

# Compliance Monitoring in Council Buildings



**A FPS Report**

**Revised Dec 2014**

## Contents

This document was originally written in 2008. Sections of the document have been subsequently added/amended. A record of those additions/amendments is shown below.

Ref	Section	Page No.	Section Last Update
1	<a href="#">Background</a>	4	
2	<a href="#">Introduction</a>	6	2011 new content: <ul style="list-style-type: none"> <li>○ Contravention of ACOP</li> <li>○ Health &amp; Safety Offences Act 2008</li> </ul>
3	<a href="#">Duties on Managers and Directors</a>	8	
4	<a href="#">The Management of Health and Safety</a>	8	2011 new section
5	<a href="#">Risk Assessment</a>	9	2011 additional content added
6	<a href="#">Duty Holder</a>	10	2014 additional content added for vacant premises
7	<a href="#">Landlord Responsibilities on Termination of a Lease</a>		2014 new section
8	<a href="#">Fee for Intervention</a>	10	2014 new section
9	<a href="#">Schedule of Activities</a>	12	2011 updated to reflect textual changes
10	<a href="#">Air Conditioning Systems</a>	24	
11	<a href="#">Asbestos</a>	24	2011 additional content added : <ul style="list-style-type: none"> <li>○ Regulation 5,7 10 &amp; 11 of CAR</li> </ul> 2014 updated to reflect Control of Asbestos Regulations 2012
12	<a href="#">Car Parking and Pedestrian/Vehicle Segregation</a>	27	
13	<a href="#">Compulsory Display of Notices</a>	27	2011 new section
14	<a href="#">Construction (Design and Management) Regulations 2007</a>	28	2011 new section 2014 updated to refer to proposed new CDM Regulations 2015
15	<a href="#">Contractor Qualification Checks and Duty to Manage</a>	29	2014 Content added on Duty to Manage Contractors
16	<a href="#">Control of Substances Hazardous to Health</a>	29	
17	<a href="#">Equalities Act 2010</a>	30	2011 new section (replaces section on DDA) 2014 additional content added on 'reasonable adjustments'
18	Electrical Safety <ul style="list-style-type: none"> <li>○ <a href="#">Portable Appliance Testing</a></li> <li>○ <a href="#">Fixed Electrical testing</a></li> </ul>	33	
19	<a href="#">Emergency Lighting</a>	35	
20	<a href="#">Extraction Systems</a>	35	
21	<a href="#">Fire Safety</a> <ul style="list-style-type: none"> <li>○ Fire Risk Assessment and management Plan</li> <li>○ Fire Detection and Alarm Systems</li> <li>○ Fire Doors</li> </ul>	36	2011 additional content added Fire Safety (Employees' Capabilities) (England) Regulations 2010  2014 minor additional content added in Fire Detection and Alarm section

	<ul style="list-style-type: none"> <li>○ Fire Fighting Equipment</li> <li>○ Fire Service Facilities</li> </ul>		
22	<a href="#">First Aid Equipment</a>	38	2011 additional content added
23	<a href="#">Fuel Oil Storage</a>	39	
24	<a href="#">Gas Safety</a>	40	
25	<a href="#">Glazing</a>	40	
26	<a href="#">Hydrotherapy Pools and Swimming Pools</a>	41	
27	<a href="#">Lifts and Hoists</a>	41	
28	<a href="#">Mobile Buildings</a>	43	
29	<a href="#">Playground and Gymnasium Equipment</a>	43	
30	<a href="#">Radon</a>	43	
31	<a href="#">Shared Premises</a>	44	2011 new section
32	<a href="#">Slips and Trips</a>	44	2011 new section
33	<a href="#">Topple Test</a>	44	2014 new section
34	<a href="#">Trees</a>	45	
35	<a href="#">Vacant Buildings</a>	46	2014 new section
36	<a href="#">Water Hygiene and Safety</a> <ul style="list-style-type: none"> <li>○ Legionnella</li> <li>○ Water and Surface temperature Restrictions</li> </ul>	46	
37	<a href="#">Workstation Assessment</a>	49	
38	<a href="#">Working at Height</a>	493	2011 additional content added

## 1. Background

Councils have a duty to ensure that buildings under their control comply with appropriate statutory, regulatory and corporate standards. This task has become increasingly complex, onerous and difficult in the context of various potentially competing drivers including:-

- An increasing burden of legislative and regulatory duties falling on building occupiers.
- Delegation of relevant budgets and responsibilities to individual establishments, notably schools but with ultimate accountability still seen as resting with the corporate body of the Council.
- The consequences of increased delegation which has brought about a significant reduction in resources retained centrally to develop and monitor compliance with relevant standards.
- Loss of critical mass and control in delivery of property related services through outsourcing, budget reductions and fragmentation of resources.
- Governance arrangements in establishments are becoming increasingly more complex through the move to Shared Services and Partnering arrangements that do not fit easily with traditional landlord and tenant definitions.

Councils now regularly face challenges in terms of their ability to control and manage what goes on in buildings which they own and which are used by staff or clients for which they have legal responsibility. An example of this is individual schools where there is both the freedom and the financial resources to enable them to procure very significant building projects without calling on the assistance of the Local Education Authority.

In addition to this Councils are faced with a wide range of Health and Safety responsibilities that fall on building occupiers. Even where rigid policies and procedures are set out at corporate level, responsibilities for their implementation are frequently delegated to service managers in individual properties who do not always appreciate the importance of ensuring that regular checks and control measures are carried out and recorded.

We are faced with the situation where day to day responsibility and the majority of available resources are delegated to premises level but with the ultimate accountability remaining at corporate level within the Council. The corporate property officer can ensure that all relevant policies and procedures are in place but is faced with the situation of simply not knowing the level of compliance across the portfolio for which he/she has responsibility. The discovery of non-compliance is often only made as a result of an incident on a particular site, by which time it is too late to do anything about it. In addition to the direct consequences of any incident, the Council could be faced with damage to its reputation, financial loss, individual officers could be faced with legal proceedings and in the worst case, lives of building users could be lost.

This document highlights the key areas where some sort of compliance monitoring is required, along with some background information. It establishes the status of each area (e.g. statutory, recommended good practice), suggests good practice frequencies and provides links to further information.

This document is not a legal document and should be read as a guidance note for those responsible for the management of local authority buildings. The aim of the document is to provide a summary of relevant responsibilities and to assist premises managers to organise appropriate testing and inspection of systems and equipment within their premises.

A great deal of the content of this document can be related to all building types however, there may be specific items, that require monitoring in particular building types for example industrial units, depots, workshops and schools that are not covered in this guide.

This document cannot replace professional advice and premises managers are strongly advised to obtain such advice.

Please note that this document only covers English Law

## 2. Introduction

The basis of British health and safety law is the Health and Safety at Work etc Act 1974 (HSWA). This HSWA sets out the broad principles for managing health and safety legislation in most workplaces. The HSWA which came into force on 1<sup>st</sup> April 1975, still remains the main health and safety legislation in existence today.

The HSWA places a general duty on employers to "ensure so far as is reasonably practicable the health, safety and welfare at work of all their employees"<sup>1</sup>. Section 3 of the Act, **General Duty to Others** requires employers to conduct their undertaking in a way that does not pose risk to the health and safety of non-employees. This section is designed to give protection to the general public and other non-employees such as children at school and contractors. A Local Authority's activities are ones to which Section 3 of the HSWA is likely to be particularly relevant as the majority of premises occupied by local authorities are open to the general public. Section 3 of the HSWA imposes a clear duty on local authorities to conduct their undertakings in such a way as to ensure, so far as is reasonably practicable the safety of the public using the premises.

In addition to the Health and Safety at Work Act there are Approved Codes of Practice (ACOPs) and Health and Safety Executive (HSE) guidance documents and standards to be considered.

ACOPs are codes of practice which are approved by the Health and Safety Commission on consent of the Secretary of State. ACOPs give guidance with regard to the intentions of Acts and Regulations. Non compliance with an ACOP is not in itself an offence although failure to observe an ACOP can be used in evidence in criminal proceedings.

If a contravention of an ACOP relevant to an offence is proved, the court must regard the offence as proved unless the defendant can show that the law was complied with otherwise than by following the ACOP. ACOPs are often regarded as an extension of the law

HSE guidance documents contain advice on requirements to be followed and actions that an employer should take in order to comply with the law. HSE guidance itself does not have any legal status.

Although following HSE guidance does not in itself guarantee safety at work nor will it prevent prosecution under HSWA, it is regarded as reflecting best practice at the time of its publication. Care should be taken however to ensure that guidance documents referred to are not out of date or have been superseded by higher standards of practice.

The Health and Safety (Offences) Act 2008 came into force in January 2009 and amends section 33 of the Health and Safety at Work, etc Act 1974. The 2008 Act does not introduce any new legal duties or change any existing ones. It does however give the courts greater powers of sentencing including an increase in the level of penalties for those caught not complying with the existing duties.

The main implications of the 2008 Act are:

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<sup>1</sup> Source:<http://www.hse.gov.uk/legislation/hswa.htm>

- There is a widened range of offences for which an individual can be imprisoned
- Length of prison sentences from the magistrates' courts have increased from 6 months to 12 months
- Maximum penalties that can be imposed have increased from £5,000 to £20,000 for breaches in the lower courts
- Certain offences which could previously only go to trial in lower courts are now triable in either the lower or higher courts

The Corporate Manslaughter and Corporate Homicide Act 2007 introduced a new statutory offence of 'Corporate Manslaughter'. This new offence came into force on 6<sup>th</sup> April 2008. The Corporate Manslaughter and Corporate Homicide Act 2007 does not in itself impose any specific new health and safety duties.

