine. Such products are permitted but, under the proposal, would require consistency in certain standards of manufacturing the products. While this would put nicotine-containing products under the same controls, e-cigarettes not using nicotine are not likely to be included in such a regime.

E-cigarettes and No Smoking Policies

- Currently the inhaling of e-cigarettes is not in breach of the No Smoking legal requirements that apply to tobacco
- However, some employers ban e-cigarettes for food hygiene reasons, e.g. they do not want any potential food contaminants on the production floor. Others ban e-cigarettes on the basis that it may lead to employees believing that the tobacco ban is no longer in place or can be ignored
- As e-cigarette users are not smoking tobacco, there appears to be a much reduced health risk when compared to tobacco smoking.

As the sale of e-cigarettes is permitted, the health risks appear to be significantly reduced and, in the case of liquids containing nicotine and nicotine patches, etc. which are already available, employers will need to consider whether or not to permit e-cigarettes in the premises they control. Given the emphasis on consultation when developing a smoking policy, it may be equally important to undertake a similar consultation exercise on developing a response to e-cigarette use.

Seton recommends:



No smoking including electronic cigarettes sign
Style No. EL007A3RP



Electronic cigarettes allowed sign
Style No. EL001A55AV



Car Park

Safety and Maintenance

By Law, every car park and traffic route must be suitable for the people and vehicles using them. We've put together a useful guide to help ensure your car park is safe for both drivers and pedestrians.

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General Car Park Maintenance

Parking areas — along with attached paths and roads — must be maintained and require a fully costed, and regularly monitored maintenance schedule.

Car parks and traffic routes should be maintained to provide good grip for vehicles or people. For example, they should be roughened if too smooth, gritted or sanded if slippery, and kept free of oil, grease, rubbish and other debris.

A surface providing extra grip may be needed on sloped driving surfaces.

Surfaces should be free from pot holes and other surface defects which may affect vehicles and pedestrians. Do not allow potholes to develop. If you find a pothole, repair it promptly.

Car Park Signs

Install clear signs to help drivers and pedestrians navigate around your car park safely and securely, allocate specific parking areas, communicate speed restriction and to promote parking etiquette. Where signposts are used, they should be constructed to Highway Code standards.

You should place signs so people have time to see and understand them, and take any action to reduce risks before they reach the hazard.

Make sure that signs are:

- Clear and easy to understand
- Obvious enough to be noticed

- Clean and well maintained so that they are always visible
- Reflective and lit if they need to be visible in darkness

Restricting Speed

Along with safety signs to communicate speed restrictions, you can install speed ramps to ensure vehicles remain at a safe speed.

Access for Visitors

The organisation owes a duty of care to visitors and so must ensure that any security arrangements are inclusive and that visitors are able to access the facilities available to them. Ensure that visitors' car parking areas are well defined, accessible, secure and are offered the same level of security as the staff car park, even if they are not sited in the main car park. Detailed consideration is also needed for access by disabled drivers and passengers, so that they can enter the premises as easily as possible.

Automatic Gates

Care must be taken with electric gate systems to ensure that they are designed, fitted and maintained according to appropriate safety standards. All automatic gates should be risk assessed and fitted with sufficient safety measures to prevent people from becoming trapped or injured.

Lighting

Car parks that are used during any period of darkness should be lit. Dark places and strong shadows provide hiding places and any lighting systems should be designed to eliminate them. Lighting should be even and consistent and it is good practice to install low-level, dusk-to-dawn lighting as opposed to harsh, sensor-activated spotlights.

In addition, organisations may wish to consider the following best practice.

- Get expert advice from an accredited body such as the Institution of Lighting Professionals
- Conduct patrols and surveys at night to check on lighting levels
- Replace defective bulbs promptly
- Do not over-light — it is expensive and can cause dark shadows. It also causes light pollution
- Mount lighting out of reach of criminals and vandals, but avoid "light trespass" onto neighbouring properties, into the road or upwards.

Disabled Parking

Dedicated, accessible and clearly marked car-parking bays should be provided for disabled people. These should be placed close to wheelchair-accessible entrances to buildings. In addition to the standard 2.4m width and 4.8m length, there should be an extra zone of 1.2m on each side of a disabled parking bay.

If automatic barriers exist, these should be accessible to people with impaired vision or hearing. Control gates or barriers must not impede disabled drivers.

Drainage and Ground Water Management

The effective management of ground water is an important consideration in car parks to reduce the risk of standing water or flooding causing water damage, as well as rendering some parking bays unusable. Water flow patterns should be monitored and analysed and the organisation should ensure there is adequate drainage in place to cope with expected rainfall levels. Particular attention should be paid to the direction of the water flow in heavy rain. Pavements, pathways, paved areas, courtyards, driveways and parking areas should tilt away from buildings. Where this is not possible, expert contractors should be used to advise on suitable flood proofing techniques.

It is important for the person responsible to be familiar with the drainage system under his or her maintenance control and to keep records and plans. These can normally be obtained from building plans or surveys.

To prevent flooding the grounds management team should ensure the effective maintenance of gutters, gullies, drains, manholes, ditches and soak-aways.

On an annual basis, and before and after the onset of rainy weather, drainage systems should be inspected, in particular surface drains such as inlets, u-channels and catchpits, which are susceptible to blockage by silt, vegetation, rubbish and debris. Underground drains are best maintained by contractors who can be asked to:

- Clear manholes, pipes and culverts by spooning or rodding
- Utilise heavy duty or specialised clearance methods where required
- Inspect the condition of drains by using closed-circuit television cameras.

Pollution and Surface Water Run-off

Surface water run-off from car parks can cause erosion, pollution and even localised flooding. Run-off may contain pollutants such as:

- Oil and fuel
- Hydraulic fluids
- Suspended solids
- Grease
- Antifreeze.

Surface water run-off from car parks can be discharged into surface water drains or watercourses without a consent or agreement from a water and sewerage company or authority, as long as it is not contaminated.

Small car parks used only for parking cars can discharge surface water run-off directly. Larger car parks (typically larger than 800m² in area or for 50 or more car parking spaces) should remove oil, grease, petrol and diesel from run-off by passing it through an oil separator before it is discharged. An oil separator should also be used for any run-off from areas used for more polluting activities, such as vehicle servicing.

Alternatively, sustainable drainage systems (SUDS) can be used to drain run-off from car parks. SUDS slow and hold back run-off from a site so that pollutants can be broken down naturally. In Scotland, SUDS must be used to drain run-off from all new car parks.

Contaminated run-off must not be allowed to enter surface water drains, watercourses or groundwater. Organisations that cause pollution in this way can be prosecuted. Contaminated run-off may be discharged to a public combined sewer but only with prior consent from the appropriate authority.

If vehicles are cleaned in a car park, the run-off should not be allowed to enter surface water drains, surface waters or ground waters. If someone else cleans vehicles in a car park, it is the car park owner's responsibility to ensure they do not cause pollution.



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What the Seton Experts Say...

