DLA PIPER

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SHE MATTERS

The Safety, Health and Environment newsletter from DLA Piper UK LLP

IN THIS ISSUE

SHE MATTERS

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At the end of April, the Supreme Court made a final ruling ordering the UK Government to prepare new air quality plans for submission to the EU Commission by 21 December 2015 to bring the UK into compliance with the requirements of the Ambient Air Quality Directive of 2008 in relation to limit values for nitrogen dioxide.

The proceedings had been brought by the NGO ClientEarth following a longstanding failure on the part of the UK to meet the requirements of the Directive. The original deadline for meeting those requirements was 2010. A number of other countries had also failed to meet this deadline and the EU Commission had agreed extensions for those that produced *"credible and workable"* plans to meet the standards by 2015. However the UK did not submit plans for the 16 worst management areas, because DEFRA deemed it impossible to meet the extended deadline, estimating 2025 as a likely date for meeting nitrogen dioxide limit values in London and 2020 for some other areas. Even this proved over-optimistic against the background of the steps then intended, and in earlier proceedings held before the Court of Justice of the European Union in 2014, the Government stated that 2020 was now only considered realistic for a limited group of non-compliant areas, 2025 being the estimated year for reaching compliance for the greater number of those areas, 2030 for Portsmouth and Southampton, and sometime later for London, Leeds and Birmingham. Following the latest order from the Supreme Court, the last-mentioned areas will now also need to be included in the new plans.

In the light the CJEU finding in November 2014 that the UK was in breach of its obligations, the only effective argument which the UK Government could put forward before the Supreme Court against a mandatory order was that the order was not necessary, because DEFRA now intended to submit new plans in any event. The Justices of the Supreme Court did not however consider this to be satisfactory.

The UK Supreme Court is not a pioneer in judicial engagement with Government on environmental issues. In 1998 the Indian Supreme Court issued an order requiring the conversion of all diesel-powered buses in Delhi to the use of compressed natural gas. This prompted much protest from private companies and governmental authorities. However the court imposed high fines on operators who failed to comply with the order, and it appears that as of June 2012 some 13,000 buses had been converted.

Legal proceedings should not be seen as a *"magic bullet"* to solve complex environmental problems. What can perhaps better be described as judicial activity, rather than judicial activism, can have clear benefits where there is an obvious practical remedy which has been left untried and the court's order can overcome inertia, or perhaps a preference by Government to deploy resources elsewhere. However, while the use of diesel buses in conurbations is admittedly likely to be a significant contributor to the problem, it is not the only factor, and indeed the use of diesel fuel has been generally favoured in this country on the ground that it has led to reduced carbon emissions.

The UK Supreme Court has, perhaps rightly, been more cautious than its Indian equivalent. It has required action, but left the decision on the actual action to be taken to the Government. It remains to be seen whether the Government can now come up with adequate practical solutions to the environmental problems arising from the operation of a relatively successful economy in densely populated areas.

CHANGES TO **COMAH REGULATIONS**

MAKE SURE YOU ARE PREPARED

The Control of Major Accident Hazard ("**COMAH**") Regulations are intended to prevent on-shore industrial major accidents and to limit their consequences to people and the environment. They lay down rules for the prevention of major accidents from certain sites that produce, use or store dangerous substances at or above relevant thresholds.

The current regulations date back to 1999 and were brought in to implement European legislation referred to as the Seveso II Directive. That Directive has since been replaced with a Seveso III Directive and therefore new COMAH Regulations are being made to reflect these changes. The changes are also required to take account of the new European system for classifying dangerous substances set out in what is referred to as the Classification Labelling and Packing of Substances and Mixtures (**"CLP"**) Regulation.

The COMAH Regulations apply to sites where dangerous substances are present or likely to be present at or above specified thresholds. These establishments can either be "top tier" (now to be referred to as upper tier) or "lower tier" dependent upon the type and quantity of the substances present, with upper tier establishments attracting significantly more stringent duties. In essence, the general duty is for the operator to take all measures necessary to prevent major accidents and to limit their consequences should they occur.

Under the new COMAH regime, the general duties will largely stay the same but there are some important changes, one of which involves the reclassification of chemicals to align them with the CLP classification. The changes mean that from 1 June 2015 a number of sites may enter the COMAH regime at the lower or upper tier threshold, could move from the lower tier or vice versa or could potentially leave the regime completely. The Health

and Safety Executive has indicated that it predicts an overall net decrease in the number of COMAH sites but clearly individual operators will need to undertake their own assessments to ascertain whether there is any change to their overall COMAH status and, to the extent necessary, will need to prepare the additional data and documentation to reflect that.

