

Your World First



UK and EU Health and Safety Calendar

CMS

August 2019

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Introduction

This calendar covers some of the key dates for proposed and existing health and safety legislation in the **UK** and **EU** (colour-coded accordingly). For a brief explanation of the different types of EU legislation, please refer to the end of this calendar. The content is ordered as follows:-

1. New **UK** and **EU** Legislation in force
2. Bills in the 2017-2019 Parliament session
3. The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update
4. REACH
5. Current and completed consultations
6. Current and completed campaigns and initiatives

This calendar is provided by way of general guidance only and does not constitute legal or professional advice. While we aim for it to be as up-to-date as possible, some recent developments may miss our publication deadline and some dates may change at short notice. The calendar is not intended to cover every policy or legislative initiative, only major health and safety issues.

1. New UK and EU Legislation in Force

22 May 2019

The Radiation (Emergency Preparedness and Public Information) Regulations 2019 (SI 2019 No. 703)

The Regulations transpose the emergency preparedness and response elements of the Euratom Basic Safety Standards Directive (2013/59/Euratom) in relation to premises in which work with ionising radiation takes place by revoking and replacing the Radiation (Emergency Preparedness and Public Information) Regulations 2001.

The Regulations strengthen Great Britain's emergency preparedness and response arrangements for radiological emergencies and will improve public protection and reduce adverse consequences in the event of an emergency. The changes will deliver a consistent approach to radiation emergency preparedness and response across the civil, nuclear, defence licensed and authorised nuclear, and radiological sectors.

29 November 2018

The Building (Amendment) Regulations 2018 (SI 2018 No. 1230)

The amended Regulations give legal effect to the combustible materials ban announced in the summer. The ban means combustible materials will not be permitted on the external walls of new buildings over 18 metres above ground level containing flats, new hospitals, residential care premises, dormitories in boarding schools and student accommodation.

21 April 2018

The Personal Protective Equipment (Enforcement) Regulations 2018 (SI 2018 No. 390)

These Regulations provide for the enforcement of Regulation (EU) 2016/425 of the European Parliament and

the Council of March 2016 on personal protective equipment ("PPE"). It came into force on 21 April in the UK and Europe, repealing Directive 89/686/EC.

Employers have duties in relation to the provision and use of PPE. It is equipment that protects employees against health and safety risks in the workplace, PPE includes items such as safety helmets, gloves, eye protection, high-vis clothing, safety footwear, safety harnesses and respiratory protective equipment. The new Regulations put increased obligations on producers, importers, suppliers and distributors to ensure the PPE they supply meets the necessary standards.

The key changes made by the Regulations are as follows:

- Categorisation has been changed from product related to risk related
- Categorisation has been changed for certain product categories, for example, Hearing Protection has now been moved to category III as 'harmful noise' from category II
- PPE is to be provided with an EC Declaration of Conformity
- New EU Certificates shall have a 5 year expiry date following which renewal is required

21 April 2018

The Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018 (SI 2018 No. 389)

From 21 April 2018, new gas appliances and fittings used to burn gaseous fuels must comply with the new Gas Appliance Regulations if they are to be imported or sold into EU countries.

1 April 2018

The Regulation aims to improve the safety of gas appliances supplied within the EU and addresses failings not caught by the Gas Appliances Directive 2009/142/EC.

EU suppliers, manufacturers, distributors and retailers will be impacted by the new changes brought about by the Regulations.

The Pneumoconiosis etc. (Worker's Compensation) (Payment of Claims) (Amendment) Regulations 2018

This Regulation came into force on 1 April 2018. This Regulation makes amendments to The Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) Regulations 1988.

The effect of this regulation is to increase the amount of compensation paid under the Pneumoconiosis etc. (Workers' Compensation) Act 1979.

1 January 2018

Ionising Radiation Regulations 2017 (IRR17)

The IRR17 came into force on 1 January 2018. They replaced the existing IRR99 regulations, due to the implementation of the EU Basic Safety Standards Directive.

For those working with ionising radiation, the biggest change relates to how employers submit information to the HSE.

This relates broadly to industry and specifically to those that use X-ray devices, radioactive substances and devices containing such substances, as well as working with radon gas.

1 January 2018

Regulation (EU) 2017/852 of European Parliament and of the Council of 17 May 2017 on Mercury

As previously reported in the last calendar, this Regulation establishes conditions concerning the appropriate usage and storage of mercury effective from 1 January 2018. It applies to any mercury containing mixtures and compounds, the manufacture, use and trade of any mercury containing products, restricts the use of dental amalgam and dictates management of any mercury waste to ensure optimum protection of human health and the environment. Its aim is to fill the gaps in existing EU mercury legislation and to ratify the Minamata Convention on Mercury.

It was implemented in the UK via the Control of Mercury (Enforcement) Regulations 2017. The consultation on the Regulations closed on 21 November 2017.

2. Bills in the 2017-2019 Parliament Session

2017-2019

Fire Safety (Leasehold Properties) Bill 2017 - 19

A Bill to require freeholders of certain properties that have failed fire safety tests to carry out remedial work; to make provision for sanctions for such freeholders who fail to carry out such work; to ensure that leaseholders are not held liable for the costs of such work; to make provision for a loan scheme to assist freeholders in carrying out such work; and for connected purposes.

This is a Private Members' Bill and was introduced to Parliament on Wednesday 28 November 2018 under the Ten Minute Rule. The next stage for this Bill will be the Second Reading which is scheduled to take place on a date that has not yet been announced.

2017-2019

Carbon Monoxide (Detection and Safety) Bill 2017-2019

According to MP Eddie Hughes, in recent years over 25 people die each year due to carbon monoxide related incidents, 264 people were hospitalised last year and 4000 people go to A&E each year with symptoms of carbon monoxide poisoning. Carbon monoxide is undetectable to the human senses but is easily noticeable by detectors costing less than £15. The Bill proposes to make carbon monoxide detectors mandatory in new build properties and rented properties from social housing to the private rented sector. It further proposes, for the fire authority to have an explicit duty to promote carbon monoxide safety, thereby enshrining current best practice into law.