High Performance and Great Value for Money

This high performance line marking system is our best selling product, perfect for producing crisp, sharp, 'traffic' grade lines and markings when creating or refreshing your car park. This versatile paint can also be used within warehouses, sports halls, playgrounds, factories and sports fields. It is simple to setup and use, great value for money (100% more paint than most other systems!), is twice as durable as other paint on the market and the unique formula is non-irritant and not harmful for the environment. A must for any line marking requirements you may have.

Step by Step Guide



Step 1

Shake the can until the ball bearing can be heard rattling. Continue to shake for another minute to ensure the paint is mixed uniformly



Step 2

Set the required line width to 50, 75 or 100mm by simply rotating the thumb wheel and selecting the desired width. Open the front wheels to their widest setting for maximum stability, unless marking against a wall or other fixed object.



Step 3

Secure the yellow actuator onto the upright paint can and then invert and place into the paint can holder at the base of the handle. When seated simply turn the can until a click is heard indicating it is in place.



Step 4

Using two fingers on the yellow push button set the height of the paint can to match the width of the line to be painted.



Step 5

Switch on the patented Airflow system checking air flow can be felt at the rear of the unit by the large wheels. Using the yellow wheel at the base of the handle set its desired angle for optimum comfort.



Step 6

Pull trigger and walk at a steady speed; the slower you walk the thicker the layer of paint will be.



Step 7

After use clean paint nozzle by holding upright and giving a quick squirt. Allow the paint to dry on the masking plates and clean with an appropriate solvent

Hazards Faced by Female Workers

The Health and Safety Executive (HSE) points out that women make up 42% of the employed population in the EU. However, the safety watchdog has warned that the jobs women do, their working conditions and how they are treated by society can affect the hazards they face at work and the approach that needs to be taken to assess and control those hazards.

The HSE advises that in assessing the risks female workers face in the workplace, employers should take into account the fact that women and men are concentrated in certain jobs, and therefore face hazards particular to those jobs. In addition, the HSE says, women and men face different risks to their reproductive health.

In general the impact of gender on both men's and women's occupational health and safety is generally under-researched and poorly understood.

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Also men and women in the same sectors, carrying out the same roles and tasks, can experience different demands. For example, it is shown that female nurses tend to have more people-facing tasks than their male colleagues.

The HSE also warns that there is a perception that the risks associated with female-dominated industries are taken less seriously than those in male-dominated industries. Especially as women are likely to be under-represented in the health and safety decision-making process.

A source at the HSE said of female workers, "Their views and experience of female-specific health and safety issues are often marginalised, underestimated or overlooked" and "research studies tend to exclude or ignore women".

Signs of Progress — Safety Gear

Despite this rather gloomy scenario, it is clear that the UK's health and safety profession is making progress in considering the needs of women as a group distinct from male workers. One of the first and most influential initiatives in this regard was that spearheaded by the Women's Engineering Society (WES), which over a number of years has conducted extensive research on safety clothing and footwear. The results of the WES research highlighted a lack of availability of personal protective equipment (PPE) clothing specifically designed for women. It concluded that women's PPE is often uncomfortable and not fit for purpose, e.g. often "women's" sizes were just a smaller version of the design for men. Women who were interviewed for the study cited many examples of where poor fit and design compromised their safety. One woman said, "Oversized gloves make it difficult to work safely or accurately", while another reported that her ill-fitting boots caused her to stumble on site.

WES has raised concerns that these issues could be one of the reasons for the under-representation of women in the UK engineering and construction industry. In response, the Society partnered with Dunlop Safety to design and retail a new range of safety boots for women with a high comfort factor and the survey is credited with raising awareness of the suitability of PPE for women. Increasingly, innovative employers are taking real action on the issue of women's

occupational health and safety. In December 2015, Transport for London (TfL) launched its first range of safety clothing designed specifically for women, as part of its commitment to supporting an increasingly diverse workforce. The new range of women's PPE was created for TfL staff following a successful six-week trial and includes a wider selection of high-visibility jackets, trousers, gloves and adjustable eye protection.

Improving Ergonomics for Women

Greggs plc, one of the largest retail bakeries in the UK employing 19,000 staff in 1487 shops, is an example of another employer which has achieved excellent outcomes by considering the health and safety of female workers, this time in the ergonomics sphere.

As a result of expansion and taking over various premises, Greggs had acquired existing equipment and machinery but found some of this was not only outdated, but in some cases was not designed with basic ergonomic principles in mind. The company wanted to ensure that the standards of equipment and machinery were consistent across all its sites and also aimed to reduce the risk of upper limb disorders to its predominantly female workers. Ergonomists made use of a female manikin to approximate the reach capabilities of females of average stature. The equipment was then updated to make it suitable for its predominantly female workforce and Greggs now says that it has "very few issues" with repetitive strain injuries (RSIs) in its retail bakeries. Its processes have not only become safer and healthier but business benefits have also stemmed from the change, with tasks being performed more efficiently.

Welfare, and Psychosocial and other Considerations

Another example of excellence in considering the health and safety of women is that of the UK's Olympic Delivery Authority via its Women into Construction project. The project focused on a health and safety standard that would create a "woman-friendly site," ensuring for example that "horseplay" on site was avoided and urination other than in the provided toilets was prohibited. There was also a strong focus on psychosocial issues for women, ensuring

there was no aggressive or violent behaviour, sexual harassment or bullying. In addition, welfare facilities were designed to adequately meet the needs of women working on the Olympic site, making sure that there were sufficient quantities of female WCs and washbasins, as well as suitable sanitary disposal units and where provided, separate shower facilities.

In general, the provision of male and female toilet facilities can be seen as a positive step in workplace health and safety gender sensitivity. For many years, the International Transport Federation (ITF) has run a campaign for toilet facilities for female transport workers after women bus workers in Bristol raised the issue of their lack of facilities. Among other changes, the campaign led to negotiations at the port of Folkestone,

where the harbour master subsequently announced the opening of a women's toilet for female truck drivers. Previously, only men had been catered for.

The TUC has an ongoing campaign which urges employers to do more to support female workers going through the menopause, including by means of adequate welfare facilities. The TUC has published a leaflet entitled Supporting Women through the Menopause, which outlines how poor working conditions, such as inadequate or non-existent rest or toilet facilities, or a lack of access to cold drinking water at work can make women's symptoms worse. Other issues to consider in the context of women's occupational health and safety relate to new and expectant mothers. Both this service and the HSE publish a wide range of information on how to

safeguard the health and safety of new and expectant mothers in the workplace, including with regard to key legislation and risk assessments for this group of workers.

Conclusion

It is clear that understanding the impact of differences between men and women can drive important improvements in occupational health and safety, as well as increase productivity and reduce inequality in the workplace.

In fact, health and safety experts, including the European Agency for Safety and Health at Work, have warned that taking a "gender-neutral" approach to health and safety can result in risks to female workers being underestimated or even ignored altogether.

One woman said, 'Oversized gloves make it difficult to work safely or accurately', while another reported that her ill-fitting boots caused her to stumble on site.



NEW PPE Regulation

British industry and standards bodies are currently working to prepare for the new European Personal Protective Equipment (PPE) Regulation 2016/425, ahead of full enforcement of the new requirements in April 2018.