Another significant change is that currently lower tier operators need to prepare what is referred to as a Major Accident Prevention Policy and provide that to the regulator on request. Under the new regulations lower tier operators will for the first time have to provide public information about their site and its hazards in electronic format and keep that information up to date. This requirement for greater transparency primarily arises from the European Commission seeking to align the Seveso III directive with the UNECE convention on public information, public participation and decision making and access to justice on environmental matters (known as the Aarhus Convention). As ever where documentation could end up in the public domain, care and attention will be required to ensure that relevant information that is provided by operators can and will remain confidential where necessary.

There will also be an increased focus on land use planning with the general public having greater opportunity to provide more input into COMAH projects alongside the implementation of appropriate "safety distances" for new establishments and infrastructure near existing establishments.

With the new COMAH regulations due to come into force at the beginning of June 2015 it is crucial that all operators that are currently subject to the COMAH regime and those which could potentially be brought into the regime under the new regulations ensure that they are implementing plans to remain compliant with this legislation going forward.

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STRENGTHENING OF ENFORCEMENT POWERS UNDER THE ENVIRONMENTAL PERMITTING REGIME AND TACKLING WASTE CRIME

WILL YOU BE AFFECTED?

The Department for Environment, Food & Rural Affairs ("**Defra**") and the Welsh Government recently consulted on strengthening the powers of the regulators in respect of those facilities which operate under environmental permits. As part of the same document they also called for evidence on measures to tackle waste crime and poor performance in the waste management industry. Views and comments were sought by 6 May 2015, and are currently under consideration. A summary of responses to the consultation paper is expected to be placed on the Defra website in late summer 2015. In relation to the call for evidence, we understand that a consultation document will be published later this year.

FOCUS AND IMPACT

Although the document places a lot of focus on the waste management industry and waste crime, the majority of the proposed changes to enforcement powers would bite on **all** holders of environmental permits. In addition, it should be noted that changes in the regulation of the waste industry not only impact on waste operators, but also on those who own land on which waste operations are carried out, those who utilise the services of waste operators, and on insolvency practitioners dealing with waste operators.

ENFORCEMENT PROPOSALS

In brief, the proposals on enhancing regulators' enforcement powers are aimed at enabling regulators to:

- Suspend permits where an operator has failed to meet the conditions of an enforcement notice. Such power is currently restricted to situations where it is considered that there is a risk of serious pollution from operation of the facility.
- Issue notices which include steps to be taken to prevent the breach of a permit getting worse. Arguably the current regime already allows this, and the proposal is intended to provide clarity.
- Take physical steps to prevent further breaches by an operator of their permit. The consultation envisages that such amendments would only apply to waste management sites.
- Take steps to remove a risk of serious pollution, whether or not a facility is under a permit. This would, therefore, cover situations where a facility is being operated without a permit and also where a permit has been revoked.
- Require the removal of waste from land where its initial deposit was lawful, but the continued presence or storage of that waste subsequently became unlawful (as a widening of current powers).

CALL FOR EVIDENCE

In addition to the specific proposals contained in the consultation paper, Defra and the Welsh Government are also seeking information on current problems encountered by the waste industry, the public and the regulators, and possible solutions. This includes consideration of the following:

- Widening enforcement options to allow the use of fixed penalty notices for fly-tipping (the situation at the current time is that local authorities can only issue fixed penalty notices for very small scale fly-tipping incidents).
- The best ways to increase awareness among landowners of their liabilities in relation to waste management operations on that land or premises. This includes seeking views on whether liquidators should be able to disclaim environmental permits as "onerous property".
- Regulation of operator competence, including: more directly reflecting operator competence requirements in the environmental permitting regulations; requiring companies to notify the regulator of a change of director, company secretary or similar manager which could then trigger a reassessment of operator competence; and potentially including operator competence as a condition of a permit.
- Possible reintroduction of financial provision for all types of waste management facility which can be accessed by the regulators or a third party to pay for the cost of pollution control and/or site clearance. Currently financial provision is only required for landfill and some extractive waste permits.
- Expansion of the regulators' powers to undertake anti-pollution works and recover the costs of the same, so as to cover works to prevent/remedy pollution associated with the deposit of waste on land.

