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# Health & Safety Newsletter

Summer 2006

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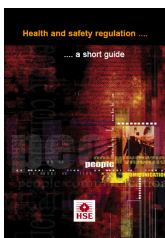
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## Amendment to the management of health and safety at work regulations

The Management of Health and Safety at Work Regulations 1999 were amended in 2003, in response to concerns raised by the EC Commission, to enable employees to claim damages from their employer in a civil action where they suffered injury or illness as a result of the employer being in breach of those Regulations. They were also intended to enable civil claims to be brought against employees for a breach of their duties under those Regulations that resulted in injury or illness. Employees have duties under those Regulations to use any equipment, dangerous substance, etc. in accordance with any training and instruction provided by the employer. Employees are also required to alert their employer of serious and imminent danger in the workplace or any shortcomings in the health and safety arrangements.

The Health and Safety Commission (HSC) has announced an amendment to the Management of Health and Safety at Work Regulations 1999, which comes into force 6<sup>th</sup> April 2006.



The amendment changes the civil liability provisions in the Regulations so as to exclude the right of third parties to take legal action against employees for contraventions of their duties under these Regulations. This extends to employees the same protection against third party action as that provided for employers.

The amendment neither creates any new duties, nor does it remove any. The practical effect will be to reduce the likelihood of claims against employees by third parties. Therefore, it is expected that there will be no additional burdens on businesses.

The wording of the 2003 amendment produced the unintended consequence of allowing claims to be brought against employees by third parties who were affected by their work activity, e.g. members of the public. This had not been the intention. One concerned group raised this unintended consequence of the 2003 amendment. HSE sought independent advice, which also concluded that there was potential for third parties to make claims against employees.

HSE found no evidence that the 2003 amendment has led to any claims against employees, but the potential for such claims was there. ■

## The Control of Noise at Work Regulations 2005 come into force

The Control of Noise at Work Regulations 2005 came into force on 6<sup>th</sup> April 2006. The regulations replace the existing Noise at Work Regulations 1989 for all industries in Great Britain except music and entertainment, which have until April 2008 to comply.

Welcoming the new regulations health and safety minister Lord Hunt of Kings Heath said, "With over one million employees in Great Britain exposed to levels of noise at work which could damage hearing the new regulations will reduce exposure without placing unnecessary burdens on employers."

It is hoped that full compliance with the regulations will eliminate all new cases of hearing damage caused by work by 2030. The Regulations put the emphasis on identifying measures to eliminate or reduce risks from exposure to noise at work rather than simply relying on hearing protection, although this may also be needed in the short term.

Workplaces, which fell within the scope of the 1989 Regulations, should already have measures in place and the main effect is likely to be a need to review their risk assessments

and prioritise their noise-control measures. Employees whose use of hearing protection under the 1989 Regulations was advisory will now have to wear the protection supplied.

Brian Lamb, Director of Communications at RNID, says: "We welcome the new Control of Noise at Work Regulations. Prolonged exposure to loud noise can cause permanent hearing loss and employers have a legal duty to cut down noise and protect their employees from the harmful effects of noise at work. However, employees also have to play their part and use the hearing protection available to them.

"Noise induced hearing loss is often cumulative and not immediately obvious, so its threat is seldom recognised or taken seriously. Whilst the effects of noise are irreversible, noise induced hearing loss is totally preventable."



Employees newly covered by the Regulations are at relatively lower risk, and the employer will need to put in place proportionate noise reduction measures and provide hearing protection on request.