The new PPE Regulation was listed in the European Commission Official Journal on 21 April 2016, starting the two-year transition period to prepare for the introduction of the new legislation. The Regulation is mandatory and will affect anyone working in the PPE industry, carrying new and wider responsibilities for commercial operators.

In a White Paper recently published on the subject, the UK standards organisation, the BSI Group, noted that the original PPE Directive (89/686/EEC) was adopted by the European Council in 1989 and after more than 20 years, during which time it has largely remained unchanged, it is in need of updating to reflect current technologies and processes.

The key changes of the new standard are summarised as follows.

- The PPE Directive will be replaced by a Regulation.
- A number of types of protection will move from category II (intermediate) to category III (complex).
- There will be a requirement to supply a declaration of conformity with every item of PPE that is placed on the market.
- A five-year certificate of validity is being suggested to bring the regulation in line with similar European requirements such as the Medical Devices Directive.

It is important that PPE manufacturers and suppliers fully understand how and if they are affected before the end of the transition period in April 2018.

The change will also make it easier for buyers of PPE to identify reputable suppliers and have confidence that the equipment they are purchasing meets necessary standards.

DEALING WITH EMERGENCY AND ONE-OFF

Waste Streams

Managing waste is a complex business. Facilities managers have to deal with any number of waste streams, from confidential documents to hazardous materials. But what about emergency and one-off waste streams?

There are several considerations organisations will need to take into account when dealing with waste that is out of the ordinary, such as:

- Legal responsibilities
- Maintaining business continuity
- Protecting employees
- Demonstrating the business is responsible.

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Legal Responsibilities

Organisations have legal responsibilities to deal with waste as it arises. First, they need to ensure that they meet their waste Duty of Care obligations under the Environmental Protection Act 1990. The duty of Care extends to all waste, but might need to be revisited when dealing with waste outside of the norm — such as when hiring skips or for one-off waste occurrences.

The health and safety of employees will also need to be considered under the Health and Safety at Work, etc, Act 1974 (HSWA). This means that any waste streams that are potentially hazardous — for example, leaks of sewage waste — will need to be dealt with in a manner that does not put employees at risk.

An organisation will also need to ensure that it does not cause pollution from waste on its premises. In particular, this will apply to organisations storing waste under the Control of Major Accidents and Hazards Regulations 2015 or Environmental Permitting (England and Wales) Regulations 2010. Particular attention should be given to these sites and what might happen should the premises be flooded.

However, even if an organisation is not covered by these regulations, they should still be aware of any pollution that might be caused by waste from their premises. Under the Environmental Permitting Regime (EPR), it is an offence for polluted water from a trade premises to enter a watercourse without consent. This applies regardless of whether or not the occurrence is unintentional and would include accidental pollution from water due to flooding or fire-fighting. There are also responsibilities on organisations to keep land they occupy free of litter and refuse, and local authorities can oblige businesses to remove litter and dumped waste from their land. In practice, most businesses will want to keep their premises looking tidy, but these obligations should be taken into consideration when reviewing policies.

A review of legislation will also be needed when specialist waste needs to be discarded; for example, hazardous waste, asbestos and waste electrical and electronic equipment (WEEE). All of these waste streams will need to be disposed of in a certain way to meet legal requirements.

Furthermore, when dealing with one-off waste streams, consideration will need to be given to the waste hierarchy because waste needs to be pre-treated before sending to landfill.

Supporting Business Continuity

When a disaster happens, organisations will have a number of issues to deal with to ensure the welfare of employees, keep disruption to a minimum, and to resume operations as quickly as possible.

As part of continuity planning, strategies should also be formulated for dealing with emergency waste. One example would be from waste water — for example, water from flooding events or fire-fighting.

As discussed above, even the unintended pollution of the environment is an offence. If accused, the only defence is that the organisation has taken adequate measures to protect against the pollution. As such, it is critical that systems are in place to protect the environment and to clear up waste water as quickly as possible. No organisation would want to be fined for pollution — it can be costly both financially and in terms of reputational damage.

When dealing with emergencies that might impact on the environment, it is also important to link the business continuity plan with the organisation's environmental management system.

Protecting Employees

If dealing with waste that has the potential to cause harm, employees will need to be protected. Some potential harmful wastes could include the following:

Sewage from blocked toilets or drains - Sewage contains bacteria and viruses, and can release toxic gases. It should not be dealt with by cleaning staff, but instead cleared up by a specialist contractor.

Asbestos - Under the Control of Asbestos Regulations 2012, asbestos will need to be dealt with in a certain way to reduce the risk of exposure. If asbestos is found as part of fly-tipped waste, certain precautions should be followed including excluding people from the area and attaching asbestos warning stickers. Personal protective equipment (PPE) must be worn and the relevant authorities should be informed. If possible, the area should be secured until the waste is removed.

Needles or other drug paraphernalia - If needles or other drug paraphernalia are found on site — either as litter or within a fly-tip — then these should be treated with great caution. The main risk associated with sharps such as needles and syringes is puncture wounds that could

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When safety matters

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result in exposure to highly infectious blood-borne pathogens such as hepatitis B and human immunodeficiency virus (HIV). Correct PPE should be used to remove drug paraphernalia, and it is recommended that they are removed and disposed of by a specialist contractor.

Responsible Business

Businesses and organisations need to present a responsible image. Authenticity and transparency are becoming ever more important, and in the world of social media, word of how a business treats its employers, community and environment can quickly spread far and wide.

A business or organisation can help demonstrate its values through its actions. The way that a business deals with its waste is one area that can speak volumes. The way a business manages its premises is another.

The local authority can oblige businesses to keep their premises tidy and free of litter, but this should be a key part of any business strategy to show respect to local communities and to demonstrate social and environmental responsibility. To help ensure premises remain tidy, waste should be safely stored and should not be allowed to escape (in accordance with the organisation's duty of care). This also applies to temporary or one-off waste storage solutions such as skips.

In most cases, fly-tipped waste is the responsibility of the occupier of the land to clear. As such, the removal of fly-tipped waste should be quick and, as fly-tipped waste can often include a number of hazards that are dangerous to public health, it should be done by a professional.

Wherever possible, a business could also look to improve its environmental credentials by increasing waste that is reused or recycled. One-off waste streams, such as those that occur during office refurbishment, can offer excellent opportunities for utilising the waste hierarchy. Examples include sending used carpets for reuse or recycling, or donating unwanted office furniture.

Conclusions

Although unglamorous, waste has the potential to cause significant disruption and/or harm to people and the environment. Organisations need to understand their legal requirements and adopt clear policies to integrate business continuity plans, environmental management systems and social and environmental principles. Doing this will help ensure that all waste — including waste that arises from an emergency — is properly dealt with and disposed of.

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Isocyanates

...are your workers at risk?

The European Agency for Safety and Health at Work (EU-OSHA) recently highlighted isocyanates as a new and emerging risk, amid concerns that workers have not always been as well protected from these widely used substances as they should. Here we examine how workers are potentially at risk and conclude that there is encouraging evidence that the health and safety profession is making progress on controlling exposures to isocyanate hazards.