The potential consequences of changes implemented as a result of the consultation and call for evidence are very wide ranging and could affect many businesses. As ever, it is important to keep abreast of developments, so that organisations can take any necessary steps to prepare themselves. This could include a review of systems to decide whether any operational or organisational changes need to be made, reviewing competencies and ensuring that appropriate briefings and training are given so that those employees who may come into contact with the regulators are aware of the powers which those regulators have, and how best to deal with their use.

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THE NEW EXPLOSIVES REGULATIONS 2014 IN WITH A BANG OR A DAMP SQUIB?

On 1 October 2014, the new Explosives Regulations 2014 ("**Regulations**") came into force, consolidating and modernising explosives health and safety legislation. The Regulations are relevant to anyone involved in the manufacture, storage, transportation and disposal of explosives.

Previously, legislation on explosives was fragmented across a number of different regimes, with the many diverse sub-sectors of the explosive industry having their own stand-alone sets of regulations. As recognised by the consultation which led to the introduction of the Regulations, this approach had resulted in overlapping legal duties and divergent legal definitions at both UK and international legislative levels.

The objective of the new Regulations is to consolidate the broad range of existing explosives legislation into a single set of modern regulations which are easier to understand and more accessible for businesses. The Regulations are now based around common topics which apply across the industry such as authorisation, safety, security and placing on the market. It was intended to maintain the existing effective health and safety and security standards rather than introduce material changes to the substantive standards.

As a result of the consolidation, a number of existing pieces of legislation have been repealed (including the Manufacture and Storage of Explosives Regulations 2005) and the existing Approved Code of Practice to the Manufacture and Storage of Explosives Regulations 2005 has been withdrawn. This has been replaced by overarching guidance published by the HSE in the form of Guidance L150 on the safety provisions and Guidance L151 on security provisions. This guidance is structured around fundamental objectives, described as 'statements of success', that all duty holders in the industry should achieve in a manner that is proportionate to their business and also identify detailed specialist and topic based guidance.

This overarching guidance is due to be supplemented by further more detailed guidance aimed at specific sub-sectors. Not all the regulations would be expected to apply to all of the activities of all sub-sectors. This is because different subsectors undertake different activities and work with different types of explosives. To date, sub-sector guidance has been published for fireworks in retail premises, wholesale storage of fireworks and the manufacture and storage of ammonium nitrate blasting intermediate.

The main changes to the regulatory framework introduced by the Regulations include:

- consolidating the registration system into the licensing system;
- enabling local authorities to issue licences for up to 5 years, aligning them with similar HSE/police-issued licences;
- extending existing licensing arrangements to address storage of ammonium nitrate blasting intermediate;
- updating exceptions for keeping higher hazard and desensitised explosives without a licence;
- restructuring of the tables of 'separation distances' to better accommodate sites with more than one store; the tables have also been revised to cover quantities of explosives greater than 2,000kg;
- revising the list of explosives that can be acquired and/or kept without an explosives certificate from the police; and
- repealing the Fireworks Act 1951, as its remaining provisions have been superseded by the Pyrotechnic (Safety) Regulations 2010.

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THE FISH LEGAL CASE:
PRIVATE COMPANIES AND THE ENVIRONMENTAL INFORMATION REGULATIONS

In the recent judgment of *Fish Legal v Information Commissioner and others [2015] UKUT 52 (ACC)* delivered on 19 February 2015, the Upper Tribunal decided that the privatised water and sewerage undertakings in England and Wales are public authorities for the purposes of the Environmental Information Regulations, by virtue of the special powers which they enjoy. The judgment applied tests set out in a preliminary ruling of the European Court of Justice (CJEU) to determine whether an organisation is a public authority in this context.

The case arose out of two separate requests for environmental information put to United Utilities Water plc and Yorkshire Water Services Ltd respectively. When the companies refused to provide the information requested on the basis that they were not public authorities, the applicants each complained to the Information Commissioner. The Commissioner agreed that the companies were not public authorities for the purposes of the Regulations. The Commissioner's decision was appealed, first to the First Tier Tribunal (where the case was dismissed but leave for appeal was granted) and subsequently to the Upper Tribunal. The Upper Tribunal referred certain questions of law to the CJEU, which set out the tests ultimately employed by the Upper Tribunal in its decision in this case.