The simple rules of thumb that may indicate you have a noise problem are:

- You're surrounded by intrusive noise for most of the working day
- You have to raise your voice to be heard by someone just 2 metres away, for at least part of the day
- You use noisy powered tools or machinery for more than 30 minutes a day
- You work in a noisy industry such as construction, road repair, engineering or manufacturing
- Your work causes impacts such as hammering, drop forging, pneumatic impact tools, etc.
- You work with explosive sources such as cartridge-operated tools, detonators, or guns

The Control of Noise at Work Regulations 2005 require employers to:

- Assess the risks to their employees from noise at work
- Take action to reduce the noise exposure that produces those risks
- Provide their employees with hearing protection if they cannot reduce the noise exposure enough through other methods (making hearing protection available on request at 80 dB and ensuring it is worn at 85 dB)
- Make sure the legal limits on noise exposure (87 dB daily or weekly exposure or peak sound pressure of 140 dB taking account of hearing protection) are not exceeded
- Provide employees with information, instruction and training
- Carry out health surveillance where there is a risk to health

The main changes in the Regulations are to lower exposure action levels. As of 6 April these will be lowered by 5 dB in comparison to the 1989 Regulations, to 80 dB for the lower exposure action value and 85 dB for the upper exposure action value.

Employers should always be looking to eliminate or reduce risks from noise, and the exposure action values are points at which the employers must take specific action. At the lower exposure action value a risk assessment is needed, employees told about the risks and hearing protection must be made available on request; and at the upper exposure action value noise control should be part of a planned programme, hearing checks are needed and hearing protection must be used.

Exposure is assessed over a working day, or a week if exposure varies markedly from day to day. Exposure to members of the public from their non-work activities is not covered by the Regulations. Also low-level noise, which, while it may be a nuisance, presents no risk to hearing damage, is not covered by the Regulations.

Employers in the music and entertainment sectors have a further two years transitional period, as the new Regulations do not come in to force in these sectors until 6 April 2008. Meanwhile they must continue to comply with the Noise at Work Regulation 1989 by ensuring they minimise the risk of hearing damage to their employees. ■

## The Regulatory Reform (Fire Safety) Order 2005

### SCOPE AND STANDING OF DOCUMENTATION:

The Regulatory Reform (Fire Safety) Order 2005 came into force on the 1st April 2006.

With the exception of self employed people with no employees who work from their own home, all sectors of business, including the

self-employed and the voluntary sector, will be covered by the new regime. It is important to note that the existing Fire Precautions (Workplace) Regulations already provide for a risk assessment based approach to fire safety in virtually all places **where people are employed to work**. Accordingly there is very little by way of new burdens.

Even in premises where people are not employed to work, under existing health and safety legislation there are already duties of care which require safety risks to be assessed, and this should include the assessment of risk from fire. So the operator of the premises should already be carrying out risk assessments which include fire risks. This mainly refers to:

- non-domestic premises used by self-employed people, and
- the voluntary sector where there are no employees (because all staff are volunteers).

The reform will apply to England and Wales; separate legislation will be made for Scotland.

### PURPOSE OF DOCUMENTATION:

At present, there are two major pieces of specific fire safety legislation, the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, as amended. Both apply in England and Wales and Scotland.

Existing fire safety legislation has developed in a piecemeal fashion with the result being scattered over many pieces of legislation. At present many premises are subject to more than one piece of fire related legislation. In addition, a number of other regimes, some statutory, some not, encompass fire within their wider application.

The existence of different regimes, each with a very different focus, is confusing for all who have to deal with them. It impacts on compliance, because employers cannot easily understand what is required of them. It makes administration and enforcement unnecessarily complex, tying up resources which could be better used elsewhere.

The new Order will enhance equity and fairness by applying the same regime to all employers for the first time.

The purpose of the new order is to:

- Create a single regime which can be better understood and administered by both businesses and the relevant authorities
- To create a regime clearly based on risk assessment and fire prevention and mitigation measures
- To increase compliance
- To focus resources for fire prevention on those premises which present the greatest risk
- To ensure that fire safety facilities and equipment (including fire alarms) are well maintained.

These objectives will contribute to the overall aim of reducing avoidable fires, and consequently death, injury and loss of property.

### RESPONSIBILITIES FOR ACTION:

Responsibility for complying with the Fire Safety Order rests with the 'responsible person'.