Wide Application

Isocyanates are reactive chemicals which are commonly used in polyurethane plastics. The most commonly used isocyanates are toluene diisocyanate (TDI) and methylene bisphenyl isocyanate (MDI). TDI is used in the production of soft synthetic rubbers. MDI is used in producing foams, hard synthetic rubbers (elastomers), and paints or coatings. Isocyanates were developed in Germany during World War II as part of a process to replace natural rubber, which became very scarce during the war. Nowadays, these substances are used across a surprisingly wide range of sectors, most commonly in the construction, manufacturing and motor vehicle repair industries.

They are commonly used in the production of:

- Paint products and coatings for the motor vehicle repair industries, and the paint for large commercial vehicles and structural steelwork
- Construction materials such as styrofoam, flexible foams, adhesives, elastomers and industrial floorings
- Chemical binders for bonding materials in the foundry sector
- Manufactured goods, including bedding, furniture, clothing, appliances, electronics, tyres and packaging.

The potential level of exposure in all the above settings depends greatly on the type of work processes and exact substances used. For example, MDI is used in industrial resin flooring but the low vapour pressure of the MDI used results in very little airborne isocyanate and hence carries little risk of inhalation, although there is significant potential for dermal exposure. Similarly, spray painting with isocyanate-based paints carries a greater risk to respiratory health than roller or brush painting.

Health Effects

Isocyanates can affect the health of workers in a number of ways, causing:

- Irritation of the eyes, nose and throat
- Dermatitis
- Occupational asthma — this is a significant risk for workers spraying isocyanates.

Other adverse health effects linked to isocyanate exposure include cancer. In particular, various studies have noted an increased lung cancer risk among workers in the polyurethane foam manufacturing industry but the association is not altogether clear, with the researchers in a 2004 study concluding they were unable to link employment with isocyanate exposure to lung cancer risk. The Health and Safety Executive (HSE) has pointed out that there is no known case of isocyanate used in paints causing cancer.

Controlling Exposures

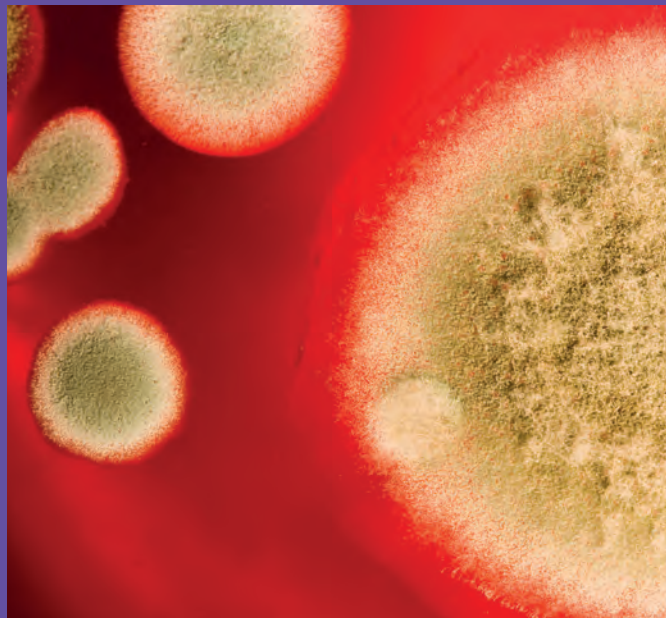
There is encouraging evidence that the health and safety profession is beginning to more effectively control exposures to isocyanates. Certainly, it is clear that the authorities as well as leaders within the industry have identified the substances as a key area of future focus.

The EU-OSHA has noted in an expert forecast on emerging health and safety risks that the increasing use of isocyanates justifies its inclusion in a list of emerging chemical risks. The Agency pointed out that exposures to isocyanates could occur:

- At the production stage
- When polyurethane products containing isocyanates are used, eg when spraying
- During processing of isocyanates, eg grinding or welding
- When they undergo thermal or chemical degradation.

In September 2015, the HSE published research (RR1064) on the exposure of workers to isocyanates contained in vehicle spray paints in the motor vehicle repair trade, and warned workers not to lift the protective visors of their air-fed respiratory protective equipment (RPE). The HSE says that exposure to isocyanates contained in vehicle spray paints has been the biggest cause of occupational asthma in the UK for more than a decade.

The research report pointed out that, although air-fed visors (AFVs) are used within the motor vehicle repair trade for protection against exposure to isocyanate paints, it is common practice for paint sprayers to flip up the visor immediately after spraying, while still within the paint spraying area, in order to closely examine and check the quality of the paintwork.



Often, the visor is only lifted for a few seconds but, the HSE warns, if repeated numerous times during a work shift, this could result in a 15-fold increase in exposure compared with an AFV used correctly.

Based on the research, the HSE and Health and Safety Laboratory jointly produced a new video urging painters not to lift their visors during the spraying process.

Similarly, the British Occupational Hygiene Society has drawn attention to isocyanates through its Breathe Freely campaign, which is aimed at controlling exposures to prevent occupational lung disease in the construction industry. The Chartered Society for worker health protection has produced a number of factsheets, including one for painters and another for carpenters which includes the identification of isocyanates as a hazardous substance and outlines the risks and preferred control options for each trade.

There is a hierarchy of control measures in the context of isocyanates, as follows.

- Elimination or substitution is at the top level, e.g. where employers are urged to consider using less toxic substances where possible.

- Engineering controls such as local exhaust ventilation, spray booths and the correct type of spray equipment for isocyanate-based paints.
- Safe working methods, e.g. training workers not to flip visors when spray painting.
- Personal protective equipment (PPE) at the lowest level of control, once the above is in place, where the use of gloves, overalls and suitable RPE is suggested.

Signs of Progress

The HSE has recently identified the tackling of work-related ill health as one of its key themes in its new strategy to 2020. To illustrate the theme, it has published details of a four-year project to tackle occupational asthma due to exposure to isocyanates in paints within the vehicle repair industry.

The project involved representatives from across the vehicle repair industry as well as the HSE and identified new practical ways of training workers. The HSE says that simple steps such as demonstrating how to use a spray booth properly can have important results in helping to reduce exposure to dangerous chemicals among the 12,000 workers in the industry. Similarly, the construction company

Skanska has reported overall economic benefits from substituting an isocyanate-free mortar for an injectable mortar that contained isocyanate and had been a "recurrent troublesome product" for the company. The new product has offered the company a number of benefits — there is no longer any need for expensive health and safety training and PPE. Efficiency gains have also been seen since there is no longer a need to seal off areas. Finally, concerns regarding ill health of workers and environmental effects have been resolved.

In contrast, failing to control the risks associated with isocyanates can have serious consequences. In one Canadian case, staff members in a school were exposed to isocyanates during the application of roofing foam, with the result that almost half of the staff members developed asthma. The financial and social impacts of failing to control exposures to isocyanates can be significant. However, it is encouraging to note that isocyanates are firmly on the radar of health and safety authorities and leaders, and with increasing research, guidance and awareness in this area, workers can be effectively protected.