ENVIRONMENTAL INFORMATION REGULATIONS

The Environmental Information Regulations 2004 enable members of the public to access environmental information held by public authorities. On the one hand, authorities must proactively provide this information. However the legislation also allows members of the public to actively make specific requests for them to provide such information, which must be provided within a certain timeframe.

The Regulations implement in the UK the European Council Directive 2003/4/CE on public access to environmental information. The EC Directive was implemented as a result of a wider international agreement on environment information known as the "Aarhus Convention". The law are designed to ensure that the public has access to environmental information and to raise awareness of issues that affect the environment. The aim of this is to increase public participation in decision-making regarding matters that affect the environment, and to increase transparency and accountability within public authorities, building public confidence in them.

Public authorities must ensure that the environmental information they make available to the public is "easily accessible", which usually means that it is made available online. The type of material that must be made available includes information about air, water, soil, land, flora, fauna, energy, noise, waste and emissions. This includes information about decisions, policies and activities that

affect the environment. The Regulations apply to any recorded information held by public authorities in England, Wales and Northern Ireland. Separate but similar regulations apply in Scotland.

WHAT IS A PUBLIC AUTHORITY?

A public authority is defined as a government department, or any other public authority defined as such in the Freedom of Information Act 2000. In addition, it can also be any other body that:

1. Carries out functions of public administration; or
2. Is under the control of a public authority and either (i) has public responsibilities relating to the environment; (ii) exercises functions of a public nature relating to the environment; or (iii) provides public services relating to the environment.

In some cases, it is clear from the above that an organisation is a public authority. For example, government departments, local authorities, the NHS and police forces are all viewed as public authorities. However in other cases it is less obvious.

UPPER TRIBUNAL

In this case, it was argued that the water companies did qualify as public authorities by virtue of points 1 and 2 above. It was argued that the companies performed "function of public administration" through the activities and services they provided under the Water Industry Act 1991, and that they were "controlled" by public authorities because they were regulated by them, including Ofwat (The Water Services Regulation Authority), the Environment Agency and the Department for Environment, Food and Rural Affairs.

These questions were considered by the CJEU, and the tests determined by them were that the public administrative functions carried out by a company must qualify as "special powers" beyond private law powers, and that an organisation was controlled by a public authority if it could not "determine in a genuinely autonomous manner the way in which they provide services", and the controlling public authority "is in a position to exert decisive influence on their action in the environmental field".

The Upper Tribunal decided that the water companies did have special powers, including for example: powers of compulsory purchase, to make bye-laws which could include a criminal sanction for a breach, to enter on or lay pipes on land and to impose hosepipe bans. The Tribunal also attributed weight to the fact that powers did not arise out of private law (even though they might have done theoretically), and that the powers gave the companies a practical advantage for example in commercial negotiations. As regards the question of control, the Upper Tribunal decided that the companies were not controlled by any of its regulators, since it judged that the companies still had "genuine autonomy" over their affairs.

ENVIRONMENTAL INFORMATION AND PRIVATE COMPANIES IN THE FUTURE

This ruling is particularly important for private companies with similar "special powers", such as other utilities companies. The CJEU did not rule out the potential for companies in other industries with similar powers to also be classified as "public authorities".

It is important that such companies take steps to review, monitor and actively manage environmental information within their organisations, in order to protect their position and ensure that such information can be easily accessed in the event of a request. This raises questions among other things about what qualifies as environmental information, the proper storage of such information (for example a register should be kept for inspection) and associated data protection issues. Organisations should also review the information that is already made available externally and decide whether more needs to be done to ensure that such information is proactively provided to the public.

Ideally utility companies should have in place policies and processes which detail what they consider to be environmental information and how such information will be managed and stored, including how requests for information will be dealt with within the timeframe designated by the Regulations, and what charges for providing such information will apply.