In a workplace, this is the employer and any other person who may have control of any part of the premises, for example, the occupier or owner. In all other premises the person or people in control of the premises will be responsible. If there is more than one



responsible person in any type of premises, all must take all reasonable steps to work with each other.

### **PRIORITY RISK FOR THE BUSINESS:**

The responsible person will be required to ensure that an assessment of the risk of, and from, fire is undertaken for the place and activity. Identified hazards should be removed or reduced so far as is reasonable and risks to persons avoided.

For any employer who employs five or more persons must record the significant findings of the assessment.

### **IMPLEMENTATION REQUIREMENTS:**

The responsible person you must carry out a fire risk assessment which must focus on the safety in case of fire of all 'relevant persons'. It should pay particular attention to those at special risk, such as the disabled and those with special needs, and must include consideration of any dangerous substance likely to be on the premises.

The fire risk assessment will help identify risks that can be removed or reduced and to decide the nature and extent of the general fire precautions which may need to be taken to protect people against the fire risks that remain.

A clear demarcation should be drawn between "general" fire precautions as required under the Order and "special" precautions which are needed directly in connection with a process - and which fall to be considered as part of health and safety.

For any employer who employs five or more persons must record the significant findings of the assessment.

All precautions provided must be subject to maintenance and must be installed and maintained by a "competent person". The precautions to be maintained should include any provided for the use of the fire brigade in case of fire (e.g. fire-fighting shafts, access points, fire-fighting riser mains).

All persons in and around a place should be protected from the risks that remain by provision of appropriate fire precautions, including (but not exclusively) means for detecting and warning of fire, means for fighting fire, and means of escape. Plans should be made for the actions to be taken in case of fire and staff should receive appropriate training. ■

### **PLEASE NOTE**

**Fire risk assessments that have already been prepared by BPP Ltd conform to the requirements of this new legislation.**

## **Lone Working**

Lone working may be defined as any work activity which is intended to be carried out in isolation from other workers by an individual or a small team of people. The work activity should normally last for some time.

### **Types of lone working**

Lone working can take place when people:

- work as individuals at a fixed site, e.g. in a shop or petrol station
- are separate from others, e.g. in warehouses or automated plants
- work away from their base or at remote locations, e.g. construction workers, maintenance, repair and cleaning workers
- work at home
- work outside normal hours, e.g. cleaners or security staff
- travel as part of their work, e.g. sales staff or delivery workers
- provide services to the public, e.g. social workers, home helps, community nurses

Many lone workers will come into more than one of these categories.

### **Hazards**

Hazards which lone workers can encounter are:

- accidents or emergencies arising out of the work including inadequate provision of first aid
- sudden illnesses
- inadequate provision of rest, hygiene and welfare facilities
- violence from members of the public

### **Legal duties of employers**

For most circumstances, there are no specific legal duties on employers in relation to lone working. However, employers are under a general duty under Section 2 of the Health and Safety at Work Act to maintain safe working arrangements and under Regulation 3 of the Management of Health and Safety at Work Regulations to carry out a risk assessment of the hazards to which their employees are exposed. Where there are more than five employees, the risk assessment must be kept as a permanent record.

Employers are under a duty to provide facilities for first aid [Health and Safety (First Aid) Regulations] and welfare [Workplace (Health, Safety and Welfare) Regulations] and to report accidents suffered by their employees, including assaults, wherever they occur (RIDDOR - Reporting of Injuries, Diseases and Dangerous Occurrences Regulations). Welfare provision on construction sites is covered by the Construction (Health, Safety and Welfare) Regulations.

There are certain activities where there are specific legal duties: erection of scaffolding, use of unsupported access equipment, demolition on construction sites, diving operations (provision of suitable supervision); young people doing woodworking (supervision plus instruction and training); work with certain chemicals (staffing levels).

### **Risk assessment**

The key to maximising safety wherever lone work is under consideration is the performance of a satisfactory risk assessment which should address two main features:

- whether the work can be done safely by a single person
- what arrangements are required to ensure the lone worker is at no more risk than employees working together

The risk assessment should prescribe arrangements for systematic monitoring of the hazards of lone working by qualified supervisors/managers.