2017-2019

The Bill was proposed post Grenfell disaster where 80 people tragically lost their lives due to unsatisfactory housing safety.

It had its first reading on Wednesday 13 September 2017 under the Ten Minute Rule, which allows MP's to make their case for a new bill in a speech not exceeding ten minutes. The second reading of the bill was expected on Friday 27 April 2018 however, it was withdrawn.

Fire Safety Information Bill 2017-2019

Briefly, the Bill aims to establish requirements for fire safety information of occupants of certain buildings, including high-rise residential buildings. The purpose of the Bill is to require the responsible person for all high-rise residential buildings to hold an annual meeting for all residents to inform them of the fire risk assessment and to address all fire safety issues that may be raised. Currently, the responsible person for any high-rise building is required to have fire risk assessments for the building carried out "regularly".

The Bill was proposed post Grenfell disaster where 80 people tragically lost their lives due to unsatisfactory housing safety.

The Bill had its first reading in the House of Commons on 20 March 2018.

2017-2019

Nuclear Safeguards Bill 2017-2019

Briefly, the Bill aims to establish a domestic nuclear safeguards regime by:

- Creating a legal framework for the operation of nuclear safeguard regimes in the United Kingdom as a replacement for the framework set out from the United Kingdom’s membership to the European Atomic Energy Community (Euratom), used previously;
- Amending the Energy Act 2013 by replacing the current nuclear safeguards purposes of the Office of Nuclear Regulation;
- Providing the Secretary of State with powers to make nuclear safeguards regulations, setting out the details of domestic regimes for nuclear safeguards; and
- Providing the Secretary of State with regulation-making powers to amend certain legislation, which reference parts of existing agreements on nuclear safeguards between the United Kingdom and the International Atomic Energy Agency.

Following agreement by both the House of Commons and the House of Lords, the bill received Royal Assent on 26 June and is now an Act of Parliament.

3. The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update

It has been over three years since the publication of the *'Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guidelines'* for courts in England and Wales, which came into force on 1 February 2016. The Guidelines apply to all offences sentenced after this date, regardless of the date of the offence itself.

It was predicted prior to the coming into force of these Guidelines that they would dramatically increase fines for the relevant offences and this has now been seen coming to fruition. In 2017/18, 517 cases were brought. Numerous fines have been levied against companies in excess of £1 million.

In its latest enforcement statistics, the HSE published that fines increased to £72.6 million in 2017/18. In the 2017/18 period the single largest fine was £3 million and a total of 45 cases received fines over £500,000. Further, reports indicate that there has been a significant increase in the number of custodial sentences and suspended sentences received by individuals. In all circumstances, the courts are placing a significant emphasis on ensuring that sentences for health and safety breaches have a real impact upon the charged party.

Prosecutions of companies setting the tone since 1 January 2018:

Date of Conviction	Defendant	Fine	Charges	Narrative	Trial/Plea
23 February 2018	Aviation manufacturing company	£1.1 million	s.3(1) of the Health and Safety at Work Act 1974	A pilot was ejected while preparing to take off from an RAF base. His parachute failed to deploy and the pilot was pronounced dead shortly after arriving at hospital. The company designed and manufactured the ejector seat. The HSE's investigation found a mechanical fault led to the failure of the parachute deployment mechanism. The company was made aware of the fault in the 1990's by two aircraft manufacturers.	Guilty plea

The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update

7 March 2018	Manufacturing company	£1 million	ss.2(1) and 3(1) of the Health and Safety at Work Act 1974	A delivery driver was killed when he was struck by a forklift truck at the company's site. The HSE found the company had failed to properly manage workplace transport in the yard area and had unsafe systems of work in place.	Guilty plea
26 March 2018	Healthcare provider	£2 million	s.3(1) of the Health and Safety at Work Act 1974	The provider was prosecuted following the deaths of two patients. The HSE's investigations found a series of management failings leading up to both deaths. This included a failure to control risks and failures in planning.	Guilty plea

18 April 2018	Engineering companies	Both companies each received a fine of £1 million	s.2(1) and 3(1) of the Health and Safety at Work Act 1974	An employee of one of the companies was working on an energy plant, unloading a large heating pipe from a trailer with a colleague. During the re-positioning of the pipes while offloading, two pipes fell, one of which fell on the employee causing fatal injuries.	Guilty plea
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The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update

17 May 2018	Manufacturing company	<p>£1.6 million</p> <p>This amount includes £800,000 in relation to the Legionnaires' incident and £800,000 in relation to the explosion.</p>	s.2(1) and s.3(1) of the Health and Safety at Work Act 1974	<p>The company was prosecuted for two incidents taking place at the same site within one year. Five people fell seriously ill following a Legionnaires' disease outbreak caused by the company's failure to effectively manage its water cooling systems in the factory. Secondly, an employee suffered from serious burns when he was recovering a part that came loose from production rollers at the manufacturing plant. The part came into contact with an electrostatic grid creating a spark and causing a dust explosion. The HSE found that the company failed to put adequate measures in place to protect operators from explosion risks, despite explosions occurring in the past.</p>	Guilty plea
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14 June 2018	Healthcare Provider	£3 million	S3(1) of Health and Safety at Work Act 1974	The provider was prosecuted following the death of a patient, who died after contracting Legionnaire's disease. The HSE's investigation found the provider had failed to conduct necessary controls to monitor the water system at the healthcare facility, which subsequently resulted in the build up of legionella. It was also found in the investigation that employees responsible for controls had not been provided adequate training.	Guilty plea
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The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update