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Government aims to cut reliance on foreign workers

Earlier this year, the independent Migration Advisory Committee (MAC) put forward a series of recommendations on reducing economic migration from outside Europe and on restricting skilled work visas to genuine skills shortages and specialist experts.

Accepting the recommendations, the Government has announced reforms to the skilled worker visa system with the aim of protecting job opportunities for UK residents and reducing UK businesses' reliance on foreign workers.

In particular, it stressed that the changes to the Tier 2 visa are designed to stop businesses using foreign workers to undercut wages.

Immigration minister James Brokenshire explained: "This balanced package of changes has been designed to ensure our immigration system continues to work in the national interest, ensuring that employers look first to the UK resident labour market before recruiting from overseas."

The reforms include an increase in the minimum salary threshold for experienced workers using Tier 2, to £25,000 in autumn 2016 and £30,000 in April 2017. However, selected occupations such as nurses, paramedics and some teachers will be exempt from this rise until July 2019.

In a written statement to the House of Commons, Mr Brokenshire said: "The MAC strongly supported the introduction of the Immigration Skills Charge to incentivise employers to reduce their reliance on migrant workers and to invest in training and up-skilling UK workers. The charge will be levied on Tier 2 employers at a rate of £1000 per Certificate of Sponsorship per year."

A reduced rate of £364 will apply to small and charitable sponsors, as defined by Immigration and Nationality (Fees) Regulations.

Business Unhappy with Changes

The Government's response to the review carried by the MAC has not been well-received by leading business groups. Basically, ministers have accepted the Committee's recommendations with the aim of reducing the numbers of economic migrants from outside Europe and forcing UK employers to use more local workers — even if they have to train them first. However, according to Neil Carberry, Director for Employment and Skills policy at the CBI, businesses did not want further visa price increases, especially a skills charge, as this will prevent from accessing the talent they need to expand.

"Further costly restrictions on temporary transfers of firms' own staff to carry out projects in the UK also make little sense," he went on.

Marcus Mason, Head of Business, Education and Skills at the British Chambers of Commerce (BCC), was similarly unimpressed, describing the measures which the Government plans to introduce as bad news for business and damaging to the UK's reputation as a global business hub.

Tim Thomas, of Employment and Skills Policy at EEF, the manufacturers' organisation, completed the trio of business groups criticising the decision to accept the MAC proposals. He echoed the BCC in arguing that employers are already investing heavily in training the UK workforce but warned that they must also be allowed the flexibility to recruit "the best person for the job" from across the globe.

The EEF is particularly irritated by the "immigration skills charge", set at £1000 per employee per year, arguing that the new UK-wide apprenticeship levy makes any proposal for an additional skills charge redundant.



Apprenticeship Update

In May last year the Government pledged to deliver 3 million apprenticeships by 2020. Here we look at some of the key issues and initiatives from the past six months.

Government Sets Public Sector Targets

In early 2016, the Department for Business, Innovation and Skills (BIS) and Department for Education launched a joint consultation into plans to introduce apprenticeship targets for public sector bodies. Open for comment until 4 March 2016, the consultation only applied to England. It argues that, in order to meet the Government's commitment to three million apprenticeship starts, the public sector needs to improve from its current position of delivering comparatively fewer opportunities than the private sector.

All public bodies with a headcount (individual employees) of 250 or more at the start of a reporting year will be considered as falling within the scope of the requirements set out in this consultation. They will have to report against the target, even if their headcount falls below 250 during the reporting year. Of the 354 local authorities in England, all but the smallest (around 30 councils) would be covered by the duty as would all police forces and nearly all Fire and Rescue Services (with the exception of Isles of Scilly and Isle of Wight). Schools which are maintained by a local authority and where the authority is also

the employer are expected to be included in their own local government target. As a starting point for determining an appropriate target for public sector organisations, Ministers have taken the current proportion of public sector workers in the total workforce in England (16.2%). They therefore expect the public sector to deliver 16.2% of three million apprenticeship starts (around 486,000). In order to deliver these starts by 2020, the

public sector will need to achieve around 97,000 apprenticeship starts annually, which is equivalent to 2.3% of the total public sector workforce.

While the three million commitment started in May 2015, the public sector target will only apply once the new legislation comes into force.

Apprenticeship Standards

The Apprenticeship Unit of the BIS approved the standards set for apprentices in the ductwork and service and maintenance sectors of the building engineering services industry. The apprenticeship standards were developed by groups of employers under

the auspices of the Building & Engineering Services Association (B&ES). Apprentices are expected to achieve these standards by the end of their training. The new standards are part of a package of measures aimed at boosting the numbers of apprentices and enhancing the quality of training. The Government's objective is to deliver 3 million apprenticeships, which reflect the requirements of business, by 2020.

The standards have been welcomed as a "significant step towards ensuring competence and professionalism across building engineering services". They can be added to the pipefitting standards approved earlier in the year. The standard-setting exercise will soon take place for the ventilation hygiene field and will be followed by others shortly. The Crown Commercial Service (CCS) write apprenticeship commitments into procurement contracts in order to support apprenticeships and to broaden the range of businesses that invest in them. When businesses bid for contracts with central Government worth £10 million or more,

their bids are reviewed in line with best practice for the number of apprentices that they expect to support and their projection will be written in to the contract.

Apprenticeship Levy

The Government published draft legislation on the introduction of an Apprenticeship Levy. It confirms that, from

April 2017, employers with a wage bill of more than £3 million will have to pay a 0.5% levy to fund apprenticeships. Employers who do not meet this criterion will not have to pay the Levy. The Government estimates that it will be paid by less than 2% of UK employers. Employers will receive a £15,000 allowance to offset the payment of the levy, which will be paid in vouchers. However only 1 in 100 of the UK's manufacturing companies support the roll-out of the Levy in its present guise, while the majority believe that the scheme looks set to fail.

Following the survey of its members, EEF, the manufacturers' organisation, is urging Ministers to delay launching the Levy until at least September next year, pointing out the number of organisations that have grave concerns about the scheme's design and implementation.

EEF's Director of Employment and Skills Policy, Tim Thomas, said: "The headlong rush to bring this levy to market has left little time to iron out some significant wrinkles and get responses to industry's unanswered questions. As a result, firms can see serious flaws that could sink this policy at launch."

The survey found that 70% of respondents agree with the Government's drive to deliver a greater number of apprentices, but only 18% think that the Apprenticeship Levy, as currently envisaged, will deliver.

Businesses told EEF that they want the levy to be simple to administer (92%), easy to understand (89%) and easy for organisations to access the funding (79%).

However, as it stands, they find it confusing (53%), overly-complicated (49%) and think it will simply become another cost burden on business (54%). And only 11% believe the Government's claim that organisations will be able to get more out of the scheme than they put in.

"While Government has made every step to engage employers in the process," Mr Thomas concluded, "the Levy simply isn't ready to roll out — half a year more in development could make all the difference between whether it succeeds or fails."