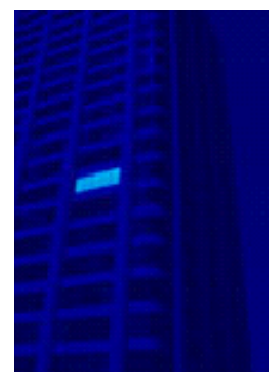
### **Staffing levels**

The critical question is whether the job can be done safely by a single person at all. There is scope for disagreement between an employer primarily motivated by cost considerations and employees and their representatives concerned with safety. The employer should demonstrate that a lone worker is not exposed to extra risk compared to a group of employees doing the same job. Where the job involves a significant risk of violence from the public, doubling of staffing levels will almost always substantially improve security.

### **Remoteness and isolation**

For a lone worker at a remote location, the following factors must be considered:

- how long should the work take and how frequently should the worker report in
- has the worker a safe means of travel to and from the location, especially out of normal hours



- is there access to adequate rest, hygiene, refreshment, welfare and first aid facilities
- can emergency services approach the location without hindrance. Procedures for responding to "worst-case" emergencies should be in place.

### Condition of the workplace

Appropriate conditions are:

- there is a safe means of entry and exit to the workplace
- there is adequate illumination, heating and ventilation for the job to be carried out
- all equipment, especially powered tools and access equipment such as ladders, can be used safely
- lifting operations can be performed safely by one person
- fire precautions are sufficient for the job

Home visits especially for the provision of personal care can involve exposure to infectious diseases in addition to other hazards and the condition of premises should be assessed by qualified staff before visits commence.

### Communications and personal alarms

Appropriate communications should be maintained with the lone worker especially when continuing supervision is required. The lone worker should be equipped with a means of two-way communication, a pager or a personal alarm. The system should enable the worker to raise an instant alarm or be located accurately if assistance is required. Rooms used for confidential interviews should be equipped with a hidden alarm.

### Preventing violence

In addition to the provision of personal alarms, procedures should be devised to minimise the risk of violence from the public, e.g. elimination of handling cash, constant changes of route when transporting valuables, adequate building security for out of hours working. Consideration should be given to the fact that women working alone are particularly at risk.

### Medical suitability

Two points need to be determined:

- does the job impose any extra demands on the lone worker's physical or mental stamina?
- does the lone worker suffer from any illness that might increase the risks of the job?

### Homeworking

If the homeworker is an employee, the employer is obliged to carry out a risk assessment of the job and the workplace. This must cover the provision of supervision, education and training and result in sufficient controls to be in place so as to protect the homeworker. The employer should accept liability for accident or injury as for other employees.

### Information and training

Sufficient training and information must be provided to the lone workers to enable him/her to identify hazards and take appropriate action to avoid them. S/he must be entitled to leave the workplace if there is serious and imminent danger.

### Permits to work

These are detailed, written instructions provided by the employer on the performance of hazardous activities such as entry into confined spaces or electrical testing, etc. They should specify:

- check-in arrangements
- tests of communications equipment
- length of the work period
- suitable first-aid equipment
- equipment, tools and electrical safety checks
- suitable personal protective equipment
- suitable manual handling
- arrangements in bad weather

- exit to safety after job

### Role of safety representatives

Safety representatives should use their rights to influence safe lone working as with other work activities. This could entail:

- consulting/negotiating on the necessity of lone working in the first instance
- ensuring that a proper risk assessment is carried out including the provision of training, information and suitable supervision
- having an input into the details of permits to work
- advising members of safe working practices
- representing any suggestions and complaints from the lone workers to the employer
- making sure that work practices are not introduced unless specified in the risk assessment or permit to work
- checking that all accidents, near misses and dangerous occurrences go into the accident book and are properly investigated
- obtaining support from the trade union if unsafe working practices become established and/or referring these to the enforcement authorities. ■

## Drop dead

It is the thoroughly modern way to die at work. Major occupational diseases of the 21<sup>st</sup> century will be heart attacks, suicides and strokes. Why are so many of us being worked into the ground?