The offence of 'Corporate Manslaughter' applies where an organisation owes a duty of care to the victim. For Local Authorities this 'duty of care' falls within the following broad categories:

1. to its employees or to others working for it e.g. contractors
2. as the occupier of premises
3. when constructing or maintaining buildings, infrastructure or vehicles or when using plant or vehicles
4. in connection with the supply of goods or services
5. when carrying out other activities on a commercial basis

Public policy decisions made by a Public Authority are excluded from being a relevant duty of care.

Section 1 (3) of the Corporate Manslaughter and Corporate Homicide Act 2007 states that:

"An organisation is guilty of an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1).

'Senior Management' is defined in Section 1 (4) (c) as the persons who play significant roles in:

- the making of decisions about how the whole or a substantial part of its activities are to be managed or organised; or
- the actual managing or organising of the whole or a substantial part of those activities.

A key factor in establishing an individual's responsibility will be what amounts to a 'substantial part' of an organisation's activities. Senior management could cover both those in direct operational management as well as those in strategic or regulatory compliance roles.

The Corporate Manslaughter and Corporate Homicide Act does not require any proof of an individual being guilty of an offence. Additionally under the Act failures of a number of senior managers can be aggregated rather than relying on the conduct of one single 'directing mind'.

### 3. Duties on Managers and Directors

Where an offence is committed under the HSWA by a body corporate with the “consent, connivance or neglect” of any director, manager, secretary or similar officer, that person may be prosecuted as well as the body corporate. This means that senior personnel such as managers, directors and indeed the corporate property officer within an authority have special responsibilities to ensure that health and safety is properly managed within their organisation and in areas under their remit. Enforcement inspectors tend to look closely at the role of directors and managers when carrying out inspections.

It is worth therefore, considering in a little more detail what is meant by the words “consent”, “connivance” and “neglect”<sup>1</sup>:

Consent – the director/manager is aware that an offence is being committed but agrees to it.

Connivance – the director/manager is equally aware of what is going on and, while not directly encouraging the offence allows it to carry on (effectively turns a blind eye)

Neglect – the director/manager is under a duty to do something but fails to do so.

In cases taken under the HSWA, the burden of proof is on the employer to prove that they have done everything ‘reasonably practicable’ or ‘everything practicable’ to safeguard the health and safety of employees, non-employees or members of the public.

This document provides a brief explanation of the **main** areas of compliance monitoring that a premises manager would be expected to be aware of and implement. However, Health and Safety Law is becoming less and less prescriptive and does not normally provide specific details with regard to inspection and testing frequencies and regimes. It now focuses more on risk based assessments which can be very much dependant upon individual circumstances such as; the use the building is put to, the users groups, the construction, age and condition of the building, previous maintenance regimes, and the building location. It is therefore often left to the responsible person to decide, once a risk assessment has been carried out what the control measures should be. Therefore this document merely provides an outline of the law covering this area and for further detail and specific information for individual circumstances it will be necessary to refer to the relevant legislation, approved Codes of Practice and/or British Standards.

### 4. The Management of Health and Safety

The general duties imposed by the HSWA are supported by more detailed provisions in the Managements of Health and Safety at Work Regulations 1999 (MHSWR). Under the MHSWR (regulation 7) employers need to appoint one or more competent persons to assist in undertaking the measures necessary for compliance with the requirements and prohibitions imposed by legislation.

Under the MHSWR a person is deemed to be competent if they have an adequate combination of training and experience or knowledge. Regulation 7 (8) requires employers to consider appointing a competent person who is in their employment, This is in preference to one who is not.

There are three main areas in terms of what constitutes a competent person:

1. Core knowledge of the subject
2. Experience to apply that knowledge correctly
3. Personal qualities needed to undertake functions effectively:

Once a person is deemed to be competent arrangements must be put in place to ensure that this level of competence is retained e.g. through regular training.

In order to ensure that the health and safety arrangements within an organisation are effective then there must be systems in place to ensure that the risks which arise from the organisation's activities are identified and controlled.

Management of Health and Safety at Work Regulations 1999 require employers to manage health and safety by assessing risk.

## **5. Risk Assessment**

Where a risk assessment is required it should be "a suitable and sufficient assessment of the risks". A suitable and sufficient assessment of risks would:

- correctly identify any significant risk that is reasonably foreseeable
- enables the assessor to decide what action needs to be taken and what the priorities should be
- is appropriate for the type of activity
- will remain valid for a reasonable time
- reflects what employers may reasonably practicably be expected to know about the risks associated with their undertaking.

Risk assessments can be time consuming however, the time and effort put into an assessment should be broadly proportional to the degree of risk. It is difficult however to provide precise guidelines as to what would be considered to be "a suitable and sufficient assessment of risks" as this has not yet been tested in a court of law and therefore the aforementioned suggested areas can merely be used as guidance.

A risk assessment must be reviewed and updated where necessary, for example if there are developments that could possibly suggest that the risk assessment is no longer valid, or where the original circumstances have changed to a significant extent, or a new or changed use of the premises is introduced, this need not necessarily be a changed use for the entire premises. An example where a part change of use of a premises may trigger the need for a risk assessment to be reviewed and updated could be where a school introduces a childcare facility or out of hours club. It is regarded as good practice to carry out a regular review of any risk assessment regardless of whether any changes have occurred. The Health and Safety Executive have produced a useful guide "[Five Steps to Risk Assessment](#)"<sup>2</sup>

As mentioned above in cases taken under the HSWA it is up to the defendant to prove that it was not reasonably practicable or practicable to do something. In practice this can be very difficult to satisfy as at the time of the prosecution there is the benefit of 'hindsight'. It is vital therefore that risk assessments and the decisions to implement or reject certain safety measures are correctly recorded and retained for future reference.

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<sup>2</sup> Source: <http://www.hse.gov.uk/pubns/indg163.pdf>

Under the Management of Health and Safety Regulations 1999 employers have a duty to ensure that the necessary arrangements are in place to monitor and review any preventative and protective measures that have been implemented. The Approved Code of Practice recommends that proactive measures are taken for periodically monitoring and reviewing the health and safety management system employed. This implies that there is a need for the organisation to carry out audits on the arrangements that it has put in place.

A safety audit will examine the organisation's systems and the implementation of these systems to determine if and where they are failing. An audit is not the appropriate tool to use if there is no safe system in place or if it already knows that there are weaknesses in the systems.

## **6. Duty Holder**

Throughout this document the term duty holder is used and it is worthwhile defining exactly what is meant by this term. Often the duty holder is the person or organisation that has clear responsibility for the maintenance or repair of the premises (non-domestic) through an explicit agreement such as a lease or contract.

The actual extent of the duty will depend on the specific details of the agreement. However where there is no agreement or contract or where one exists but it is silent on such matters, the duty is placed on whoever has control of the premises, or part of the premises. The duty to manage covers all non-domestic premises, including industrial, commercial, or public buildings such as offices, shops and schools.

In local authorities it can often be unclear as to who the 'duty holder' is and in order to avoid such confusion there should be a named 'duty holder post' at each establishment.

Where a building is vacant the duty is placed on whoever has control of them. Authorities should have clear procedures in place to ensure that there is a recognised duty holder. An appropriate risk assessment should be carried out and the building regularly inspected. The frequency of inspection of vacant buildings may not be the same for all vacant buildings and will need to take into consideration the findings from the risk assessment. See also section on vacant buildings

## **7. Landlord responsibilities on termination of a lease**

As mentioned in section 6 above the duty holder is the person or organisation that has clear responsibility for the maintenance or repair of premises through an explicit agreement such as a lease or contract. Where an agreement terminates the Landlord should have in place handover procedures to ensure that the outgoing tenant has complied with all relevant legislation.

## **8. Fees for intervention<sup>3</sup>**

In 2012 the HSE introduced 'Fees for Intervention' (FFI). this means that if you are found to have a material breach of the law the HSE may recover their costs from you by

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<sup>3</sup> Source: <http://www.hse.gov.uk/fee-for-intervention/index.htm>

charging a fee for the time and effort that is spent on assisting you to put the matter right, investigating and taking enforcement action.

FFI applies to all businesses and organisations inspected by HSE, except for:

- self-employed people who don't put people at risk by their work;
- those who are already paying fees to HSE for the work through other arrangements; and
- those who deliberately work with certain biological agents

FFI only applies to work carried out by HSE's inspectors and not for other regulators such as local authorities and environmental health officers.

What is a material breach?

A material breach is where a health and safety law has been broken and the inspector determines that it is serious enough for them to notify you in writing. This will either be a notification or contravention, an improvement or prohibition notice, or a prosecution.

Before notifying you in writing, the inspector must apply the principles of HSE's Enforcement Policy Statement ([www.hse.gov.uk/pubns/hse41.pdf](http://www.hse.gov.uk/pubns/hse41.pdf)) and Enforcement Management model (<http://www.hse.gov.uk/enforce/emm.pdf>).

Examples of material breaches include: materials containing asbestos in a poor or damaged condition resulting in the potential to release asbestos fibres; or not providing guards or effective safety devices to prevent access to dangerous parts of machinery; or things

How will the FFI be calculated?

The fee will be based on the time taken by HSE to identify the material breach, assisting your authority to put it right and investigating and taking enforcement action.

This will include time spent:

- carrying out visits (including all the time on site during which the material breach was identified;
- writing notifications of contraventions, improvement or prohibition notices, and reports;
- taking statements; and
- obtaining specialist support for complex issues.

The time taken for the above will be multiplied by the FFI hourly rate to provide the amount that must be paid by your authority. As at Dec 2014 the current hourly rate is £124, for the latest hourly rate see <http://www.hse.gov.uk/fee-for-intervention/index.htm>.