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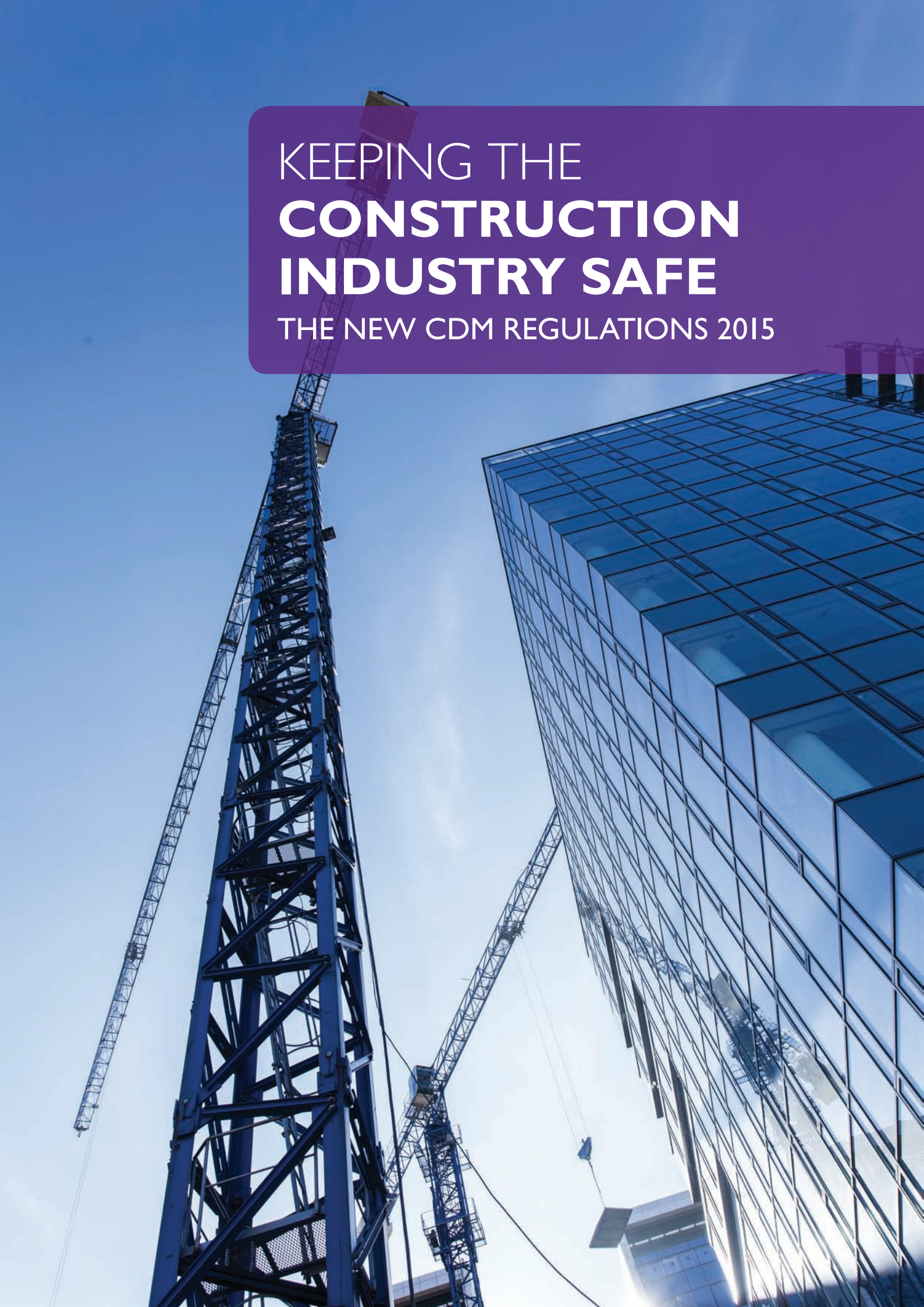
KEEPING THE **CONSTRUCTION INDUSTRY SAFE**

THE NEW CDM REGULATIONS 2015



On Easter Monday, 6 April 2015, the new regime for construction health and safety came into force in the form of the Construction (Design and Management) Regulations 2015 ("**CDM 2015**"). These replace the previous regulations ("**CDM 2007**"). The new regime has been described as the biggest health and safety change in the construction industry for a decade.

THE MAIN CHANGES

The changes have been made partly to bring the CDM Regulations more into line with EU requirements. For example, the previous fairly wide exemption for domestic clients from CDM 2007 was considered to be in breach of the relevant EU Directive. Instead, the duties of all clients are set out generally in CDM 2015, but in the case of domestic clients, most of them are then passed to another duty holder under Regulation7.
A domestic client is a person who has construction work done on his own home or the home of a family member which is not done in connection with a business.
The flipside of this approach is that there is a new emphasis on the duties of non-domestic clients.

Generally there is a greater emphasis on the non-domestic client fulfilling his responsibilities himself, with the assistance of competent advisors as necessary, rather than transferring him to others. The general duties of clients as regards managing projects are strengthened.