11 September 2018	Logistics company	£1.5 million	S2(1) Health and Safety at Work Act 1974	A worker died when he was trapped between a trailer and his vehicle, while attempting to attach a trailer to his vehicle. The trailer was parked upon a slight slope, which was enough to allow it to roll forward trapping the employee. An investigation by the HSE found safety management arrangements for coupling trailers to vehicles failed to take account of the slope.	Guilty plea
17 September 2018	Construction companies	Both companies each received a fine of £1.4 million	S3(1) Health and Safety at Work Act 1974	A contract worker's foot became trapped in a large rotating screw while upgrading water treatment works. The worker had three toes amputated as a result. The HSE's investigation found that neither companies had properly planned or managed the commissioning works which were being undertaken.	Unknown

20 September 2018	Construction company	£1.25 million	S3(1) Health and Safety at Work Act 1974	<p>The construction company was the principal contractor in relation to remedial work carried out on flats it had built a few years earlier. During the works to an external wall, live flues of gas boilers were removed, damaged and blocked which exposed the residents to a risk of carbon monoxide poisoning. The HSE investigation found that the construction company, as principal contractor, had failed to ensure that an adequate system of work was in place to manage the risks from working around the live flues.</p>	Guilty plea
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The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update

<p>6 November 2018</p>	<p>Construction companies</p>	<p>The first company was fined £1.2 million. The second company was fined £60,000.</p>	<p>The first company was in breach of s2 Health and Safety at Work Act 1974. The second company was in breach of s2 and s3 Health and Safety at Work Act 1974</p>	<p>Two employees of the first company were injured after being called to a gas escape, which had been caused by employees of the second company when they damaged a gas main during construction work. During the repair by the employees of the first company, the gas ignited causing the injuries. The HSE's investigation found that the second company had not followed safe digging techniques when excavating around the pipeline which led to the gas main being damaged by a mechanical excavator. The first company then did not follow their own procedures or recognised safe systems of work when repairing the gas main.</p>	<p>Guilty pleas</p>
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27 November 2018	Transport company	£2.3 million	S2 and s3 Health and Safety at Work Act 1974	A bus driver employed by the company pulled off at speed, striking a parked bus and driving across a grass verge which resulted in the death of two people. The police investigation found that there was no mechanical fault with the bus. The company was found to have dealt inadequately with numerous complaints about their employee's driving and had ignored warnings to ensure he reduced his hours of work due to the effect of fatigue on his standard driving.	Guilty plea
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The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update

<p>15 January 2019</p>	<p>Housing Companies</p>	<p>The first company was fined £1 million. The second company was fined £533,000. A third company was also prosecuted but its charge was ordered to be left to lie on the court file.</p>	<p>S3(1) Health and Safety at Work etc. Act 1974</p>	<p>A young girl became trapped between a lift and the ground floor ceiling when she put her head through a broken vision panel in an internal lift in the property where she lived. The young girl died from the injuries she sustained. The HSE investigation into the incident found that the vision panel had been broken since 2013 and the failure to replace it was the responsibility of all three prosecuted companies.</p>	<p>Guilty plea</p>
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<p>13 March 2019</p>	<p>Transport company</p>	<p>£2.7 million for the s3(1) breach and £33,500 for the s20 breach.</p>	<p>S3(1) and s20 of the Health and Safety at Work etc. Act 1974</p>	<p>Two young boys were injured after receiving an electric shock from 25,000-volt overhead line equipment at a yard. The boys accessed a disused signal box and came in contact with the overhead line after climbing on top of a stationary wagon. One of the boy's injuries were life-changing and the others minor.</p> <p>The ORR investigation found that the company failed to ensure that non-employees were not exposed to risks through its activities.</p>	<p>Found guilty following trial to s3(1) breach. Guilty plea for s20 breach.</p>
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The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update

22 March 2019	Food manufacturing company	£1.866 million	S2(1) of the Health and Safety at Work etc. Act 1974	<p>Two employees suffered serious injuries when they fell through a rooflight when investigating a leaking roof.</p> <p>The HSE investigation found that the roof was made of asbestos cement and had a number of rooflights which were not visible due to a build-up of moss and dirt.</p>	Guilty plea
29 March 2019	Food manufacturing	£1.4 million	S2(1) and s3(1) of the Health and Safety at Work etc. Act 1974	<p>An employee was crushed while attempting to clear a blockage on a conveying system.</p> <p>The HSE investigation found that the company had failed to identify deficiencies in the guarding on the machine and that the clearing of blockages was usually carried out while the machine was still in operation.</p>	Guilty plea

20 May 2019	Energy company	£1.16 million	Reg4(1) of the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995	<p>A high pressure gas release occurred on an offshore platform releasing two tonnes of high pressure methane gas and causing significant damage to the platform. No injuries were sustained.</p> <p>The company was found to have failed to undertake suitable and sufficient inspection of the pipework. Such inspection would have enabled the company to identify the risk and prevent the gas release from occurring.</p>	Guilty plea
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The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update

17 July 2019	Rail company	£1 million	S3(1) of the Health and Safety at Work etc. Act 1974	<p>A passenger travelling on a train operated by the prosecuted company died when his head passed through a droplight window of the door on the train and struck a trackside gantry as the train passed by.</p> <p>The investigation by the Office of Rail and Road found that the company had failed to conduct a suitable and sufficient risk assessment to identify and appropriately control the risks associated with droplight windows on its trains.</p>	Guilty pleas
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The number of company directors and other senior personnel being sentenced for health and safety failings is on the rise. Recent HSE statistics have shown that 46 senior personnel were prosecuted under section 37 of the Act in 2015-2016. Of those, twelve directors were sentenced to immediate or suspended jail terms. The Guidelines provide judges with a starting point when sentencing companies and individuals for health and safety offences. Since coming into force, at least 23 individuals have received either an immediate or suspended custodial sentence. The Guidelines have lowered the threshold for custodial sentences, meaning that even “low culpability” offences can result in 26 weeks’ imprisonment.