## 9. Schedule of Activities

Aspect	Service Requirement	Statutory/Recommended/Best Practice	Frequency/Regularity	Links to Other Information/Documents	Relevant Legislation/British Standard/Approved Code of Practice
<a href="#">Air Conditioning Systems</a>	Inspection	Best Practice Statutory	Annual or bi-annual  Not exceeding five years	<a href="#">The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 No. 991</a>	Under The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007
<a href="#">Asbestos register</a>		Statutory	When circumstances dictate e.g. if changes to the premises have been made	<a href="http://www.hse.gov.uk/asbestos/schools.pdf">http://www.hse.gov.uk/asbestos/schools.pdf</a>	Control of Asbestos Regulations 2012
<a href="#">Car Parking and Vehicle/Pedestrian Segregation</a>	Risk Assessment				The Workplace (Health, Safety and Welfare) Regulations 1992 (regulation 17)
<a href="#">Compulsory Display of Notices</a>	Checks made to ensure correct and up to date information is displayed	The display of most information Statutory	Regular checks to ensure information is still on display and is current		Various
<a href="#">Construction (Design and Management) Regulations 2007</a>	On letting of a construction project	Statutory	As required – on letting of a construction project	<a href="http://www.hse.gov.uk/construction/cdm.htm">http://www.hse.gov.uk/construction/cdm.htm</a>	Construction (Design and Management) Regulations 2007

Aspect	Service Requirement	Statutory/Recommended/Best Practice	Frequency/Regularity	Links to Other Documents	Relevant Legislation/British Standard/Approved Code of Practice
<a href="#">Contractor Qualification Check</a>	Checks made on contractors qualifications i.e. NICEIC, ECA	Statutory or Good Practice	On appointment of contractor	See also sections on Gas Safety Regulations and Electricity at Work Regulations	Where contractors are appointed directly by the premises manager then checks should be made to ensure that they have the appropriate qualifications to carry out the specified work. This is covered by various pieces of legislation, such as Electricity at Work Regulations 1989, Gas Safety Regulations 1998 etc
<a href="#">Control of Substances Hazardous to Health (COSHH) Risk Assessment</a>	Check on storage and use of hazardous materials	Statutory	Annual (Best Practice)	<a href="#">COSHH A Brief Guide to the Regulations</a> <a href="#">COSHH Approved Code of Practice</a> (NB this is a priced publication)	The Control of Substance Hazardous to Health Regulations 2002 (as amended)
<a href="#">Equality Act 2010</a>	Inspection	Statutory	Checks to be made whenever alteration/changes are made to the building or the external environment	<a href="#">Disability Discrimination Act 1995</a> <a href="#">Disability Discrimination Act 2005</a> <a href="#">BS8300</a>	Equality Act 2010 see also Disability Discrimination Act 1995 and 2005 and BS8300 for background Building Regulations 2010

Aspect	Service Requirement	Statutory/Recommended/Best Practice	Frequency/Regularity	Links to Other Documents	Relevant Legislation/British Standard/Approved Code of Practice
<a href="#">Duct Hygiene (Air Conditioning, Plenum Heating)</a>	Inspection and testing		Annual inspection and testing – thorough cleaning routine determined from testing/inspection results		Workplace (Health, Safety and Welfare Regulations) 1992 and COSHH LEV Testing
<a href="#">Electrical - PAT</a>	Portable appliance testing	Statutory	Variable but can be up to annual	<a href="#">The Provision and Use of Work Equipment Regulations 1998</a>	The Provision and Use of Work Equipment Regulations 1998 (PUWER)

Aspect	Service Requirement	Statutory/Recommended/Best Practice	Frequency/Regularity	Links to Other Documents	Relevant Legislation/British Standard/Approved Code of Practice
<a href="#">Electrical - Fixed Electrical Installations</a>	Schematic of supply route and primary distribution	Best Practice	Annual Update	<a href="#">Simple precautions - Work on electrical equipment machinery or installations</a>	Electricity at Work Regulations 1989 and BS 7671 IEE Wiring Regulations
	Inspection of fixed wiring and all distribution boards and safety devices	Highly recommended	Annual	<a href="#">The Electricity at Work Regulations 1989</a> <a href="#">Electrical Safety Council's Best Practice Guide on Periodic Inspection Reporting</a>	Electricity at Work Regulations 1989 and BS 7671 IEE Wiring Regulations
	Testing of all fixed wiring and all distribution boards	Statutory	5 yearly (or more frequently as determined by competent person)		Electricity at Work Regulations 1989 and BS 7671 IEE Wiring Regulations
	Testing of all distribution boards in mobile accommodation	Statutory	Annual		Electricity at Work Regulations 1989 and BS 7671 IEE Wiring Regulations
Electrical Stage Lighting	Inspection and testing		Annually inspection and test by competent person		

Aspect	Service Requirement	Statutory/Recommended/Best Practice	Frequency/Regularity	Links to Other Documents	Relevant Legislation/British Standard/Approved Code of Practice
Electrical Stage Lighting	Inspection and testing of portable dimmer racks with no fixed cabling, plugs, sockets, flexible leads		Every 3 months and after every alteration		
<a href="#">Emergency Lighting</a>	Inspection and testing of system	Statutory	Variable but recommend monthly checks by premises manager to check functionality, RCD (Residual Current Device [Circuit Breaker]) test. To include stop button functional test. Every six months - 1 hour duration test Annual full duration test		Electricity at Work Regulations 1989 and Regulatory Reform (Fire Safety) Order 2005

Aspect	Service Requirement	Statutory/Recommended/Best Practice	Frequency/Regularity	Links to Other Documents	Relevant Legislation/British Standard/Approved Code of Practice
<a href="#">Extraction Systems</a> including Fume Cupboards	Inspection and Testing of Dust Extraction Equipment	Best Practice	Annual		Control of Substances Hazardous to Health 2002 (as amended)
	Local Exhaust Ventilation	Statutory	Every 14 months	<a href="#">Controlling Airborne Contaminants at Work: A Guide to Local Exhaust Ventilation</a> NB this is a priced publication	Control of Substance Hazardous to Health 2002 (as amended)  Building Bulletin 88 Fume Cupboards, DfES applies to installation and maintenance of school fume cupboards  There is a British Standard that applies to other fume cupboards
<a href="#">Fire Risk Assessment</a> and Management Plan	Fire Risk Assessment	Statutory	Whenever any changes are made that will impact on the original assessment	<a href="#">The Regulatory Reform (Fire Safety) Order 2005</a>	Regulatory Reform (Fire Safety) Order 2005
<a href="#">Fire Detection and Alarm Systems</a>	Inspection and testing of system	Best Practice	Weekly test with formal quarterly and annual inspections by competent person		Regulatory Reform (Fire Safety) Order 2005
<a href="#">Fire Doors</a>	Inspection		Weekly		Regulatory Reform (Fire Safety) Order 2005

Aspect	Service Requirement	Statutory/Recommended/Best Practice	Frequency/Regularity	Links to Other Documents	Relevant Legislation/British Standard/Approved Code of Practice
<a href="#">Fire Fighting Equipment</a>	Inspection and maintenance extinguishers	Best practice	Annual		Regulatory Reform (Fire Safety) Order 2005
	Inspection and testing of fire sprinkler system	Best practice	Annual, although further checks may be necessary for specific insurance requirements.		Regulatory Reform (Fire Safety) Order 2005
<a href="#">First Aid Equipment</a>	Inspection		Regular checks to ensure no equipment is outside of expiry date	<a href="#">HSE - First aid at work: Legislation</a>	Health and Safety (First Aid) Regulations 1981 as amended by the <a href="#">Health and Safety (Miscellaneous Amendment) Regulations 2002</a>
<a href="#">Fuel Oil Storage</a>	Plan of primary pipe work and main isolation points	Best Practice	Annual Update	<a href="#">The Control of Pollution (Oil Storage) (England) Regulations 2001</a>	The Control of Pollution (Oil Storage) (England) Regulations 2001
	Visual Condition Inspection	Recommended	Annual		The Control of Pollution (Oil Storage) (England) Regulations 2001
	Maintenance checks on all pipe work devices	Best Practice	Annual		The Control of Pollution (Oil Storage) (England) Regulations 2001

Aspect	Service Requirement	Statutory/Recommended/Best Practice	Frequency/Regularity	Links to Other Documents	Relevant Legislation/British Standard/Approved Code of Practice
<a href="#">Gas Safety</a>					The Gas Safety (Installations and Use) Regulations 1998
<a href="#">Gas Appliance</a>	Gas Safety Inspections and certificates	Statutory		<a href="#">THE GAS SAFETY (INSTALLATION AND USE) REGULATIONS 1998</a>	The Gas Safety (Installations and Use) Regulations 1998
	Identification and location	Statutory	Annual updating		The Gas Safety (Installations and Use) Regulations 1998
	Servicing for efficient operation, combustion	Recommended for all premises Statutory duty on Landlords	Annual Servicing to include check on ventilation, adequate flues, heat input combustion conformance, appliance is stable and safety devices working		The Gas Safety (Installations and Use) Regulations 1998
	Visual condition inspection and testing if required	Recommended	Annual		The Gas Safety (Installations and Use) Regulations 1998
<a href="#">Gas Pipe Work</a>					
<a href="#">Glazing</a>	Checks	Statutory	Initial survey of building to identify areas where safety glazing should be in place, ongoing checks that any glazing replacements are with safety glass as req'd.		Workplace (Health, Safety and Welfare Regulations 1992) and Building Regulation Part M