There has also been an emphasis on simplifying the structure of the Regulations to make them easier for SMEs to understand and apply. This follows a conclusion of the review of CDM 2007 that the previous regulations were not well understood by SMEs and that health and safety incidents are now more common on smaller construction sites.

To accompany CDM 2015, new guidance has been published by the Health and Safety Executive (**"HSE"**). The new guidance is shorter and provides useful checklists for compliance. In line with recent HSE practice it is not an Approved code of Practice (**"ACOP"**). However many of the respondents to the 2014 consultation on the new regime indicated that they would prefer an ACOP, and the HSE has therefore stated on its website that it will seek views later in 2015 on whether to replace the guidance with an ACOP.

Key further points are:

- **New principal designer ("PD") –** The most fundamental change in CDM 2015 is the introduction of the new role of PD, replacing the CDM co-ordinator (**"CDM-C"**) role (which is abolished). The PD is responsible for co-ordinating health and safety during the pre-construction phase and, as such, CDM 2015 requires the client to appoint a PD as soon as practicable and in any event before construction begins.

  CDM 2015 provides that the PD must be a 'designer', which is defined as including any person who arranges for or instructs another person under its control to prepare or modify design. It is anticipated that entities that have previously acted as CDM co-ordinators under CDM 2007, but who are not designers, will seek to continue acting by being appointed as a sub-consultant to the PD.

- **Skills, knowledge, experience and organisational capacity** – CDM 2015 removes the bureaucratic and prescriptive requirements under CDM 2007 to ensure that duty-holders are "competent". Instead, all duty-holders (other than the client) must have the "skills, knowledge and experience" and "organisational capacity" to carry out their respective roles. Clients are required to "take reasonable steps" to ensure designers and contractors meet these requirements and duty-holders must not accept an appointment if they do not. The HSE has made it clear that it is down to the relevant professional bodies and institutions to ensure that these standards are met across the industry.

- **Notification of projects** – All projects that are scheduled to last more than 30 working days **and** have more than 20 workers working simultaneously at any point or that are scheduled to exceed 500 person days must be notified to the HSE by the client.

CDM 2007 required notification for projects likely to involve more than 30 days or 500 person days of construction work. The change should reduce the number of notifiable projects.

- **More than one contractor?** – However, notification no longer triggers additional duties to appoint a CDM-C and principal contractor (**"PC"**), as was the case under CDM 2007. Instead, under the new rules, the duty to appoint a PC and PD applies whenever there is more one contractor, irrespective of whether the project is notifiable. This will catch smaller projects on smaller sites. Should the client fail to appoint a PC or PD, he is obliged to fulfil the roles himself.

TRANSITIONAL ARRANGEMENTS

CDM 2015 includes transitional provisions for projects which started before 6 April and finish after that date:

- Where a CDM-C has been appointed on a project that starts before 6 April but will definitely reach completion within six months of this date (before 6 October), the CDM-C can continue its role without the need for a PD to be appointed.
- During this "period of grace", the appointed CDM-C should comply with the duties in Schedule 4 of CDM 2015 (which largely reflect the existing requirements under CDM 2007).
- For projects which commenced before 6 April and which will not be completed before 6 October, the client must appoint a PD as soon as practicable. The PD will take over and the CDM-C will have no further role from 6 October (but it is perhaps likely that, in practice, the CDM-C may be sub-contracted to the PD to provide continuity and support).
- Where a project continues beyond 6 October and the client fails to appoint a PD, the client will become responsible for fulfilling the duties of the PD.
- Where a project begins before 6 April and has only one contractor, that contractor must draw up the construction phase plan as soon as practicable after 6 April. For similarly timed projects involving more than one contractor but no PC, the client must appoint a PC as soon as practicable after 6 April. The PC will be responsible for the construction phase in such circumstances.

FINAL PRACTICAL THOUGHTS

Clients find themselves with increased responsibility to check and review their health and safety arrangements through the life of a project under the CDM 2015. While clients will look to pass on many of their duties, they will still retain that responsibility. To ensure that all parties on a construction project follow the new rules, clients should make certain that building contracts and appointments are brought up to date – the JCT and other industry bodies are producing amendments to their standard form agreements. As breaches of the rules attract criminal liability with a maximum of two year's imprisonment and/or an unlimited fine, clients should act now to ensure that both projects already underway and future projects are fully compliant.