Sentencing of individuals setting the tone since 1 January 2019:

Date of Conviction	Defendant	Sentence	Charges	Narrative	Trial/ Plea
January 2019	Director	10 months in prison	Reg9 and reg18 of the Plant Protection Products Regulations 2011 and reg11(2) of the REACH Enforcement Regulations 2008	<p>A company director has been sentenced to 10 months in prison for the online sale of products containing prohibited substances.</p> <p>The company was selling a plant protection product containing Sodium Chlorate, a prohibited substance.</p> <p>The HSE investigation found that the company was also selling paint stripper containing dichloromethane (DCM) which is restricted under REACH. The company also failed to check at the point of sale that the paint stripper containing DCM was either being sold for use in industrial installations or to appropriately certified professionals, which is a condition of sale. The HSE served enforcement notices on the company but these were ignored.</p>	Guilty plea

The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update

12 February 2019	Director	Six months in prison suspended for 18 months	S2(1) of the Health and Safety at Work etc. Act 1974	<p>A vehicle repair firm and its managing director have been sentenced following the death of an employee who was crushed by a bus. The employee was working in a vehicle inspection pit beneath a single decker bus when the bus fell onto the employee, killing him instantly.</p> <p>An investigation by the HSE found that the company had failed to plan and organise the lifting of the bus in a manner that ensured the safety of their workers. The bus was inadequately supported. It should have been supported using appropriate equipment so that it could not have fallen.</p>	Guilty plea
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2 April 2019	Director	Four 18-month sentences all suspended for two years, 300 hours of community service and costs of £15,000.	Four offences under the Gas Safety (Installations and Use) Regulations 1998	<p>An unregistered gas fitter has been sentenced for carrying out gas work without being registered with Gas Safe. The gas fitter purported to be Gas Safe registered when he undertook gas work at two properties between 2015 and 2016 by brandishing a t-shirt with the Gas Safe logo, which was also on his company van. The gas fitter was reported to Gas Safe Register after defects were found in the installation of a gas boiler.</p> <p>The HSE investigation found that the gas fitter was not Gas Safe registered at the time he conducted the work.</p>	Unknown
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The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update

May 2019	Director	Fined £6,500 and ordered to pay costs of £7,000	Reg4(1) of the Construction (Design and Management) Regulations 2015 and s37 of the Health and Safety at Work etc. Act 1974	<p>A construction company and its director have been fined for failing to ensure the safe removal of asbestos during demolition work.</p> <p>The results of an asbestos survey identified the presence of asbestos containing materials at the site. The extra work required to remove the asbestos increased the estimated costs and timescale for the completion of the demolition.</p> <p>The HSE investigation found that the company had failed to ensure suitable contractors were used to carry out the asbestos removal work and demolition. No record of a notification to the HSE to remove asbestos had been received for the site. No details of how the asbestos containing materials were removed or how they were disposed of were provided to the HSE.</p> <p>The company had had a previous enforcement by the HSE including a prosecution in relation to their role as a construction client.</p> <p>The company was also charged in relation to the incident.</p>	Guilty plea
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June 2019	Director	Community Service Order for 100 hours	S3(1) of the Health and Safety at Work etc. Act 1974	<p>A worker suffered a serious head injury after falling from a tower scaffold onto the street below. The injury has caused long term brain and memory problems resulting in the man being unable to care for himself and suffering seizures.</p> <p>The HSE investigation found that the principal contractor failed to control the safety and planning on site and the sub-contractor carried out unsafe working practices.</p> <p>The principal contractor and sub-contractor were also charged in connection with the incident.</p>	Guilty plea
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The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update

July 2019	Ex-Director	Six month jail sentence suspended for 12 months and disqualified from being a company director for five years	Reg4(1) of the Work at Height Regulations 2005	<p>A worker fell from height suffering life changing injuries when undertaking window cleaning. The worker was using suspended access equipment when he fell from the end of the beam supporting him suffering significant and life-changing injuries, including a broken back.</p> <p>The HSE investigation found that the director of the company had failed to effectively plan the work at height task by failing to undertake a suitable and sufficient risk assessment or to ensure that a safe system of work was in place for cleaning the windows. The director also failed to ensure that arrangements were in place to ensure the task was effectively supervised and to ensure that there were suitable trained staff, safe equipment and a suitable rescue plan in place.</p> <p>A company was also charged in connection with the incident.</p>	Guilty plea
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The Definitive Guideline on Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Update

July 2019	Director	Fined £40,000 and ordered to pay costs of £6,350	Reg4(1)(c) of the Work at Height Regulations 2005	<p>A company and its director have been fined after a worker died following a fall from a tree.</p> <p>Untrained workers were tasked with taking down a large, dead tree using a chain saw. One worker went up a ladder and used the saw to cut a branch, which when released swung back at the worker and knocked him out of the tree. The worker fell to the ground and was taken to hospital where he died from his injuries.</p> <p>The HSE investigation found that the workers should have been trained in chainsaw use and in working with saws in trees. The work should also have been properly planned with competent workers using the correct PPE.</p>	Guilty plea
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4. REACH

The UK chemicals industry is currently regulated through a framework which is largely based on EU legislation and implemented by the European Chemicals Agency ('ECHA'). The primary piece of legislation is REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) Regulation. In the event of a no deal Brexit, REACH will be brought into UK law by the European Union (Withdrawal) Act 2018 and the HSE will be the regulatory authority from exit day. While the aim of bringing REACH into UK law will be to maximise continuity, Brexit will still mean significant change to the status quo and potential implications for the industry as well as throughout the supply chain. In particular, companies registered with REACH may no longer be able to sell into the EEA market without transferring their registrations to an EEA-based organisation and users currently importing chemicals from an EEA country may face new registration requirements.