Aspect	Service Requirement	Statutory/Recommended/Best Practice	Frequency/Regularity	Links to Other Documents	Relevant Legislation/British Standard/Approved Code of Practice
<a href="#">Hydrotherapy Pools and Swimming Pools</a>	Risk Assessment			The Health and Safety Executive publication HSG179 <a href="#">Managing health and safety in swimming pools (HSG179)</a>	Health and Safety Act Work Act 1974
<a href="#">Lifts and Hoists</a>	Thorough examination, full maintenance and Inspection	Statutory	Every 6 months minimum for passenger lifts Every 12 months for goods lifts After substantial and significant changes have been made	<a href="#">The Lifting Operations and Lifting Equipment Regulations 1998</a>	Lift Operations and Lifting Equipment Regulations 1998 <a href="#">Thorough examination and testing of lifts</a>
Lighting Conductors	Inspection and testing	Best Practice	Every 11 months full test to assess adequacy of earthing, evidence of corrosion, alterations to structure (by competent persons to BS 7430)		BS 6551, 1992
<a href="#">Mobiles – Stability of</a>	Structural inspection of mobile accommodation	Best Practice	Annual (depending on age)		BRE Digest 374 1992

Aspect	Service Requirement	Statutory/Recommended/Best Practice	Frequency/Regularity	Links to Other Documents	Relevant Legislation/British Standard/Approved Code of Practice
<a href="#">Playground &amp; Gymnasium equipment - Fixed</a>	Inspection and testing	Best Practice	Annual		BS 5696, BS 7188, BS7044,BS 1892 Part 1 2003
<a href="#">Radon</a>	Risk Assessment			<a href="#">Statutory Instrument 1999 No. 3232</a>	Ionising Radiation Regulations 1999.
<a href="#">Shared Premises</a>	Risk Assessment		As required		Regulation 11 of the Management of Health and Safety at work Regulations 1999
<a href="#">Slips and Trips</a>	Risk Assessment		As required	<a href="http://www.hse.gov.uk/slips/index.htm">www.hse.gov.uk/slips/index.htm</a>	The Workplace (Health and Safety and Welfare) Regulations 1992
<a href="#">Topple Test</a>	Risk assessment		As required		<a href="#">Local Authorities' Cemeteries Order 1977 (LACO)</a>
<a href="#">Tree Safety</a>	Risk Assessment		Annual and following any works that could have caused damage and high winds		Health and Safety at Work etc Act 1974 Occupiers Liability Act 1957 and 1984
<a href="#">Vacant Buildings</a>	Risk Assessment		As required		Occupiers Liability Act 1984
Water Hygiene and Safety ( <a href="#">Legionnaires' Disease</a> etc)	Risk Assessment	Statutory	Risk assessments reviewed regularly or in any case if there is a reason to believe original assessment is no longer valid	<a href="#">HSE Legionnaires' Disease – further information</a>	Health and Safety Act Work Act 1974 Control of Substances Hazardous to Health Regulations 2002 (COSHH) The Notification of Cooling Towers and Evaporative Condensers Regulations Legionnaires' Disease – The Control of Legionella Bacteria in Water Systems Approved Code of Practice

Aspect	Service Requirement	Statutory/Recommended/Best Practice	Frequency/Regularity	Links to Other Documents	Relevant Legislation/British Standard/Approved Code of Practice
Water Hygiene and Safety <a href="#">Legionnaires' Disease Water Systems</a> <a href="#">Cold water Systems</a>	Plan of Primary pipe work and main isolation points	Best Practice	Annual Updating		Health and Safety Act Work Act 1974 Control of Substances Hazardous to Health Regulations 2002 (COSHH) The Notification of Cooling Towers and Evaporative Condensers Regulations Legionnaires' Disease – The Control of Legionella Bacteria in Water Systems Approved Code of Practice
	Visual Condition and Compliance inspection	Recommended	Annual		
	Tank condition and compliance inspection	Statutory	Annual		
	Water Quality Check	By exception from supply company	By exception		
Water Hygiene and Safety <a href="#">Legionnaires' Disease Water Systems – Low pressure hot water systems</a>	Visual condition inspection	Recommended	Annual		
	Maintenance checks on all pipe work devices (strainer, valves, blending valves, pumps etc	Best practice	Annual updating		

Aspect	Service Requirement	Statutory/Recommended/Best Practice	Frequency/Regularity	Links to Other Documents	Relevant Legislation/British Standard/Approved Code of Practice
Water Hygiene and Safety <a href="#">Legionnaires' Disease Water Systems</a> –	Water Systems Risk Assessment	Statutory	Bi-annual review, any change to the system to initiate a review or user can initiate		Health and Safety Act Work Act 1974 Control of Substances Hazardous to Health Regulations 2002 (COSHH) The Notification of Cooling Towers and Evaporative Condensers Regulations Legionnaires' Disease – The Control of Legionella Bacteria in Water Systems Approved Code of Practice
<a href="#">Water and Surface Temperature</a>	Water Quality checks	Statutory	Subject to risk assessment		
	Water and Surface Temperature	Statutory	Risk Assessment		Education (School Premises Regulations) 1999
<a href="#">Workstation Assessment</a>	Analysis of workstation to assess any health and safety risks		Change of employee or relocation of workstation	<a href="#">The Health and Safety (Display Screen Equipment) Regulations 1992</a>	Health and Safety (Display Screen Equipment) Regulations 1992
<a href="#">Working at Height</a>	Risk Assessment			<a href="#">The Work at Height Regulations 2005</a>  <a href="#">HSE Guide to Working at Height Regulations 2005</a>	Working at Height Regulations 2005
<a href="#">Working at Height – safety Eyes Bolts and Cradles</a>	Inspection and testing	Statutory	Annual		Lift Operations and Lifting Equipment Regulations 1998

## **10. Air-Conditioning Systems**

Prior to the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulation 2007 there was no legislative requirement for air conditioning units to be inspected, other than the cooling tower type (See section on water hygiene). However on installation of an air conditioning unit the installing company is likely to insist that the client sign up to a maintenance contract of 6 monthly checks which will also include an annual maintenance schedule.

Under The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 an air conditioning system should be inspected by an energy assessor at regular intervals not exceeding 5 years, although bi annual checks and an annual maintenance schedule as described above should continue as best practice .

It is the duty of the relevant person to ensure that this is carried out; under the Regulations the relevant person is classified as the person who has control of the system.

If the system was installed after 1<sup>st</sup> January 2008 then it must be inspected within 5 years from the date that it was first put into use. Where the system was installed prior to 1st January 2008 an inspection must have taken place by 4<sup>th</sup> January 2009 where the effective rated output of the system is more than 250kw or if the effective rated output is more that 12kW the inspection must take place by January 2011.

Once the inspection has taken place the relevant person should retain a copy of the report.

## **11. Asbestos**

The Control of Asbestos Regulations 2012 came into force on 6<sup>th</sup> April 2012. These regulations update previous asbestos regulations to take account of the European Commission's view that the UK had not fully implemented the EU Directive on exposure to asbestos (Directive 2009/148/EC).

In practice the changes are fairly limited. They mean that some types of non-licensed work with asbestos now have additional requirements. i.e. notification of work, medical surveillance and record keeping. All other requirements remain unchanged.

The duty to manage asbestos is contained in Regulation 4 of the Control of Asbestos Regulations 2012. It requires the person who has the duty (i.e. the duty holder') to:

- take reasonable steps to find out if there are materials containing asbestos in non-domestic premises, and if so, its amount, where it is and what condition it is in.
- presume materials contain asbestos unless there is strong evidence that they do not.
- make and keep up to date a record of the location and condition of the asbestos containing materials or materials which are presumes to contain asbestos.
- assess the risk of anyone being exposed to fibres from the materials identified
- prepare a plan that sets out in detail how the risks from these materials will be managed

- take necessary steps to put the plan into action
- periodically review and monitor the plan and the arrangements to act on it so that the plan remains relevant and up to date
- provide information on the location and condition of the materials to anyone who is liable to work on or disturb them

There is also a requirement on anyone to co-operate as far as necessary to allow the dutyholder to comply with the requirements.

Under Regulation 4 the “duty holder” (see earlier section), must ensure that a suitable and sufficient assessment is undertaken to determine whether asbestos is on the premises, the assessment should take into account the likely condition of any asbestos. Once the assessment has been completed then the conclusions from the assessment and any subsequent reviews must be recorded. In addition to this the duty holder must also consider building plans, other relevant information and the age of the premises, and inspect reasonably accessible parts of the premises.

Where asbestos is identified or suspected the duty holder must:

- determine the risk from asbestos
- prepare a written plan identifying the areas of the premises concerned and the measures necessary for managing the asbestos risk
- implement the measures in the plan
- record the measures taken to implement the plan

These measures should include means for:

- monitoring the condition of any asbestos or suspected asbestos
- maintaining the asbestos or safely removing it
- providing information which identifies the location and condition of identified asbestos to any person likely to disturb it. This would include caretakers and contractors working on the premises, the information must also be made available to the emergency services.

The assessment and written plan must both be reviewed if they become invalid or if there have been significant changes to the premises.

Under Regulation 5 employers must not undertake work in demolition, maintenance or any other work which exposes or is liable to expose employees to asbestos in respect of any premise unless either:

- a) that employer has carried out a suitable and sufficient assessment as to whether asbestos, what type of asbestos, contained in what material and in what condition is present or is liable to be present in those premises; or
- b) if there is doubt as to whether asbestos is present in those premises, that employer:
  - i. assumes that asbestos is present, and that it is not chrysotile alone, and
  - ii. observes the applicable provisions of these Regulations

Under Regulation 6 of the Act an employer must not carry out work which is liable to expose employees to asbestos unless the employer has:

- a) made a suitable and sufficient assessment of the risk created by that exposure to the health of those employees and of the steps that need to be taken to meet the requirements of these Regulations;
- b) recorded the significant findings of that risk assessment as soon as is practicable after the risk assessment is made; and
- c) implemented the steps referred to in a) above

The assessment described above should:

- identify the type of asbestos which the employee is liable to be exposed.
- assess the nature and degree of likely exposure
- consider the effectiveness of control measures
- take into account the results of air monitoring and medical surveillance
- identify the measure necessary to prevent or deduce asbestos exposure to the lowest level reasonably practicable.