Vicarious Liability

AND VIOLENCE AT WORK

Vicarious liability is an ancient concept of English law whereby, in the employment context, legal responsibility is imposed on an employer, although the employer is free from blame, for a tort (a civil wrong) committed by an employee in the course of his employment. For such liability to apply, the act of the employee must be so closely connected with what the employee was authorised to do that it would be fair and just to regard it as a mode, even if an improper one, of doing it.

In deciding whether the connection is sufficiently close, the court has to balance the social interest in furnishing an innocent tort victim with a recourse against a financially responsible defendant, with the need to avoid foisting an undue burden on a business enterprise.

Vicarious liability is a loss distribution device used on grounds of social and economic policy.

The facts of the *Mohamud v Morrison*'s case were that on 15 March 2008, M entered MS plc's premises in Small Heath, Birmingham. The premises include a petrol station and a kiosk where customers pay for their purchases. Having parked his car, M entered the kiosk to ask whether he could print some documents from a USB stick.

Mr Amjid Khan was behind the kiosk desk, employed by MS plc to see that petrol pumps and the kiosk were kept in good order and to serve customers. Mr Khan refused M's request in a rude manner, at which M protested. Mr Khan responded in foul, racist and threatening language and ordered M to leave. M returned to his car followed by Mr Khan.

Before M could drive off, Mr Khan opened the passenger door, told M in threatening words never to return and punched him on the left temple. M got out and walked round to close the passenger door, at which point Mr Khan subjected him to a serious attack. M had not done anything which could be considered aggressive or abusive. He alleged that as a result of the attack, he suffered psychological injuries and a head injury that resulted in epilepsy. M brought proceedings against MS plc on the basis that it was vicariously liable for the actions of its employee Mr Khan. The trial judge dismissed the claim because he considered that there was an insufficiently close connection between what Mr Khan was employed to do and his tortious conduct in attacking M for MS plc to be liable. The Court of Appeal upheld the

judge's decision.

M appealed to the Supreme Court, challenging whether the "close connection" test was the appropriate standard to apply and also arguing that his claim should have succeeded in any event.

The Supreme Court unanimously allowed the appeal. It made the following points.

- The court has to consider two matters. First, the court must ask what function or field of activities has been entrusted by the employer to the employee (i.e. the nature of his job). This is to be viewed broadly.
- Second, the court must decide whether there was a sufficient connection between the position in which he was employed and his wrongful conduct to make it right for the employer to be held liable. Applying that test here, it was Mr Khan's job to attend to customers and respond to their inquiries. His conduct in responding to M's request with abuse was inexcusable, but interacting with customers was within the field of activities assigned to him by his employer. What happened thereafter was an unbroken sequence of events.
- The connection between the field of activities assigned to Mr Khan and his employment did not cease at the moment when he came out from behind the counter and followed M onto the forecourt. There are two reasons to draw this conclusion. First, it is not correct to regard Mr Khan as having metaphorically taken off his uniform the moment he stepped out from behind the counter — he was following up on what he said to M. Second, when Mr Khan followed M to his car and told him not to come back to the petrol station, it was not something personal between them but an order to keep away from his employer's premises. In giving the order

he was purporting to act about his employer's business.

- Mr Khan's motive in the attack was irrelevant. It did not matter whether he was motivated by personal racism rather than a desire to benefit his employer's business.

While the Supreme Court took care to state that it had not changed the law on vicarious liability, it seems clear that it has significantly extended its scope. It is arguable that employers can now be found liable for criminal acts committed by employees at work even when those acts were personal acts not directly connected to their employment. The Court's decision may result, for example, in cases such as *ST v North Yorkshire County Council* (1999), where ST, a mentally handicapped school pupil who suffered from epilepsy, alleged that he had been sexually assaulted by his deputy headmaster during a school trip to Spain. He claimed compensation from NY on the basis that it was vicariously liable for the assaults.

At first instance, his claim succeeded. NY appealed to the Court of Appeal. That Court reversed the decision. It stated that an assault on a school pupil was an independent act outside the course of employment. It could not be regarded as a mode of doing what the deputy headmaster was employed to do. It was not sufficient for vicarious liability that the

employment provided the opportunity for the employee to commit the act. Another example of the application of the concept before the *Morrisons* case is *Duffy v Thanet District Council* (1984). Three apprentices were sent by their employers on a course at a technical school. During the course of making a wooden arch, a struggle ensued over a chisel and the eye of one of the apprentices was injured. The injured person claimed compensation from his employer. The claim failed. The High Court ruled that the injury had been suffered during the course of an unauthorised act and the employers were not liable.



Sub-Standard Washrooms

AFFECTING STAFF MORALE

A new survey has concluded that one in five small to medium sized businesses in Britain are not providing enough toilets for workers, resulting in wasted working hours as well as negative impacts on staff morale and customer perceptions.

The research was conducted by Initial Washroom Hygiene, a company which provides washroom sanitation services, and was based on a survey of some 2000 employees. It found that:

- Over one fifth of small businesses are not meeting legal requirements for the number of toilets in their office
- The lack of adequate facilities causes queues; more than half of those surveyed reporting they regularly had to wait to use the washroom facilities in their office, wasting an average of almost seven minutes each week (equating to over five hours per year) doing so
- Although health and safety laws require employers to keep their washrooms in a clean and orderly condition, 19% of employees said that this was not the case in their workplace
- Some 32% of office workers said their business has been negatively affected by the standard of their washrooms, with staff morale and customer perceptions mentioned in responses.

According to the Approved Code of Practice for the Workplace (Health, Safety and Welfare) Regulations 1992, the number of toilets provided by small businesses for employees must increase in line with the number of employees.

Any business with more than five employees, for example, must have at least two toilets available, increasing to a minimum of five for businesses with between 76 and 100 employees.

Commenting on the issue, Dr Peter Barratt of Initial Washroom Hygiene, said: "It's essential for employers to provide their workers with sufficient numbers of toilet facilities, and to ensure that these are clean and well-presented."

Toilet and Washing Facilities

Adequate sanitary facilities must be readily available to all building occupants. The location of the facilities should be within reasonable distance from the workplace. Where public access is also needed, the facilities must be increased.

Key considerations for the facilities manager include the following.

- Enough toilets and washbasins should be supplied for those expected to use them
- Facilities should have hot and cold running water and enough soap or other washing agents
- Specific facilities must be provided separately for disabled people
- Showers and/or baths must be provided where work functions are particularly strenuous or dirty or where contamination can occur
- Special drench facilities must be installed close to all hazardous workstations, e.g. acid processes
- Permanent water and drain systems should be connected to all sanitary facilities, unless the facility is of a temporary nature
- Where possible, separate facilities for men and women, and failing that, rooms with lockable doors, must be provided
- Facilities must be clean, and walls and floors should preferably be tiled or covered in waterproof material for easier cleaning
- A supply of toilet paper is essential and, for female employees, a means of disposing of sanitary dressings
- Facilities should be:
 - Well lit
 - Clean
 - Ventilated

CONTINUED... ►►

Toilets

A suitable number of toilets should be provided for the use of those expected to use them. People should not have to queue for long periods to go to the toilet. In most workplaces toilets should be provided within the premises themselves. So far as is reasonably practicable, facilities need to include flushing toilets and running water. Portable cabins converted into toilet facilities are available from hire companies for use at temporary worksites. Chemical toilets and water containers should only ever be used as a short-term measure and use of public toilets and washing facilities should be a last resort and not used just because they are the cheaper option. Toilets are now mainly of the close-coupled type where the flushing cistern is directly above and behind the closet. Furthermore, most modern toilet units incorporate a two-stage flushing effect (reducing the amount of water consumed) and reduced capacity with the same flush effect. As human perception of hygiene and concern over disease increases, maintenance hygiene is more critical than ever.