REACH etc (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/758)

These Regulations were laid in exercise of legislative powers under the European Union (Withdrawal) Act 2018 in preparation for Brexit. The Regulations amend and revoke subordinate legislation and retained direct EU legislation relating to REACH in order to correct deficiencies in retained EU law to ensure that the EU legislation will operate effectively in the domestic context after the UK leaves the EU. The Regulations were signed on 29 March 2019 and will come into force on exit day.

The regulations were amended on 11 April 2019 by the REACH etc. (Amendment etc.) (EU Exit) (No.2) Regulations 2019 and on 18 July 2019 by the REACH etc. (Amendment etc.) (EU Exit) (No.3) Regulations 2019.

Guidance for businesses in a no-deal Brexit

The HSE has issued guidance on preparations for a no deal Brexit.

The guidance includes REACH guidance for businesses in the event of a no-deal Brexit and the EU REACH Regulation being brought into the UK.

Due to the possibility that the role businesses undertake within EU REACH may change, the guidance urges businesses to review their roles within the EU and UK REACH regimes. The guidance provides actions that businesses should take in order for them to maintain or gain access to the EU/European Economic Area (EEA) and UK market if there is a no-deal Brexit.

HSE outlines potential scenarios and offers guidance.

HSE also provides information on UK REACH after the UK leaves the EU in a no-deal scenario, the guidance was last updated on 14 March 2019 and includes guidance on:

- New registrations;
- Authorisations;
- Safety data sheets;
- Restrictions;
- PPORD exemptions;
- Only representative provision; and
- UK REACH-IT

Post-Brexit UK equivalent for CE mark

The Government has announced a post-Brexit UK-specific equivalent to the CE mark, to be known as the UKCA mark (UK Conformity Assessed) to be used for certain goods being placed on the UK market if we leave the EU without a deal.

The CE mark is applied to goods as a declaration that they meet the essential safety, health and environmental requirements of all relevant EU Directives. It must be applied before goods are placed on the market or put into service within the EU single market.

All of the EU Directives which require CE marking have already been implemented in UK law. These UK laws will continue to apply, and until they are amended, the relevant products will continue to require CE marking. However, a post-Brexit UK Government may amend the various product safety legislation and require UKCA marking instead for goods in the UK market. To check whether you will need to use the new UKCA marking, the Government issued guidance on “trading goods regulated under the ‘New Approach’ if there is a no deal Brexit deal.” The Government subsequently withdrew this guidance on 19 March 2019 and replaced it with guidance on “Placing manufactured goods on the UK market if there’s no Brexit deal” and “Placing manufactured goods on the EU internal market if there’s no deal”. The Government also published guidance on 2 February 2019 on “using the UKCA marking if the UK leaves the EU without a deal”. The rules around the new UKCA marking will mirror those which currently apply for the application of CE marking.

REACH

REACH (Registration, Evaluation, Authorisation and restriction of Chemicals) is the regime for the control and regulation of chemicals in the EU. It is co-ordinated by the European Chemicals Agency (‘ECHA’) but largely enforced in the UK by the HSE, in conjunction with other government agencies.

REACH is designed to provide more information on the risks of chemicals and increase confidence in their safe use. Information about hazards and safe use will have to be passed down the supply chain using improved Safety Data Sheets.

While the Regulations came into force on 1 June 2007, many of its provisions are being ‘phased-in’ over eleven years. Businesses in a wide range of sectors are affected; it is estimated that there are approximately 30,000 controlled substances being used in the EU. The Regulations require that companies register substances where

they are being manufactured or imported (from outside the EU) in quantities exceeding one tonne per year.

Registration can be completed electronically using the REACH-IT tool. It involves submitting a 'dossier' containing information on the substance, its health and/or environmental risks and the precautions that have been taken to minimise those risks.

Besides Registration, REACH introduces requirements of evaluation, authorisation and information exchange. Evaluation allows authorities to require registrants or occasionally downstream users, to provide further information as regards their dossier to examine proposals for testing and check compliance with the registration requirements or conduct substance evaluations if there are suspicions that a substance may pose a risk to human health or the environment. Applications for authorisation are required where affected companies use and place in the market, substances with properties of very high concern. Sharing information about substances imported, manufactured, used in the EU and placed on the market is a fundamental aspect of REACH. The two mechanisms for data sharing are substance information exchange forums (SIEFs) for existing substances and injury for new substances. Risk reduction measures should be developed by manufacturers and/or importers for all known uses of chemicals, including downstream uses. Details of these should be provided to their suppliers encouraging information exchanges.

As of June 2018, the registration of phase-in substances is complete. Companies should continue to constantly monitor additions to the REACH scope via the ECHA's website, as the list of harmful substances is continuously growing. Failure to comply is an offence, which in the UK can be punishable by unlimited fines. Directors can also be held personally liable for breaches.

REACH – KEY DATES

1 June 2018

'Phase 3'

From 1 June 2018, the threshold for registration of substances decreased from 100 tonnes to 1 tonne per annum.

REACH has been subject to a 'REFIT' evaluation following the second review of the Regulation by the European Commission. Under REACH, the Commission is required to report on the achievement of the Regulation's objectives every five years.

Before the implementation of REACH, there were concerns that chemicals being used and marketed in the European Union were not being managed or investigated properly. The aim of REACH is to address these concerns by shifting the burden of the responsibility from the regulators to those manufacturing and/or importing goods containing chemicals. The World Summit for Sustainable Development is due to take place in 2020 and REACH needs to achieve its objectives to ensure it promotes the EU as a frontrunner in improving the protection of human health and the environment and promoting alternatives to animal testing.

The REFIT evaluation has allowed the Commission to present an action plan for a potential overhaul of the Regulation, including simplifying authorisation procedures, assisting SMEs with compliance and strengthening enforcement. The review has taken place in parallel with the fitness check on the most relevant chemicals legislation, excluding REACH.