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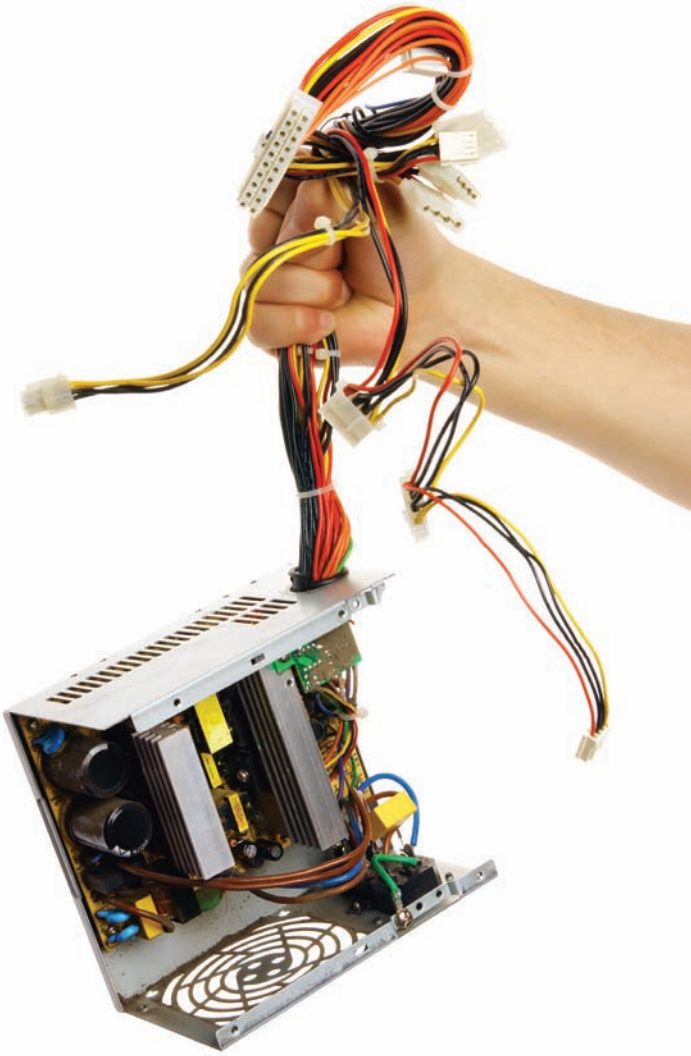
SPAIN:

NEW REGULATIONS ON THE DISPOSAL OF ELECTRICAL AND ELECTRONIC WASTE



INTRODUCTION

Significant changes have been recently introduced in the Spanish legislation on the disposal of electrical and electronic waste. In particular, on 21 February 2015, the Royal Decree 110/2015 on electrical and electronic waste (the **"Royal Decree")** came into force transposing the Directive 2012/19/EU of the European Parliament and of theCouncil of 4 July 2012 on waste electrical and electronic equipment (the **"WEEE Directive").**

The aim of the Royal Decree is to regulate the management of electrical and electronic waste, and to reduce its adverse impacts on the environment and human health. Additionally, it regulates the collection and treatment of such waste, and sets forth instruments for its proper management and traceability at national level.

The Royal Decree replaces and repeals the previous Royal Decree on this matter (Royal Decree 208/2005) and complements the Spanish Law 22/2011 on waste and polluted grounds. This previous Spanish regulation did not cover the disposal of electrical and electronic waste in an extensive manner. In this respect, the Royal Decree has dramatically increased the legislative scope, introducing a series of new dispositions as detailed below.

CHANGES INTRODUCED BY THE NEW ROYAL DECREE

1. Instructions on electrical or electronic products must mention that any batteries must be removed and separately disposed of before disposing of the electrical and electronic waste, in accordance with Royal Decree 106/2008 on batteries and accumulators and the environmental management of their waste.
2. Manufacturers of electronic devices must include their identification number from the Incorporated Industrial Registry (the **"IIR")** on all the invoices or documents related to commercial transactions involving said devices, as long as they take place between manufacturers and distributors. Furthermore, the final user will be able to request from the distributor the identification number of the manufacturer of the relevant device.
3. Distributors of electrical and electronic devices will only be able to sell said devices when they are sourced from a manufacturer with an identification number from the IIR.