No room containing a sanitary convenience should communicate directly with a room where food is processed, prepared or eaten.

Washing Facilities

Washing facilities, including showers if required by the nature of the work, must be provided at readily-accessible places. Wash basins must be large enough to wash hands and forearms if necessary. Hot (or warm) and cold running water as well as soap and clean towels or other means of drying, e.g. hot-air dryers, must all be provided. Showers must be provided if dirty work is being carried out. Men and women should have separate toilet and shower facilities unless each facility is in a separate room with a lockable door, and is for use by only one person at a time.

Washing facilities

are only considered suitable if:

- They are provided in the immediate vicinity of every sanitary convenience, whether or not provided elsewhere
- They are provided in the vicinity of changing rooms required under the welfare regulations, whether or not they are also provided elsewhere
- They include a supply of clean hot and cold, or warm, water (which should be running so far as is practicable)
- They include soap or other suitable means of cleaning
- They include towels or other suitable means of drying
- The rooms containing them are sufficiently ventilated and lit
- They and the rooms containing them are kept in a clean and orderly condition
- There are separate facilities for men and women, except where and so far as they are provided in a room the door of which is capable of being secured from inside and the facilities in each such room are intended to be used by only one person at a time.

Wash basins should be fitted with suitable taps or mixers. In many workplace toilets, water saving taps are used which are designed to reduce the amount of water wasted. Some taps have flow regulators or aerators to ensure that water does not reach full flow. Others close off after a short period of time. Some are activated by a movement sensor which means that hand contact does not actually have to be made with the tap, thus reducing capacity for infections to be passed on. An additional toilet and one additional washing station should be provided for every 25 people above 100. For toilets used only by men, an additional water closet for every 50 men above 100 is sufficient, but only if at least an equal number of additional urinals are provided.

Toilets should contain toilet paper in a holder or dispenser and a coat hook. Suitable sanitary bins should be provided in female toilets.

Disabled Users

Suitable sanitary facilities should be available for all people who use the building, including disabled people. For disabled people, suitable toilet accommodation may take the form of a specially designed cubicle in separate-sex toilet washrooms or a self-contained unisex toilet. For wheelchair users, the separate unisex toilet is the preferred option.

Cleaning

Rooms containing sanitary conveniences or washing facilities should be kept clean. This not only includes the physical parts, e.g. walls and floors, but also emptying and cleaning of sanitary disposal units and nappy bins, etc. Toilets should be kept appropriately sanitised and have a pleasant, hygienic and fresh smell. Soap dispensers and hand drying facilities should be provided and replenished on a regular basis. Liquid soap dispensers which create no mess and which are robust in design are to be preferred, as well as disposable towels rather than fabric towels. A cleaning schedule should be kept which should list daily cleaning tasks; this should include all toilet areas. The facilities manager must ensure that cleaning staff or contractors make at least one daily visit to keep surfaces clean. A common practice is to display a chart in toilet areas to record each cleaning event. Monthly deep cleans need to be carried out to keep sanitary ware clear of verdigris (green rust on copper or brass) and lime scale, and high-level surfaces clean. Spillages also need to be cleaned promptly. The responsibility for cleaning should be clear, particularly where facilities are shared by more than one workplace.

Essential Washroom Provisions

The Workplace (Health Safety and Welfare) Regulations 1992 supported by a Code of Practice, gives precise details regarding the number of toilets and hand basins which should be made available to employees, based on numbers and sexes. In addition, reasonable adjustments in accordance with the Disability Discrimination Act 1995 are essential to ensure access to washroom facilities.

The Regulations specify that the provision of washroom equipment includes basic minimum standards, including:

Sanitary Disposal

'In toilets used by women, suitable means for the disposal of sanitary dressings should also be provided'

Dual Purpose Sanitary and Nappy Disposal Bins
Style No. JANC412



Paper Dispensers

'Washing Facilities are not suitable unless they include towels or other suitable means of drying'

Hand Towel Dispenser
Style No. JAN1139



Soap Dispensers

'Washing Facilities are not suitable unless they include soap or other suitable means of cleaning'

Hand Soap Dispenser
Style No. FAD0180



Toilet Roll Dispensers

'Toilet paper should be provided in a holder or dispenser'

Toilet Roll Dispenser
Style No. JAN1133



Cleanliness

'Washing Facilities are not suitable unless they and the rooms containing them are kept in a clean and orderly condition'

Bucket Tray Trolley with Wringer
Style No. JAN769



Further information

HSE: L24 – Workplace health, safety and welfare, approved code of practice and guidance.
ISBN: 9780717665839

For all your washroom essentials

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Case Study

A building firm boss was fined £2,000 and ordered to pay costs of £1,215 for not providing adequate toilet and washing facilities for staff on a construction site. Bridlington Magistrates Court heard a toilet unit was not plumbed in and there was no water supplied to sinks in a cabin or adjacent toilet compartment at the construction site for a pair of cottages at High Green, Bridlington. Following the initial HSE inspection, an Improvement Notice was served requiring the provision of suitable toilet and washing facilities. On a subsequent site visit it was found that the Improvement Notice had not been complied with. A sewage outlet had been provided to the toilet, but there was no water supply to the unit. Neither was there any water available at the sinks in the cabin or the adjacent toilet compartment and no soap or towels were available.

CHECKLIST

Assessor(s)	
Date	
Activity requiring PPE	
Ref no of risk assessment(s)	
Hazards requiring PPE	Nature of the hazards
Description of job (methods, time, communications, area, effort, etc)	
Part(s) of the body at risk	
People at risk	
Health conditions	
Will the PPE increase risks?	
Compatibility – other PPE in use	
Possible PPE suppliers and types	
Date trial of PPE started	
People involved in trial	
Results of trial	
PPE selected	
Risk level with PPE in use	
Does the PPE adequately control the risk(s)?	
Assessment review date	



National

National Minimum Wage increases from October 2016

The rate for workers aged 25 and over (the National Living Wage) will remain at its initial rate of £7.20 per hour.

The rate for 18–20 year olds will increase from £5.30 to £5.55 per hour.

The apprentice rate will increase from £3.30 to £3.40 per hour.

The accommodation offset will increase from £5.35 to £6.00 per

This consultation asks questions about the impact of the different minimum wage rates. It also seeks views on how much the wage rates should increase next April.

There are now five minimum wage rates: the new National Living Wage (NLW) and four rates of National Minimum Wage (NMW) applying to workers up to the age of 25.

The NLW was introduced in April 2016. The other NMW rates normally increase in October as outlined above. From April

For rates affecting those aged under 25 and apprentices, the LPC makes its recommendations on the basis of "helping as many low-paid workers as possible without damaging their employment prospects".