The latest REFIT results were published on 5 March 2018 in a Commission

REACH

report, alongside a comprehensive evaluation report. The Commission report acknowledges that achievement of REACH objectives has been lagging behind initial expectations, although it notes that a steady improvement has been made. Supply chain costs in relation to registration and communication of information have been higher, up approximately EURO.9 billion more than the originally anticipated EUR1.7 billion. The findings state these higher costs are justified by the results observed and benefits that are beginning to materialise, but more efficiency is required in dealing with the information passing through the supply chain, particularly for SMEs. The EU executive has said that *“the estimated scale of potential benefits for human health and the environment remains in the order of EUR200 billion over 25-30 years”*.

The report notes the key issues that have impeded the progress of REACH objectives and improvements have been identified. These improvements include extended Safety Data Sheets, evaluation, authorisation and restriction. Issues requiring the most urgent action have been recognised as:

1. non-compliance of registration dossiers;
2. simplification of the authorisation process;
3. ensuring a level playing field with non-EU companies through effective restrictions and enforcement; and
4. clarifying the interface between REACH and other EU legislation, in particular on occupational safety and health (OSH) and waste.

Further measures such as training, guidance documents and pilot projects may be proposed by the EU executive during 2019.

5. Current and Completed Consultations

The following is a selection of recent and ongoing consultations and the expected timetable for implementation of proposals, where applicable.

Completed

CD287 – Carcinogens and Mutagens – Revision of limit values in EH40/2005 “Workplace Exposure Limits”

The Health and Safety Executive (HSE) consulted on the implementation of Directive 2017/2398 which amends Directive 2004/37/EC and introduces 11 new occupational exposure limits values (OELVS) and amends 2 existing OELVs for substances to help protect workers from the ill-health effects of exposure to carcinogens and mutagens in the workplace.

The consultation focused on the initial limits which come into effect in January 2020 and set out the HSE’s proposals for establishing Workplace Exposure Limits for substances listed in the Directive and sought views on them from stakeholders, subject to the ongoing negotiations on the UK’s relationship with the EU.

Following consultation, the HSE will make a recommendation to the Secretary of State on the best way forward.

The consultation began on 15 April 2019 and ended on 7 June 2019.

Completed

Radiation (Emergency Preparedness and Public Information) Regulations 2019 – Consultation on proposed Approved Code of Practice

The Office for Nuclear Radiation (ONR), on behalf of the HSE, consulted on the proposed Approved Code of

Practice that will support duty holder compliance with the new Radiation (Emergency Preparedness and Public Information) Regulations 2019 (REPPiR). The Approved Code of Practice will be approved by the Board of the HSE and issued as part of a supporting publication that includes good practice guidance.

REPPiR 2001 has been repealed and replaced as part of transposing the emergency preparedness and response requirements of the Basic Safety Standards Directive 2013 made under the Euratom Treaty. REPPiR 2019 is made under the Health and Safety at Work etc. Act 1974. REPPiR 2001 was supported by Guidance on Regulations but there was no Approved Code of Practice. The decision to introduce an Approved Code of Practice to support REPPiR 2019 reflects changes to the policy intent for nuclear and radiological emergency planning in Great Britain and associated changes in the Regulations.

The Approved Code of Practice is statutory guidance and if a duty holder follows the code, they will be meeting their statutory duties. A duty holder can still meet their statutory duties without following the code but will be required to demonstrate the approach they have taken is in line with the standards required by the code. The Approved Code of Practice is designed to provide users with confidence in how to comply with REPPiR 2019.

The consultation began on 10 April 2019 and ended on 27 June 2019.

Completed

CD286 – Review of the Adventure Activities Licencing Authority (AALA)

The Health and Safety Executive (HSE) reviewed the delivery and scope of the AALA on behalf of the Department for Work and Pensions. The review aimed to ensure the provision of licencing adventure activities is delivered in a sensible, proportionate and cost effective manner.

Adventure Activities Licencing legislation is separate from and additional to the Health and Safety at Work, etc. Act 1974. However, the criteria in which adventure activity providers are assessed are the same as that required under health and safety at work law.

The aim of adventure activities licencing was to provide assurance to the public. It was also expected that young people would also enjoy outdoor activities without being exposed to the risks of death or disabling injury.

The licence scheme was reviewed under the consultation as it was found to be a cost and burden to businesses and added little to the health and safety of young people undertaking adventure activities.

The consultation began on 12 January 2018 and ended on 9 March 2018.

Completed

CD283 - Consultation on implementing new and revised Workplace Exposure Limited

The Health and Safety Executive (HSE) consulted on the implementation of new and revised Indicative Occupational Exposure Limit Values (IOELVs) for thirty-one chemical substances to help protect workers from the ill-health effects of exposure to hazardous substances in the workplace.

The consultative document sets out HSE’s proposals for establishing workplace exposure limits for the substances listed in the 4th Indicative Occupational Exposure Limit Values (IOELVs) Directive 2017/164/EU, in order to implement it in Great Britain.

The consultation began on 10 November 2017 and ended on 2 February 2018.

Completed

Revised Requirements for Radiological Protection: Emergency Preparedness and Response

The Euratom/European Union Basic Safety Standards Directive 2013 (BSSD 2013) establishes updated safety requirements for the radiological and nuclear sector. It sets out five work streams namely: emergency preparedness and response, medical exposure, public exposures, occupational exposures, and air and space crew.