Any significant findings from this assessment should be recorded and then reviewed regularly. In particular if there are any reasons to suspect that the situation has changed or to suggest that the original assessment was inaccurate then the assessment should be review as soon as possible.

Under Regulation 7 of the CAR 2012 employers must prepare a written plan of work prior to any work commencing that may expose their employees to asbestos. This plan must include details of how the asbestos work will be undertaken and a copy of the plan must be kept on the premises.

It should be noted that under Regulations 8 & 9 of the CAP 2012 work with asbestos cannot be carried out unless the employer holds a licence granted by the Health and Safety Executive. Further details can be obtained from the HSE website.

Under Regulation 10 of the CAR 2012 employees that are liable to be exposed to asbestos, who supervise asbestos work or who undertake work in connection with their employer's duties under the regulations must be given adequate and regular information, instruction and training. This is to ensure their own and other employees' safety.

Where reasonably practicable employers must prevent employee exposure to asbestos. However if this is not possible then under Regulation 11 exposure must be reduced to the lowest level reasonably practicable and the number of employees likely to be exposed reduced to the lowest number that is reasonably practicable.

As mentioned earlier the CAR 2012 introduced some changes in that some non-licensed work needs to be notified to the relevant enforcing authority. There is also a requirement from 6<sup>th</sup> April 2012 to keep brief written records of non-licensed work which has to be notified e. g copy of the notification with a list of workers on the job, plus the level of likely exposure of those workers to asbestos. This does not require air monitoring on every job, if an estimate of degree of exposure can be made based on experience of similar past tasks or published guidance.

Additionally under the CAR2012 by April 2015, all workers/self employed doing notifiable non-licensed work with asbestos must be under health surveillance by a Doctor.

Workers who are already under health surveillance for licensed work need not have another medical examination for non-licensed work. However medicals for notifiable non-licensed work are not acceptable for those doing licensed work.

The above is only meant to provide an outline of the requirements and does not cover the detailed requirements for employees and contractors working with asbestos.

Further information is available from the Health and Safety Executives website.

## **12. Car Parking and Pedestrian/Vehicle Segregation**

The Workplace (Health, Safety and Welfare) Regulations 1992 (regulation 17) covers the layout of traffic routes, traffic management systems and the provision of signage. The main areas of the regulation are:

- Every workplace shall be organised in such a way that pedestrians and vehicles can circulate in a safe manner.
- Traffic routes in a workplace shall be suitable for the persons or vehicles using them, sufficient in number, suitable positions and of sufficient size. It may sometimes be difficult to provide "sufficient separation" between pedestrians and vehicles where layouts and traffic routes have already been constructed, therefore the regulation is qualified by the statement "so far as is reasonably practicable"
- All traffic routes shall be suitably indicated, where necessary, for reasons of health and safety.

A risk assessment should therefore be carried out to include, traffic movement within the site, pedestrian/vehicle segregation, car parking and how the routes are signed. This risk assessment should consider these areas at different key times in the day e.g. if the property is a school at pupil arrival/departure times.

## **13. Compulsory Display of Notices**

There are a number of notices and documents that employers have to display on their notice board or anywhere where the information is easily accessible to employees. There are some very specific requirements depending on the type of property however in general terms employers are required to post the following:

- Details of the person in charge of the first aid box
- Any information necessary to comply with fire legislation
- A certificate of insurance as required by the Employers Liability (Compulsory Insurance) Act 1969
- A thermometer on each floor
- A copy or abstract of relevant regulations (where still relevant)

#### **14. Construction (Design and Management) Regulations 2007**

The Construction (Design and Management) Regulations 2007 (CDM 2007) came into force on 6 April 2007. They replace the previous Construction (Design and Management) Regulations 1994.

The CDM Regulations have far-reaching implications for duty holders in particular the client and cover all construction work (except domestic) to some extent.

Under the CDM 2007 Regulations a client is defined as any person for whom a project is carried out. This is irrespective of whether the project is carried out by another person or in-house.

For any project the client has an overriding duty to ensure that arrangement made for managing it would be carried out, as far as it reasonably practicable, without risk to the health and safety of any person.

The client must also ensure that there are suitable welfare arrangements for the workers and if the work involves the construction of a building that will be used as a workplace the client must ensure that once completed it will comply with the Workplace (Health, Safety and Welfare Regulation 1992.

It is important that those managing premises have an understanding of the requirements of CDM 2007 Regulations however this is a detailed area and requires specialist knowledge. Indeed under regulation 14 there is a requirement for the client to appoint a CDM co-coordinator and principle contractor where the construction project is deemed to be notifiable under the CDM Regulations.

This section refers to The Construction (Design and Management) Regulation 2007 (CDM) it should be noted that these regulations will be superseded once the CDM 2015 Regulations become effective. It is anticipated that the CDM 2015 Regulations will be implemented from April 2015. :

The main changes are summarised below:

- Structural simplification of the Regulations
- Existing ACOP to be replaced with a shorter signposting ACOP, complemented by the HSE and joint HSE-industry guidance
- Replacement of the CDM co-ordinator role with that of the Principal Designer
- Replacement of the detailed competence requirements with a more general framework based on information, instruction, training and supervision
- Changes to notification requirements
- Changes to client duties, with increased focus on commercial client responsibilities, particularly from contractors and principal contractors.

It should be stressed that until the Regulations are finalised it cannot be stated with any certainty that all the proposed changes will be adopted. Further details of the changes can be found at <http://www.hse.gov.uk/search/search-results.htm?q=changes%20to%20CDm%20regulations#gsc.tab=0&gsc.q=cdm%20regulations%202014>

## **15. Contractor Qualification Checks and Duty to Manage**

Where a person responsible for the management of a local authority property appoints a contractor, this should be carried out in accordance with the local authority's procurement procedures, or in consultation with the local authority, to ascertain whether call-off contracts are already in place to cover such areas of work. Where this is not possible, that person must ensure that the contractor that is proposed for carrying out the work has a current health and safety policy approved by the local authority, has current suitable insurances in place, and where necessary has the appropriate qualifications, for example Gas Safety Register or NICIEC registered for work in connection with gas and electrical installations respectively.

Although contractors have their own responsibilities under health and safety legislation, those who employ contractors also have a responsibility for their contractor's health and safety since in most cases it is the employer who controls the workplaces and in many cases dictate the working practices. It is the extent of this control that determines the extent of the responsibilities of the employer toward the contractor.

Contractors should have a thorough appreciation of the standards and performance that are expected. From the outset they should be familiar with the health and safety policy statement, and relevant procedures. This should include:

- any particular hazards of the workplace and work activities,
- how to report accidents/incidents
- emergency procedures including fire safety arrangements. .

Managers and supervisors of the authority with responsibility for managing contact work, will need to know all details of the project and its agreed safety measures.

## **16. Control of Substances Hazardous to Health (COSHH)**

The Control of Substances Hazardous to Health Regulations 2002 (COSHH) (as amended) place a duty on employers to control the risks to employees and others which arise from exposure to substances hazardous to their health that are associated with the employers' work activities. This can be done through identifying, assessing and where possible preventing or adequately controlling exposure to the hazardous substances. The purpose of the regulation is to prevent ill health.

The Control of Substances Hazardous to Health (Amendment) Regulation 2004 (COSHH 2004) introduced changes to the regulations; a simpler exposure limit was introduced so that workplace exposure limits now replace occupational exposure standards and maximum exposure limits.

In addition to this eight new principles of good practice were introduced by the amendment regulations<sup>4</sup> which apply regardless of whether a substance has an occupational exposure standard or maximum exposure limit.

From April 2005 employers are required to:

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<sup>4</sup> Source: The Control of Substances Hazardous to Health (Amendment) Regulations 2004

- Apply the eight principle of good practice to control substances hazardous to health;
- Ensure that the workplace exposure limit is not exceeded and
- Ensure that exposure to substances which can cause occupation asthma, cancer or damage to genes that can be passed on from one generation to another are reduced as low as is reasonable practicable

The eight principles of good practice are:

- 1 Design and operate processes and activities to minimise emission, release and spread of substances hazardous to health.
- 2 Take into account all relevant routes of exposure- inhalation, skin absorption and ingestion- when developing control measures.
- 3 Control exposure by measures that are proportionate to the health risk
- 4 Choose the most effective and reliable control options which minimise the escape and spread of substances hazardous to health.
- 5 Where adequate control of exposure cannot be achieved by other means, provide, in combination with other control measures, suitable personal protective equipment.
- 6 Check and review regularly all elements of control measures for their continuing effectiveness.
- 7 Inform and train all employees on the hazards and risks from the substances with which they work and the use of control measures developed to minimise the risks.
- 8 Ensure that the introduction of control measures does not increase the overall risk to health and safety."