4. Introduction of measures to extend the life cycle of the devices in order to reduce the amount of electrical and electronic waste produced.
5. Introduction of rules regarding the repair of electronic devices in order to reuse them. The facilities in which this type of activities take place must have a waste treatment permit.
6. Establishment of different alternatives to collect electrical and electronic waste. Now municipalities, distributors, producers or waste managers can be directly responsible for collecting electrical and electronic waste.
7. Introduction of additional requirements for collecting waste that contains certain dangerous substances, such as mercury.
8. When a consumer buys a new household electrical or electronic product, the distributor must accept the return (free of charge) of the old equivalent product, now considered as waste. Additionally, distributors with sales areas dedicated to electrical and electronic products of more than-400 square meters must provide a collection service, free of charge, for devices not exceeding 25 centimeters. This collection service will not require consumers to purchase another product.
9. Competent authorities may impose on producers of household electrical and electronic products the obligation to set up waste collection networks in areas where not enough waste is collected or due to certain hazardous characteristics of the electrical and electronic waste.
10. Aside from waste collecting targets for producers, the Royal Decree sets forth an additional obligation to meet targets to reuse a fraction of the collected waste, starting on the 1st January 2017.
11. Producers now have a series of new obligations (extended producer responsibility), such as manufacturing electrical and electronic devices in such a way that they can be easily reused, repaired and recycled.
12. For waste originated from electrical and electronic products, producers must finance, at least, the cost of collection, preparation for reuse, specific treatment, recovery and disposal for products introduced in the market after 2005.

IMPACT OF THE NEW REGULATION

Following the path set out by the WEEE Directive, the new Spanish regulations clearly seek to reduce the amount of electrical and electronic waste generated and to promote recycling. In order to do so, it does not exclusively focus on electrical and electronic waste as such, but rather, it adopts a global approach affecting the whole life cycle of the devices. This means that manufacturers and distributors must take into consideration this new regulation from the moment in which a device is produced up until when it becomes waste.

Some of the new obligations (particularly those that affect the manufacturing process) are only generally defined in the new Royal Decree. Any companies involved in the manufacturing, distribution or waste processing in connection with electrical and electronic products must be fully aware of the new obligations established for them.

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IN **BRIEF**

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (SI 2015/664) were made on 11 March 2015 and came into force on 12 March 2015. The Regulations apply only to England and Wales and make the necessary consequential amendments to other legislation to give full effect to section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012).

The impact of this legislation on corporate defendants was discussed in considerable detail in the Winter 2014/2015 edition of SHE Matters. However, now that the relevant sections have come into force it is confirmed that for any offences committed after 12 March 2015, Section 85 removes the cap on fines set at £5,000 or more in the magistrates' courts. Magistrates now have the power to impose whatever level of fine they consider most appropriate in summary offences.

The maximum level of fines that can be imposed by magistrates' courts on summary conviction are usually expressed in legislation by reference to:

- Levels 1 to 5 on the standard scale (with level 5 being £5,000)
- The "statutory maximum" or "prescribed sum" (set at £5,000)
- A numerical amount of £5,000 or more

Section 85 LASPO 2012 provides for all fines in magistrates' courts of £5,000 or more, regardless of how they are expressed, to become unlimited. This means that magistrates will be able to impose higher fines than previously. Fines below £5,000 will continue to be capped.

This change gives the courts a wide discretion when imposing fines for summary offences and affects a very wide range of legislation across all business sectors. This includes health and safety and environmental offences.

This will remove some of the certainty with which companies were able to deal with potential prosecutions under health and safety and environmental legislation. Knowing that a fine in the magistrates court would be no greater than £5,000 per offence may well have shaped the approach that Companies took to these kinds of offences. With this change in legislation it is likely that Companies and Directors will need to revise their approach to environmental and health and safety compliance as the cost of being prosecuted may no longer be an acceptable price of doing business.

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The Mines Regulations 2014, which replace most of the previous mines specific health and safety regulations, came into force on 6 April 2015. The general content of the Regulations was discussed in SHE Matters last year, following the publication of the Regulations in draft for consultation. The Regulations are intended to provide one set of consolidated regulation to supplement the general body of health and safety legislation which applies in mines.

In line with recent HSE practice, the Mines Regulations are not accompanied by an ACOP (but see the article on the CDM Regulations 2015 in this issue).

Instead the Regulations are supported by new guidance, available on the HSE website, which does not have the status of an ACOP. The ACOPs previously in force in respect of the repealed mining sector-specific health and safety regulations have been withdrawn, but the ACOP covering first aid at mines remains in force. Following the repeal of certain provisions of the Electricity at Work Regulations 1989 that applied only to mines, the HSE has published new guidance on the use of electricity at mines, which is also available on the HSE website.

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