The consultation related to implementing the emergency preparedness elements of the BSSD 2013. It aimed to inform and seek the views of the public on the government’s proposals regarding:

- Outcome-focused planning whereby planning efforts are to focus on places where impacts of an emergency

are most likely to be felt, most severe or where the potential benefit is greatest;

- Commensurate planning that will aid the civil and defence nuclear and radiological sectors to prepare for the full range of emergencies through proportionate and flexible planning. Where emergencies are more severe or likely, more detailed plans should be created;
- A graded approach to be implemented ensuring that the most comprehensive emergency response and preparedness requirements are focused on the most hazardous activities;
- Transparency and Consistency in threshold calculations to ensure that all planning decisions can be justified due to proportionate planning as well as standardising key elements of the methodology regarding planning countermeasures and distances;
- Flexibility in planning and responding to radiological and nuclear emergencies to facilitate pragmatic and effective decisions; and
- Continuous Improvement by updating the supporting Code of Practice that aims to guide duty holders in fulfilling the requirements of the regulations, to account for changing good practice without amending the underlying regulatory regime.

The Consultation closed on 15 November 2017. The deadline for the Directive to be implemented into UK law was 6 February 2018.

6. Current and Completed Campaigns and Initiatives

Current

Go Home Healthy campaign

The HSE continues its 'Go Home Healthy' campaign, providing guidance and information on the HSE's three areas of priority: occupational lung disease, musculoskeletal disorders and work-related stress.

The campaign aims to reduce cases of work-related ill-health. Employers have been urged to "shine a light" on hazards in their workplaces, and to do the right thing, expressed by the hashtag #workright.

The HSE's microsite, provides further information for both employees and employers. It includes links to guidance, case studies, videos and thought leadership.

More information can be found on the HSE's Go Home Healthy microsite: www.hse.gov.uk/gohomehealthy/

Current

Healthy Workplaces Manage Dangerous Substances

The European Agency for Safety and Health at Work ('EU-OSHA') has launched a campaign to highlight the risks that workers face from dangerous substances. The two-year campaign, called '*Healthy Workplaces Manage Dangerous Substances*' will promote the best ways to deal with the risks posed by dangerous substances, from those found in bakeries, to those substances found on building sites.

The campaign hopes to dispel the common misunderstandings around dangerous substances and

Completed

raise awareness of the importance of preventing risks from those substances. It also aims to promote risk assessment practices by providing information on practical tools and encouraging good practice. The risk assessment focus would be on eliminating or substituting dangerous substances and the hierarchy of prevention methods adhered to by following the correct legislative measures.

The campaign will also aim to heighten awareness of the risks linked to exposure to carcinogens, target workers who are at particular risk and increase knowledge of the legislative framework as well as highlighting policy developments.

More information can be accessed on the EU Healthy Workplaces microsite: healthy-workplaces.eu/en/what-issue

Healthy Work Places for All Ages

Stemming from the EU-OSHA's Healthy Workplaces Campaign 2016 - 2017, the healthy workplaces for all ages campaign encourages employers to account for diversity and ensure that elderly workers get the support they require in the context of an ageing workforce.

Estimates show that by 2030, 30% or more of the workforce in many European countries will be aged 55-64. As retirement age increases, efforts must be made to ensure healthy and safe conditions throughout working life.

The campaign promotes the following:

- Health in later life is affected by working conditions in earlier life;
- Holistic approach to occupational safety and health (OSH) management;

- Human resources (HR) policies; and
- Rehabilitation and policies on return to work.

The aim is to clarify the common misconceptions regarding the elderly working population. For instance, key cognitive elements required for work in the work place do not show any degradation until the age of 70. Further, the campaign aims to inform employers on the legislation regarding this issue.

More information can be accessed on the HSE microsite: [healthy-workplaces.eu/](https://www.hse.gov.uk/healthy-workplaces.eu/)

Current

Vehicle Load Safety campaign

According to HSE, unsafe loads injure more than 1,200 people a year in the UK and cost businesses millions in damaged goods.

This campaign focuses on the securing of loads. It highlights the risks of shifting loads on transport vehicles, damaged lashings and mistaken reliance of curtains, which are merely for weather protection.

The HSE micro-site (www.hse.gov.uk/workplacetransport/loadsafty/index.htm) provides detailed guidance and links to Department of Transport guidance on specific load types and vehicles.

Current

'Make the Promise. Come Home Safe' campaign

With 3 deaths per month, the farming industry has one of the highest rates of death and serious injury in the UK. The HSE reports that a farmer is two and a half times more likely to die in the workplace than in a car accident. The HSE notes

Current

that the following factors are responsible for this increased risk: farmers are an ageing workforce; many farmers work alone; and the machinery used is very powerful.

Seeking to mitigate this risk, this initiative produces health and safety guidance for farmers, organises free health and safety awareness days and provides advice through telephone or farm visits. In addition, it encourages farmers to make the pledge to return safely for themselves and their families.

The campaign focuses on encouraging farmers to share their promise by working with stakeholders to reach new farmers and act as ambassadors. Farmers are encouraged to host events such as get-togethers and question answer sessions.

The initiative has received high profile support from the National Federation of Young Farmers' Clubs and Co-operative Farms. More information can be accessed on the HSE microsite www.hse.gov.uk/agriculture/makethepromise/index.htm.

Hidden Killer/Beware Asbestos campaign

Asbestos is the single biggest cause of occupational-related deaths in the UK. Therefore, the HSE's Beware Asbestos campaign, launched in 2014, aims to encourage safe working practices among those workers most at risk, i.e. tradespeople working on small sites and projects in the construction and maintenance industries.

In order to raise awareness and encourage safer working practices, HSE teamed up with TradePoint (the trade-only outlet of B&Q) to distribute free asbestos safety kits directly to tradespeople in the UK, which included free Type 5 safety overalls.

Another key feature of the campaign was the introduction of a free Beware Asbestos web app designed to help tradespeople easily identify where they could come into contact with asbestos and give them tailored help on how to deal with the risks.

More information can be accessed on the HSE microsite: www.hse.gov.uk/asbestos/tradesperson.htm.

Safe & Sound at Work (do your bit)

The campaign aims to provide a new website and training for small to medium sized enterprises (SMEs) to help improve worker involvement through active engagement. The aim is to illicit essential input from staff through communication and consultation.