Links to Other Information Sources:

[HSE Publication: COSHH A brief guide to the regulations](#)

## **17. Equalities Act 2010**

The Disability Discrimination Act 1995 (DDA)<sup>5</sup> was introduced to prevent discrimination in employment, provision of goods, services and facilities, the selling or letting of land and property, education and transport. Under Part 111 of the DDA service providers have to address any physical features which make it impossible or unreasonably difficult for disabled people to use their services'. This Act was significantly extended by the Disability Discrimination Act 2005, which gave disabled people rights in the areas of:

- employment
- education
- access to goods, facilities and services, including larger private clubs and transport services
- buying or renting land or property, including making it easier for disabled people to rent property and for tenants to make disability-related adaptations
- functions of public bodies, for example issuing of licenses

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Source: [http://www.opsi.gov.uk/acts/acts1995/ukpga\\_19950050\\_en\\_1](http://www.opsi.gov.uk/acts/acts1995/ukpga_19950050_en_1)

The DDA Act 2005 has now been superseded by the Equality Act 2010. The Equality Act 2010 was intended to simplify the numerous regulations, statutory orders and codes within the DDA in connection with the duty to make reasonable adjustments to physical features at premises, however in reality the Equality Act has not made any real changes to the requirements on 'service providers'..

It is therefore worth considering first the requirements under DDA before considering any 'changes' introduced through the Equality Act.

The DDA was aimed at protecting the rights of a wide range of disabled people besides wheelchair users, including:

- blind and partially sighted people
- deaf and hearing-impaired people
- facially disfigured people
- people with long-term illnesses or hidden impairments, for example, those with arthritis, asthma, diabetes, or Alzheimer's Disease
- people with learning disabilities, for example, those with dyslexia
- people with mental illness

Under DDA people who have had disabilities in the past are also protected from discrimination even if they no longer have the disability. Only a court can decide what constitutes disability under the terms of the DDA: if **in doubt** then it is best to assume that someone is protected by the Act.

Under the Act service providers had to make reasonable adjustments to their premises to overcome physical barriers to access. They had to ensure that as far as possible, disabled "customers" were treated in the same way as non-disabled customers.

Service providers and those responsible for managing buildings need to ensure that all customers can use their service effectively. An access audit should be carried out to identify those areas where there are physical features which make it impossible or unreasonably difficult for a disabled person, to use the service, whether or not this is related to the building from which the service is being provided.

The access audit forms the basis of an action plan to consider issues such as physical constraints, alternative ways of providing the service and the reasonableness of making the adjustments identified by the access audit.

This may include the provision of any necessary extra help or special equipment as well as for example, adjustments to stairways; building entrances and exits; internal and external doors; gates; toilet, washing, and public facilities etc.

The service provider can remove, alter, or bypass the physical feature causing difficulty to a disabled person. Alternatively the service could be provided in an alternative way, this may include management solutions.

Whichever course of action the service provider decides to take the action plan should contain clear details of what is being done and what is not in terms of adjustments and the reasoning behind such decisions. This will help in the event of a customer complaint

and assist in monitoring the premises should the facilities or services change in the future.

The access audit and action plan should be reviewed if there are alterations made to the premises or if the use of the premises is changed.

Under The Equality Act 2010 a single 'objective justification test' has been introduced although the requirement to make reasonable adjustments still remains. Through the single 'objective justification test' the organisation must show that its conduct was a '**proportionate means of achieving a legitimate aim**' (s15 and s19 of Equality Act. It is difficult to carry out a direct comparison with the requirements under the DDA.

The Equality Act (para 5.28-5.29 of Service Code) gives more information on what is a legitimate aim:

- should be legal
- should not be discriminatory in itself and
- must represent a real, objective consideration
- a service provider solely aiming to reduce costs cannot expect to satisfy the test.

The Equality Act does provide further information on what is 'proportionate', para 5.31 – 5.33 of the Service Code refers:

- a tribunal or court may wish to conduct a proper evaluation of the discriminatory effect of the action as against the employer's reasons for it, taking into account all the relevant facts.
- European law views treatment as proportionate if it is an 'appropriate and necessary' means of achieving a **legitimate aim**.
- 'necessary' does not mean that the action is the only possible way of achieving the legitimate aim, it is sufficient that the same aim could not be achieved by less discriminatory means

If there is a greater financial cost of providing a less discriminatory approach then this in itself cannot provide justification for the course of action taken. If the duty to make reasonable adjustments is not complied with then it will be difficult to show that the treatment was proportionate.

The Equality Act does provide some examples of what a '**legitimate aim**' might be:

- Ensuring that services and benefits are targeted at those who most need them
- The fair exercise of powers
- Ensuring the health and safety of those using the service or others, providing risks are clearly specified
- Preventing fraud or other forms of abuse of inappropriate use of services provided but by the service provider
- Ensuring the well being and dignity of those using the service

The Equality Act 2010 has made no real change to the requirements on the duty holders to make reasonable adjustments and the duty is set out in Part 2 of the Act which is summarised below:

- Where a provision, criterion or practice puts a disabled person at a substantial disadvantage compared with people who are not disabled, the duty holder should take reasonable steps to avoid the disadvantage
- Where a physical feature puts a disabled person at a substantial disadvantage compared with people who are not disabled, the duty holder should take reasonable steps to avoid the disadvantage
- Where a disabled person would be put at a substantial disadvantage, compared with people who are not disabled, without the provision of an auxiliary aid, the duty holder should take reasonable steps to provide the auxiliary aid.

When considering if an adjustment is reasonable, typical factors that should be considered include the:

- Type of business
- Size (and turnover) of the business
- Cost of the adjustment
- Level of disruption to the business while the work is being carried out
- Practicality of carrying out the adjustment
- Level of benefit to the disabled customers and employees

If a building is listed then the planning issues associated with this can override the requirement to make reasonable adjustments.

As under the DDA an Access Audit of premises will form the basis of an action plan to consider issues such as physical constraints, alternative ways of providing the service and the reasonableness of making the adjustments identified by the access audit (see earlier).

## **18. Electrical Safety**

Electrical safety in all work places and/or work activities is specifically legislated for over and above the general duty of care owed by employers to their employees and members of the public under ss2 and 3 of the Health and Safety at Work etc Act (1974). This expansion of responsibility for electrical safety was brought about by The Electricity at Work Regulations 1989 which came into effect on 1<sup>st</sup> April 1990

### **Portable Appliance Testing (PAT)**

A portable electrical appliance can be defined as an electrical appliance which is normally connected to a lead and a plug and which can usually be easily moved.

The Provision and Use of Work Equipment Regulations 1998 (PUWER) covers the safe provision and use of all work equipment including portable electrical appliances, the maintenance of such equipment falls under the Electricity at Work Regulations 1989 (EWR) (PAT testing) and is part of the duty holders responsibility under PUWER.

There are three main electrical equipment classifications:

1. Class 1 equipment has its live components protected by basic insulation and is surrounded by a metal enclosure. This metal enclosure could become live in the case of the basic insulation failure and is protected by being earthed. The supply cable will have an earth wire in addition to the normal live and neutral. Examples of this sort of equipment include electric cookers, free standing electric heaters and some kettles, toasters and IT equipment.
2. Class 11 equipment separates the user from live conductors by two sets of insulation.
3. Class 111 equipment is supplied from a safety isolation transformer and will not exceed 50V, typical uses include IT equipment such as answering machines and chargers for mobile phones.

As there is such a wide range of portable electric equipment available which can be used in very varied environments the risks that are present can be very different and therefore a range of control measures is required. It is necessary to carry out a risk assessment to determine the maintenance requirement for each piece of equipment and the following five steps should be followed:

1. Identify all portable appliances that need to be maintained and tested. An inventory of this equipment should be made.
2. Carry out an assessment of the risk posed by each type of equipment,
3. Categorise into high, medium or low risk for example a PC that is rarely , if ever moved would be a low risk
4. Determine if the appliance needs to be tested and examined or examined only, taking into account the tests that can be carried out on Class 11 and 111 appliances are very limited
5. Determine the frequency of examination/testing.

There are three types of maintenance activities that are usually carried out on portable electrical appliances

1. User checks should be carried out on hand held appliances, Class 1 (earthed) and frequently moved equipment and in particular, on cable leads and extension leads.
2. Formal visual examination – this is a more formal examination of the equipment than a user check. All electrical appliances should be subject to such an examination at pre determined intervals and only a competent person should carry them out.
3. Combined inspection and test; Class 1 apparatus and leads and extension leads should be subject to a routine test in conjunction with the formal examination. A purpose made portable appliance tester should be used. Any competent person can normally carry out testing using such devices but some formal training is recommended. A record should be made and kept of the tests.

Unfortunately there are no statutory frequencies for any of the above maintenance measures, however in order to satisfy the general legal requirement to prevent “danger” some, all or a combination of the maintenance activities as set out above should be carried out.

The risk assessment carried out on the equipment will determine any further measures that will be required to be implemented.

Links to other information sources: Maintaining portable electrical equipment in offices and other low-risk environments  
INDG236 HSE Books 1996 (single copies free or priced packs of 10  
ISBN 0 7176 1272 4)

### **Fixed Electrical Installation Tests**

The Electricity at Work Regulations 1989 state that all electrical systems and equipment used in the working environment should be in a safe condition. The installations should be maintained to prevent danger; the Health & Safety Executive recommend that to comply with the regulations, an appropriate system of periodic visual inspection and testing by a competent person should be implemented at all places of work. The frequency of inspection must be determined taking into account:

1. the type of installation
2. its use and operation
3. the frequency and quality of maintenance
4. the external influences to which it is subjected

Further guidance

[Electrical Safety Council at www.esc.org.uk](http://www.esc.org.uk)

### **19. Emergency Lighting**

Emergency Lighting is lighting that is installed in a building to provide a degree of illumination when the normal lighting fails. In terms of fire safety the most important component of an emergency lighting is the “escape lighting” which is provided to illuminate escape routes to an extent sufficient to enable occupants to evacuate the building in safety. Under BS 5266 Part 1, there are recommendations for routine inspection and testing of emergency lighting. This includes daily, monthly, six monthly and three yearly regimes of inspection and/or testing.