The cases aren't rare. They are just not *statistics*. Doctor Sid Watkins died when his body could no longer stand the "crazy" hours. Stressed out teacher Pamela Relf killed herself. So did mental health nurse Richard Pocock. All died because their jobs were just too much to bear.

But these cases, and hundreds like them each year, are not recorded as "work-related deaths." Dying because the job was beyond a human's capabilities is, in Britain at least, not a workplace problem.

In the real world it is a problem that is getting worse. The 2003 *Stressed Out* survey by the Samaritans found: "People's jobs are the single biggest cause of stress... with over a third (36 per cent) of Britons citing it as one of their biggest stressors." And it is worse at work. The survey found 23 per cent of people working full time get stressed every day compared to just 16 per cent of those who aren't working.

### Work until you drop

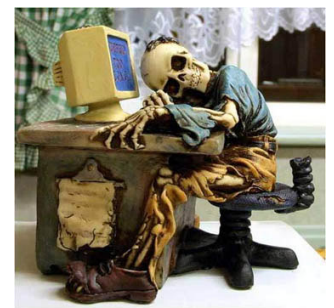
Our hearts and minds can face intolerable pressures from work. Japan and China each have a word for death by overwork – *karoshi* and *guolaosi*. And both Japan and Korea recognise suicide as an official, compensatable work-related condition.

The problem may not be quite so bad in the UK – yet. But the number of people suffering from work related stress has more than doubled since 1990. HSE says the estimated prevalence rose from 829 cases per 100,000 workers in 1990, to 1,700 per 100,000 in 2001/02.

HSE figures show that last year 13.4 million lost working days were attributed to stress, anxiety or depression, with an estimated 265,000 new cases of stress. It says stress, depression or anxiety now affects 1.3 per cent of the workforce.

### Death from overwork

In Japan, "management by stress" led to the emergence of *karoshi* – death from overwork – as an official occupational disease, with the dependants of workers dying from overwork related stroke (cerebrovascular disease) or heart disease eligible for state payouts.



In 2001/02, there was a record 690 claims leading to 143 confirmed cases, 47 related to sudden deaths from heart disease and 96 from stroke.

In 2002/03, the number of cases was higher still, with 160 of the 819 claimants receiving compensation.

The increase is in part explained by a rule change to take account of cumulative fatigue. A worker dying after regularly working overtime of 80 plus hours per month would now qualify, for example.

Less than 45 hours overtime in each month prior to death is considered "weak" evidence, but the association is assumed to get stronger as overtime increases.

The rules say karoshi risk factors include extremely long hours, long-term excessive work, irregular work hours, long hours with inadequate breaks, shiftwork and nightwork and work-related stress.

About two-thirds of the karoshi deaths are in men in their 40s or 50s.

### Karoshi in the UK

A government survey published last year found there had been a steep rise in the number of people working excessive hours – taking millions of UK workers into the karoshi zone.

The DTI research found 16 per cent of the workers surveyed – 1 in every 6 workers – were working over 60 hours a week, up from 12 per cent in 2000.

DTI found one in five men (19 per cent) had visited the doctor because of stress, rising to one quarter (23 per cent) of over 40s.

That's not the only evidence we are feeling the strain. TUC figures show unions started almost 9,000 new stress compensation cases in the years 2000 and 2001, accounting for about 10 per cent of all union personal injury cases and far outstripping the number of asbestos claims.

And things could be about to get worse. In July 2003 the government proposed abolishing the mandatory retirement age of 65 years. The old notion that "we work to live, not live to work" could soon be superseded by "we work until we drop."

We all have to die of something, of course – and circulatory disorders are Britain's top killer. But even if your job does not determine what kills you, it could be why it gets you that bit sooner.