Employees often have the best understanding of risks in their workplace and thoroughly influence health and safety through their actions. Involving employees has shown to lower accident rates and increase productivity, efficiency and quality in many cases.

The Campaign is underpinned by:

- The Health and Safety (Consultation with Employees) Regulations 1996; and
- The Safety Representatives and Safety Committees Regulations 1977;

which both set out employer's duties to consult their workforce on health and safety issues.

The following HSE microsite provides more information: www.hse.gov.uk/involvement/doyourbit/index.htm.

Completed

Good Hygiene is Good for Business Campaign

This campaign was run by the Eastbourne Borough Council with the help of the Food Standards Agency (FSA). It aimed to ensure that food businesses maintain an adequate level of hygiene by keeping a written record of their own food safety management system.

The Food Hygiene Rating Scheme is run by local authorities in England, Wales and Northern Ireland in association with the FSA.

Businesses are given a food hygiene rating following a planned inspection by a food safety officer. Advertising the rating to costumers, rewards better performing businesses and incentivises businesses with poor food hygiene to improve. The food safety officers provide advice, promote tools to help better food hygiene and help businesses implement them.

EU Legislation in Brief

Various kinds of EU legislation exists and it may not always be clear to whom they apply and when. The main types are:

Directives do not automatically come into force in the UK; they must be implemented by legislation at a national level. Until they are so implemented, they are not directly effective against any individual or company. They may, however, be directly effective against a Government or Government body.

Regulations come into force in all EU Member States upon publication. That means that they apply to individuals and companies without legislation on a national level.

Decisions are directed towards specific Member States, companies or individuals. They are binding on those to whom they are addressed.

Further Information

For further information on our health and safety services please contact Jan Burgess on +44 207 367 3000 or +44 7811 362201; or email jan.burgess@cms-cmno.com

If your company has a health and safety emergency, you can contact us on:

**0333 20 21 010 – Emergency Response Hotline
(available 24 hours a day, 7 days a week)**

Disclaimer – this calendar is provided by way of general guidance only and does not constitute legal or professional advice. While we aim for it to be as up-to-date as possible, some recent developments may miss our publication deadline and some dates may change at short notice. The calendar is not intended to cover every policy or legislative initiative, but only major health and safety issues.

Health and Safety – what we do

CMS is recognised as a leading firm in the area of Health and Safety. We provide specialist advice on regulatory compliance, prosecutions, investigations and corporate governance. We have specialised knowledge of the offshore and energy sector in particular, which faces greater challenges and regulation than most. However, our client base and expertise spans a broad range of sectors, including:

- Construction
- Communications
- Energy
- Global health and safety advice
- Leisure, hotels and sports
- Manufacturing
- Renewables
- Transport

Regrettably, accidents at work can be serious and sometimes result in fatalities. Our clients appreciate the high level of attention and support we are able to offer during what can be a difficult time for any organisation. We are able to provide assistance with every aspect of incident response, including incident investigations, dealing with witnesses, defending prosecutions and advising senior management on relations with the Health & Safety Executive.

Emergency Response Team

Our specialist team is on call to provide assistance and respond to incidents 24 hours a day. Our team is qualified to practice in England, Wales and Scotland but also regularly advises clients in relation to international working practices and health and safety matters in other jurisdictions. We are available for health and safety emergencies and advice; along with any other related urgent matters. In the event of an emergency the team will ensure a swift and efficient response to client queries, irrespective of the time of day or day of the week.

If your company has a health and safety emergency, you can contact us on:

**0333 20 21 010 – Emergency Response Hotline
(available 24 hours a day, 7 days a week)**

Kelvin TOP-SET Senior Investigators

We have specialised knowledge and training to investigate serious accidents or near-miss events under the Kelvin TOP-SET incident investigation system. This is a well-known investigation qualification, regularly used by many industries in the UK and abroad. The system is designed to ensure a bespoke but swift and systematic investigation of any incident incorporating root cause analysis and identification of remedial measures.

Our clients come to us for advice on:

- Emergency Response and Crisis Management
- Health and Safety prosecutions
- Accident Inquiries
- Formal interviews and investigations undertaken by inspectors
- Corporate Manslaughter investigations
- Inquests and Fatal Accident Inquiries
- Appeals against Improvement and Enforcement Notices
- Compliance with UK and European regulatory requirements
- Drafting corporate Health and Safety policies and contract documentation
- Safety aspects of projects and property management
- Due diligence in corporate acquisitions/disposals
- Directors' and officers' personal liabilities
- Management training Courses
- Personal injury defence
- Risk management and training

Recent Experience

- Defending Health and Safety prosecutions of client companies.
- Appealing other types of enforcement action against companies (e.g. Prohibition Notices).
- Conducting numerous Coroners' Inquests and Fatal Accident Inquiries - including some of the most high-profile and complex Inquiries to have taken place in relation to offshore incidents.
- Obtaining the first ever award of expenses against the Crown in favour of a client company following a Fatal Accident Inquiry.
- Taking Appeals to the High Court of Justiciary.
- Taking Appeals on human rights issues to the Privy Council.
- Defending Judicial Reviews.
- Advising on forthcoming Health & Safety legislation.
- Assisting clients in consultations with the HSE and other regulatory bodies, including the Department for Energy and Climate Change.
- Advising clients in relation to Safety Cases, Corporate Governance issues and Directors' duties and liabilities.
- Undertaking transactional due diligence in relation to Health and Safety matters.
- Carrying out Health and Safety audits.
- Advising clients on incident investigation, legal privilege and dealing with HSE inspectors.
- Preparing and drafting incident investigation reports.
- Advising clients on media, public relations and reputational issues following incidents.
- Advising clients in the immediate aftermath of an incident and providing emergency response services.
- Advising clients in relation to protestor action and possible responses thereto.
- Successfully defending environmental prosecution.

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