### **20. Extraction Systems**

The Health and Safety at Work etc Act 1974 requires employers to provide and maintain working conditions that are safe and without risk to the health of employees, so far as is reasonably practicable. COSHH (see earlier section) expands on this general duty and requires employers to prevent worker exposure to hazardous substances or, where this is not reasonably practicable, to ensure adequate control. Employees are required to make full and proper use of the control measures provided and to report any defects in them promptly to their employer.

Adequate control may mean the installation of suitable extraction systems. Where such systems are installed they must be adequately maintained to ensure that they are kept in an efficient and effective working order, and they must be examined and tested against their performance standard, records of these checks must be kept for at least five years. Local Exhaust Ventilation Systems (LEVs) must be examined and tested generally every fourteen months.

## **21. Fire Safety**

The Regulatory Reform (Fire Safety) Order 2005 places general fire safety duties on the “responsible person”. The responsible person is the employer where the premises are to any extent under his/her control. Where this does not occur then the responsible person is:

- the person who has control of the premises (as occupier or otherwise) in connection with the carrying on by that person of a trade, business or other undertaking
- the owner, where the person in control of the premises does not have control in connection with the carrying on by that person of a trade, business or other undertaking.
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The general fire safety duties placed upon the responsible person are:

- General fire precautions are to be taken that will ensure, as far as is reasonably practicable, the safety of any employees. In relation to relevant persons who are not employees, the responsible person must take general fire precautions “as may be required in the circumstances of the case” to ensure that the premises are safe.
- A suitable and sufficient assessment of the risks to which persons are exposed must be made, this is known as the “fire risk assessment”
- Appropriate arrangements for the effective planning, organisation, control, monitoring and review of the preventive and protective measures must be undertaken.
- Where a dangerous substance is present in or on the premises, risks from that dangerous substance must either be eliminated or reduced.
- Premises must be equipped with appropriate fire-fighting equipment and with fire detectors and alarms. Any non-automatic fire-fighting equipment provided must be easily accessible, simple to use and indicated by signs.
- Routes to emergency exits from premises and the exits themselves are to be kept clear at all times and emergency routes and exits must lead as directly as possible to a place of safety,
- Procedures for serious and imminent danger must be established.
- Any facilities, equipment and devices provided must be maintained in an efficient state, working order and good repair.
- The responsible person must appoint one or more competent persons to assist in undertaking the preventive and protective measures.
- Employees must be provided with comprehensible and relevant information.
- The employer of any employees from an outside undertaking who are working in or on the premises must be provided with comprehensible and relevant information on the risks.
- At the time when they are first employed employees must be provided with adequate safety training and if they become exposed to new or increased risks.
- Where two or more responsible persons share, or have duties in respect of the premises, each person must co-operate with the other responsible person concerned
- Every employee must, while at work take reasonable care for the safety of himself and of other relevant persons who may be affected by his acts or omissions at work.

The Fire Safety (Employees' Capabilities) (England) Regulations 2010 came into force on 6<sup>th</sup> April 2010 and place a duty on employers to consider the capabilities of their employees in relation to fire safety when entrusting any tasks to them.

### **Fire Risk Assessment and Management Plan**

As stated above "a suitable and sufficient assessment" of the risks to which persons are exposed must be undertaken, this is known as the fire risk assessment and it should be carried out to help determine the chances of a fire occurring and determine the control measures that will be required. The Home Office publication, Fire Safety: An Employers Guide, recommends, a five stage approach to carrying out a risk assessment:

1. Identify the fire hazards.
2. Identify people at risk
3. Evaluate and remove or reduce the risk where possible
4. Record the findings
5. Review and revise the assessment

Consideration needs to be given to those employees that have physical or sensory impairment and the risk to the disabled person should be assessed. Factors such as the inability of the person to recognise alarms/evacuate the building without assistance, length of time for them to evacuate the building must be taken into consideration. Any potential adjustments and/or systems required to ensure the safety of the individual need to be identified and implemented.

<http://www.communities.gov.uk/documents/fire/pdf/150949>

<http://www.communities.gov.uk/publications/fire/reviseddetermination36rro2005>

### **Fire Detection and Alarm Systems**

The scale and complexity of a fire detection and alarm system will depend upon the type of premises it is designed to protect and the type of fire risk present. In the UK, most fire-alarm installations are designed in accordance with BS 5839 Part1:2002 Fire Detection and Alarm Systems for Buildings: Code of Practice for Systems Design, Installation and Servicing. This specifies various levels of systems based upon life safety or property safety.

Fire detection and alarm systems should have a weekly alarm test with all call points being tested over a 13 week cycle. The system should also be subject to quarterly and annual inspections and tests by a competent person.

### **Fire Doors**

All fire doors and associated hardware must remain in efficient working order and should be regularly checked and maintained by a competent person in accordance with the relevant British Standard and the manufacturer's recommendations; it is advisable to keep a record of any maintenance. The inspection of fire doors should include some or all of the following:

- Self closing device operate properly
- Hold open device release when the fire alarm operates

- Glazed panels are intact and un damaged
- Warning signs are in place “Automatic Fire Door – Keep Clear
- Door open and close freely and there is no physical damage to the door
- There is no distortion or warping of the door or frame
- Seals and smoke strips are in place and not damaged
- Hinges and locks are properly lubricated

## **Fire Fighting Equipment**

### **Extinguishers**

These should be maintained and inspected by a competent person at least once a year. This involves a visual inspection of the extinguisher and a check of the contents and stored pressure. A written record should be kept of the date of the last maintenance examination and this should usually be attached to the body of the extinguisher.

### **Hose Reels**

Hose reels are for the use of the fire service and staff should not normally be trained in the use of this equipment. All hose reels should be inspected on a yearly basis by a competent person.

### **Fixed Systems**

Fixed systems are those which when activated by the warning/alarm system, release the extinguishing medium e.g. sprinkler systems. All fixed systems should be inspected on a yearly basis or to manufacturer’s guidelines. It is advisable to keep a record of any maintenance and testing.

### **Fire Service Facilities**

Facilities for the fire service may include dry riser, access for emergency vehicles, emergency switches for installations and information in respect of the premises and its contents. Where these facilities are provided they should be maintained and kept in good order.

### **Links**

Sector guides on the RRO e.g., Risk Assessment Guide for Educational Premises 2006  
[www.communities.gov.uk/publications/fire/firesafetyrisk6](http://www.communities.gov.uk/publications/fire/firesafetyrisk6)

## **22. First Aid Equipment**

The Health and Safety (First Aid) Regulation 1981 as amended by the [Health and Safety \(Miscellaneous Amendments\) Regulations 2002](#) require employers to provide adequate and appropriate equipment, facilities and personnel to enable first aid to be given to employees if they are injured or become ill at work. These regulations apply to all workplaces including those with five or fewer employees and to the self-employed.

Under these Regulations all establishments should provide at least one first-aid box. All first aid boxes, first aid kits and first aid rooms (where provided) should be checked regularly to ensure no contents are outside their expiry date.

First aid boxes should be made of suitable material, protect the contents and be clearly marked. It should be noted that first aid does not include the treatment of minor illnesses

e.g. headaches – therefore headache pills and/or other medications must not be kept in the first aid box.

An adequate and appropriate number of 'suitable persons' must be provided to render first-aid treatment at work. The decision on what is adequate and appropriate should be based on a risk assessment. There is no ratio for the number of first aider to employees although the Approved Code of Practice does offer some guidance:

- low risk workplaces such as office one trained first aider to every 50 employees with an additional first aider for every 100 employees.
- High risk workplaces one trained first aider for five or more employees, with an additional first aider for every 100 employees.

In terms of what constitutes a 'suitable person' this is defined as a person who holds a Health and Safety Executive approved first-aid course certificate. Consideration must also be given to any temporary or exceptional absence of trained first-aid personnel.

It is recommended that first aiders undertake refresher training (annually) to ensure that their skills are kept up to date.

In addition to trained first aiders the organisation may wish to nominate 'appointed persons'. These are not fully trained first aiders but people who will take charge in an emergency.

A record should be kept of all trained first aiders and appointed persons as well as a record of all first aid treatment provided. These records should include:

- Date, time and location of the incident
- Name and job title of casualty
- Treatment details
- Details of actions taken immediately after treatment
- Name and signature of the person administering the treatment.

Any signage used for first aid equipment or facilities must comply with the Health and Safety (Safety Signs and Signals) Regulations 1996 i.e. a white St George's cross on a green background.

Other Sources Information Sources:

<http://www.hse.gov.uk/firstaid/>

### **23. Fuel Oil Storage**

The Control of Pollution (Oil Storage) (England) Regulations 2001 cover the storage of oil at industrial, commercial and institutional premises where the amount stored is more than 200 litres and it is stored outside and above ground. This includes storage at schools, museums, offices, businesses and warehouses.

All tanks, bunds and pipework should be regularly checked for signs of damage and it is recommended that they are checked at least weekly with a more detailed annual inspection and service by qualified inspectors to ensure that any potential defects are found and rectified

There are security issues regarding oil storage areas and these areas should be as resistant as possible to unauthorised interference and vandalism. If there are any permanent taps or valves through which oil can be discharged from the tank to open areas then these should be fitted with a lock and should be locked shut when not in use. Where appropriate, notices should be displayed telling users to keep valves and trigger guns locked when they are not in use. Pumps should also be protected from unauthorised use, taps and valves should be marked to show whether they are open or closed. Where these are not in use then they should be fitted with a blanking cap or plug.