### Driven to suicide

A 2003 analysis by the Samaritans reports: "It is commonly accepted that high stress, together with easy access to means, are important factors which put people in certain occupations at greater risk of dying by suicide." Evidence suggests workplace problems could explain a shockingly high proportion. A November 2002 study in the Australian state of Victoria, found work was a significant factor in 109 suicides in the years 1989-2000.

Applied to the UK, this would suggest there are well over 100 cases of work-related suicide each year, making it one of the UK's top work-related killers. The authors say their total is likely to be an under-estimate because coroner's data is not designed to make work links.

In 2002/03 Japan compensated the dependants of a record 46 victims of karojisatsu, suicide resulting from overwork. Official statistics suggest about five per cent of all suicide deaths in Japan are "company related," *The Japan Times* reported on 10 May 2003. In July 2003, the widow of a 35-year-old Toyota Motor Corp employee who took his own life in 1988 as a result of overwork became the latest recipient of karojisatsu compensation. Multinationals like Toyota operate similar management regimes worldwide. Earlier this year auto union CAW fought off a bid by the company to force compulsory overtime on workers at a Canadian plant.

### It couldn't happen here?

In May 2003, the British Medical Association advised senior hospital doctors to ensure they are not working more than 48 hours a week. A BMA survey of almost 11,000 consultants found that 77 per

cent worked more than 50 hours a week for the NHS, and 46 per cent more than 60 hours a week – well within the karoshi risk zone.

The call came after a coroner has criticised the "crazy" hours worked by Dr Sid Watkins who was found dead in a toilet at Southampton General Hospital. The 44-year-old paediatric consultant often worked 100 hours a week, and died after he apparently injected himself with the drug Fentanyl to help him cope with his workload.

In March 1998, UNISON secured £25,000 compensation for the family of mental health nurse Richard Pocock, who took his own life after being subjected to a macho management regime.

Teaching union NASUWT said the 2001 suicide of assistant head teacher Patrick Stack, 45, could be linked to his "Herculean workload."

Teacher Pamela Relf, who killed herself in January 2000 after being told by Ofsted her lessons "lacked pace," left a suicide note saying: "I am now finding the stress of my job too much. The pace of work and the long days are more than I can do."

In March 2001, an inquest heard that 29-year-old teacher James Patton hanged himself because he was worried about a forthcoming Ofsted inspection at his Birmingham primary school.

In July 2002, postal union CWU called for a campaign to make the industry harassment free after a report showed a black Birmingham Mail Centre worker, 26-year-old Jermaine Lee, took his own life after enduring constant racist bullying.

It is the thoroughly modern way to die at work. Major occupational diseases of the 21st century will be heart attacks, suicide and strokes.

### Here are a few solutions that might work for you

- Sufficient staffing levels at all times to ensure that service can be maintained and that no worker carries an excessive workload.
- Replace workers on holiday or any other leave.
- Stop attrition – fill jobs when people retire or resign.
- Reduce regular working hours for full-time employees without loss in pay.
- Fair and equal treatment of part-time and casual workers; convert part-time and casual jobs to full-time, permanent jobs.
- More rest periods; more holiday.
- Effective workplace training programs to help workers meet changing job requirements; ensure full coverage while on training.
- No new technologies to speed up work demands.
- Compensation for overwork and related problems; pay for overtime and compensate in time off, child care allowances, better sick leave provisions, workers' compensation for stress and other overwork-related problems.
- Better provisions to allow workers to balance the increased demands of work and family including more time off for family and personal responsibilities; access to child care and elder care facilities and programmes; longer paid parental leave.
- Reasonable work schedules that deal with the problem of long, exhausting and potentially dangerous work shifts.
- Measures to make jobs physically less demanding and dangerous.
- Effective procedures to address workload complaints including the right to grieve workload, to make health and safety complaints about overwork, and to refuse excessive work.
- Workplace committees with authority to investigate and solve workload problems. ■

**Our next newsletter is due out in August / September.**

**Please let us know if there are any particular topics that you would like us to include.**