For the new NLW, the LPC's recommendations are subject to a target of 60% of median earnings by 2020. This target is "subject to sustained economic growth" but includes tolerance of some

This consultation asks for feedback on the effect of the introductory rate of the NLW (£7.20) on workers and for views on the target rate of £7.60 for April 2017. It also asks for responses to the LPC's approach to making recommendations for the NLW. For the other minimum wage rates the consultation seeks evidence on the impact of the rates on younger workers' employment prospects. It also asks for views on how to adjust the rates in April 2017, given that the increases will come just six months after the October 2016 increases.

Q&A'S



Using drones for maintenance

Q. Can we legally use drones to help with maintenance checks?

A. Unmanned Aerial Vehicles (UAV) are legal to use, although a recent House of Lords EU Committee has called for compulsory registration.

There are however, certain rules that must be adhered to: FMs must not fly their UAV within 150m of a congested area, or 50m above a person or vehicle. The basic advice is that UAVs must not be flown in public places where injury could occur.

Within the confines of the work premises, UAVs can be used to check the condition of roofs or chimneys for instance. As long as the pilot of the UAV has sight of the aircraft it is legal to fly, but if the UAV will need to go above 400 feet, permission is needed from the Civil Aviation Authority (CAA). Pilots are required to be aware of the Air Navigation Order 2009 and the Rules of the Air Regulations.

Operators of unmanned aircraft must comply with EC Regulation 785/2004 (Article 2) on Insurance Requirements for Air Carriers and Aircraft Operators. Operators of small unmanned aircraft and small unmanned surveillance aircraft are advised to consult the regulation to determine the minimum level of insurance required.

Clearly, the use of an UAV has many advantages. Companies have sprung up to offer inspections services where using traditional systems such as ladders, scaffolding or abseiling have a level of danger that is best avoided.

UAVs with cameras do need to be handled carefully. The extension of the Data Protection Act to include CCTV footage and images means that businesses contemplating using UAVs need to pay attention to these new rules. The Information Commissioner's Office states: "A business may purchase an Unmanned Aerial System (UAS) to monitor inaccessible areas, such as a roof to check for damage. Its use should be limited to that specific function and recording should not occur when flying over other areas that may capture images of individuals."

The use of UAVs must then be carefully planned within highly defined parameters. In most cases, businesses will outsource this work to a third party. Checking their credentials and placing the use of the UAV within the overall risk assessment is critical.

Q&A'S



Tackling mould and damp

Q. I have received complaints about mould and damp in some of our office accommodation that is located in a basement. Employees say it is harmful to their health and have requested we resolve the issue. Can mould and damp be harmful to health and what can we do about it?

A. According to both the World Health Organization (WHO) and the National Health Service (NHS), mould and damp can be a threat to a person's health.

With damp comes mould, which produces allergens (substances that can cause an allergic reaction), irritants and, sometimes, toxic substances. Inhaling or touching mould spores may cause an allergic reaction with occupants of damp or mouldy buildings at increased risk of experiencing respiratory problems and infections, allergic rhinitis and asthma. Some people are more sensitive to mould than others, and some groups are especially vulnerable: children, elderly people, those with existing skin problems such as eczema, or respiratory problems such as allergies and asthma, and anyone who is immunocompromised (eg chemotherapy patients).

Mould and damp are caused by excess moisture. Moisture in buildings can be caused by leaking pipes, rising damp in basements or ground floors, or rain seeping in because of damage to the roof or around window frames. Excess moisture indoors can also be caused by condensation. Condensation forms when the air indoors cannot hold any more moisture. To address the situation the employer should:

- Detect and locate the source of the moisture problem
- Remove the mould
- Take action to control condensation.

The employer should therefore undertake all necessary investigations to discover the source of the mould and damp. This may require the assistance of specialists to investigate further matters such as broken pipes (including sewage pipes in basement areas).

When the cause of the mould is related to building faults (leakages, etc) and/or the mould is also present in the building structure and material, it is recommended to get professional assistance to remove the mould and rectify the source of the damp through appropriate building repairs. This will prevent any spores from being released during cleaning and also ensure the problem does not return.

If the issue is related to condensation it is likely to be due to high humidity levels, low temperatures and/or poor ventilation. The cause should be ascertained and the necessary remedial treatment adopted such as preventing moisture build-up, introducing better ventilation and/or improving the building's insulation.

News ROUND UP



Elastic employers make for happier workers

The Chartered Institute of Personnel and Development (CIPD) has published a new report on commuting and flexible working, which concludes that flexible workers are more satisfied with their jobs, reporting better work-life balance and less exposure to excessive pressure at work.



Mobile working 'tipping point'

A new report published by the Work Foundation has concluded that the UK is on the verge of a mobile working 'tipping point' — when working away from the office becomes more common than working at a desk from 9 to 5.



Unsafe pregnant women pushed out of work

A new report published on pregnancy and maternity rights by the Equality and Human Rights Commission (EHRC) has revealed that thousands of pregnant women and new mothers could be leaving their jobs each year as a result of unresolved health and safety issues and discriminatory practices.



Drivers taking more care of their teeth than of road safety

Drivers of commercial vehicles have been stopped by police for committing a variety of offences behind the wheel including reading newspapers, watching DVDs and brushing their teeth.



High on work

Recent research has concluded that over a third of employees know or suspect that their colleagues have a drug problem.

June 2016

More money for flood defences

The Government has committed an extra £700m in flood defence funding to support new catchment plans and protect local infrastructure in high risk areas in the north of England.



£7 million energy fund to support small businesses

The Carbon Trust has launched a new £7 million Green Business Fund to help small and medium-sized companies (SMEs) in Great Britain with a financial contribution towards energy saving initiatives.



Improvements in work-related health 'stalled'

A recent survey of work-related issues in Britain reveals that improvements in work-related health have "stalled" and that 1 in 4 employees have suffered a stress-related absence in the past year. The Britain at Work Survey was commissioned by the communications company Lansons and assessed the attitudes of more than 3000 employees across many sectors on a wide range of work-related topics.



If you don't ask, you don't get

Nearly three-quarters (72%) of UK employees have failed to ask for a pay increase in the past three years and only around a third (34%) would even consider asking their current boss for more money according to a recent study by a recruitment agency.



Good ventilation needed for 3D printers

The Finnish Institute of Occupational Health (FIOH) has warned that good ventilation is needed when using tabletop 3D printers, amid concerns that such printing releases nanoparticles into the indoor air.

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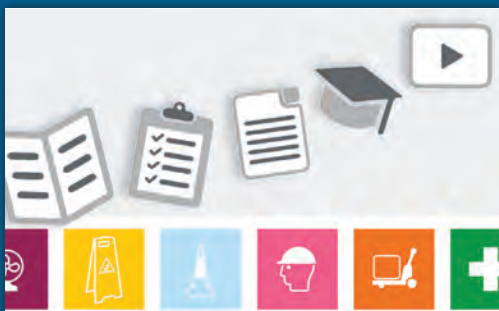
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