## **24. Gas Safety**

The Gas Safety (Installation and Use) Regulations 1998 place duties on gas consumers, installer, suppliers and landlords. It is the duty of the employer to ensure any gas appliance associated pipe work and flues in the work places are maintained in a safe condition. These regulations link with other safety controls on combustion equipment, such as the Building Regulations, which provide standards for ventilation and flues.

By law anyone carrying out work on gas appliance or fittings as part of their business must be registered and have a valid certificate of competence relevant to the particular type of gas work involved see section also on Contractor Qualification Checks. Gas Safety Register replaced CORGI as the register of approved gas engineers in the UK from 1<sup>st</sup> April 2009. . By law a gas appliance or fittings must not be used if it is known or suspected that they are unsafe.

In the HSE Approved Code of practice it is recommended that periodic routine maintenance is carried out gas appliances, pipe work and flues by a registered person. Routine maintenance would normally involve ongoing regular periodic examination of the installation/appliance and remedial action taken where necessary. Reference should be made to the manufactures installation instructions for servicing intervals, however where this is not available the physical condition of the flue, air vents and pipe work should be checked for deterioration and performance checks carried out, where necessary remedial should be taken.

Further detailed information is available from HSE publications; Safety in the Installation and Use of Gas Systems and Appliances. Gas safety (Installation and Use) Regulations 1998, Approved Code of Practice and Guidance L56 (Second Edition) HSE Books.

## **25. Glazing**

Glazing requirements are covered under Regulation 14 of the Workplace (Health, Safety and Welfare) Regulations 1992. The duty to comply with the regulations will normally fall to the employer or those in control of the premises. Under the Regulation every window or other transparent or translucent surface in a wall, partition, door or gate should, **where necessary for reasons of health or safety**, be of a safety material or be protected against breakage and be appropriately marked.

As the Regulation only requires action "**where necessary for reasons of health or safety**". It is necessary to assess every window, door etc to establish whether there is a risk of anyone being hurt if people or objects come into contact with it, or if it breaks.

This risk assessment needs to take into account all relevant factors such as the location of the glazing, the activities taking place, the volume of traffic and pedestrians, and any previous experience of incidents. Glazing in some locations may be a higher risk, for example doors and windows which are at or below waist level or in particular areas of a building where the activity taking place may increase the risk e.g. a school hall used for sport.

If it is assessed that there is no risk then it is not necessary to take any further action. Where there is a risk then further action is required in order to comply with the regulations to:

- prevent people or objects coming into contact with the glazing, or
- upgrade the glazing so that if it breaks, it breaks safely, and
- mark large expanses of glazing in some way so that people know it is there

Following the risk assessment it may be necessary to take further action however this will depend on the individual circumstances examples of further action that may be required could be to replace the glazing with a safety material, or apply a safety film which prevents the glass from shattering in a dangerous manner.

## **26. Hydrotherapy Pools and Swimming Pools**

Under the Health and Safety Act Work Act 1974 it is the responsibility of swimming pool operators “to carry out a suitable and sufficient risk assessment of their operations and to identify necessary control measures. A suitable and sufficient risk assessment for a swimming pool would have to take account of the whole user population of the swimming pool and the fact that a fatal incident i.e. drowning can occur very quickly.

The Health and Safety Executive publication HSG179 Managing health and safety in swimming pools (HSG179) is a comprehensive guidance document on managing health and safety in swimming pools to assist pool operators and pool hirers put in place appropriate safety precautions. When considering appropriate control measure to be put in place it is recommended that operators take into account this guidance.

Further Guidance

Authoritative guidance on the treatment of water in swimming pools (ref 1) is available from the Pool Water Treatment Advisory Group [www.pwtag.org](http://www.pwtag.org) .

Swimming Pool Water – Treatment and Quality Standards, ISBN 0 951 7007 6 6.  
Advice on spa pools and hydrotherapy pools is available from the Health Protection Agency [www.hpa.org.uk](http://www.hpa.org.uk)

## **HSE - Entertainment: Managing health and safety in swimming pools (HSG179)**

### **27. Lifts and Hoists**

The maintenance and inspection of lifts and hoists is a complex area covered by numerous pieces of legislation:

- Under regulation 5 of Provision and Use of Work Equipment Regulation 1998 lifts need to be maintained in a safe condition and free from fault and defects
- Under Regulation 9 of Lift and Operations and Lifting Equipment Regulations 1998 (LOLER) lifts must be tested and inspected by a competent person at regular intervals. U
- Under the Management of Health and Safety at Work Regulation 1999 there is a duty placed on employers to carry out a suitable and sufficient assessment of risks associated with their work activities. This includes the risks associated with lifts.
- Under the Health and Safety at Work etc Act 1974 (HSWA) there is a duty to ensure the health safety and welfare of employees including ensuring that safety risk are not created by the type and use of lifts (and escalator) within the premises. This includes ensuring that lifts are maintained, serviced, checked and inspected as required and otherwise checking that they remain in a good, safe condition.
- There are similar duties to non-employees which are created by s3 (1) of the HSWA. Section 4 places similar duties on those in “control” of non-domestic premises that are used as a place of work by someone else’s employees. Basically this places duties on landlords/occupiers of non-domestic premises used as a place of work.
- Under the Lift Regulations 1997 all lifts supplied after June 1999 must comply with the Lifts Regulations 1997. The regulations require lifts and their associated safety components to satisfy the relevant essential health and safety requirements, meet appropriate national standards, undergo the appropriate conformity assessment procedure, have the CE marking applied (if necessary), have an EC declaration of conformity and be safe.

Under The Lifting Operations and Lifting Equipment Regulations 1998 (LOLER) a duty holder has a legal responsibility to ensure that any lift on the premises is thoroughly examined and safe to use.

A thorough examination will entail a systematic and detailed examination of the lift and all its associated equipment by a competent person. In order to determine the extent of the thorough examination, the competent person should assess the risks, taking into account factors such as where the lift will be used, frequency of use, the weight of loads to be lifted and its age and condition.

Part of the thorough examination may include some testing, if considered necessary, the thorough examination may also be supplemented by an inspection. Inspections should be carried out at suitable interval between through examinations.

As well as considering the risks associated with lifts in normal use, it is important to consider the safety of users in the event of the lift breaking down or stopping between floors. It may be appropriate to set up breakdown response contract in addition to normal maintenance contracts. It may be appropriate to train some employees in lift lowering and emergency door opening. In order to alert people to any problem, consideration should be given to providing a suitable means of raising the alarm (e.g. alarm call buttons, emergency telephones). In order to avoid panic in the event of an electrical failure it may also be appropriate to provide emergency lighting.

The Lifting Operations and Lifting Equipment Regulations 1998 require employers to ensure that any equipment that is used for lifting people is thoroughly examined and inspected by a competent person at intervals of no more than six months. Passenger

and mixed use lifts and escalators fall into this category. Where a lift is only used to carry goods then this interval can be increased to every twelve months.

A competent person is someone with sufficient technical and practical knowledge of the lift to be able to detect defects and assess how significant they are. The competent person should also be sufficiently independent and impartial to allow them to make an objective assessment of the lift and it is therefore not advisable for the same person who performs routine maintenance to carry out the thorough examination, as this would mean that they would then be responsible for assessing their own work.

As an item of lifting equipment the safe working load of a lift must be determined and displayed in a suitable, prominent place.

(Guidelines on the thorough examination and testing of lifts (SaFed lifts guidelines) LG1 Safety Assessment Federation, 1998 ISBN 1901212 53 1)

## **28. Mobile Buildings**

Due to the fact that mobile buildings are designed and constructed as temporary structures it is recommended that an annual inspection is carried out on their structural stability.

## **29. Playground and Gymnasium Equipment**

Due to the very use that PE equipment is put to it carries a high risk and requires regular inspection. British Standard 1892 Part 1 2003 states "an inspection should be carried out at least once a year". There are also British Standards to cover playground equipment (BS 5696) and for surfaces (BS 7188 and 7044) outside play areas should comply with BS5696

## **30. Radon –**

Radon is gas which is odourless, tasteless and colourless and can only be detected using specialised equipment. Radon occurs naturally in rocks and soils throughout the country although levels tend to be higher in some granite areas. Radon can be found in high concentrations in buildings as it tends to be sucked in to the building from soil.

It may then collect in buildings and under certain conditions can reach concentrations where the risk to people in the workplace requires control under the Ionising Radiation Regulations 1999.

Under the Management of Health & Safety at Work Regulations 1999 in areas affected by Radon.employers should undertake an initial assessment to determine whether there may be a radon hazard within the workplace, this includes cellars and basements.

Radon surveys should be conducted in any building where its location and characteristics suggest that elevated levels may be found. Due to the fact that radon levels can vary widely throughout the day and from season to season measurements should be made over a period of three months and the annual average estimated using seasonal correction factors.

Further details on levels of radon in buildings and remedial measures to be taken can be found on <http://www.hse.gov.uk/lau/lacs/42-1.htm>

### **31. Shared Premises**

Where a building is occupied by more than one user then it is important that the results of any risk assessments should be shared with other occupiers of the premises where relevant e.g. fire safety, the control of vehicle movements asbestos etc.

Under Regulation 11 of the Management of Health and Safety at work Regulations 1999 there is a duty of cooperation and coordination on those sharing a workplace.

Even if there is no direct control over common areas of the premises the employer needs to ensure that access and egress through these areas is safe for employees, visitors and contractors. Common areas of premises are those that are used by tenants (or occupiers) but are not controlled by them e.g. car park, access routes, internal staircases, corridors and lifts.

Where there is shared services such as electrical installation, gas supply, fire safety systems the tenant needs to ensure that they are and remain to be safe and without risks to the health of employees and visitors. This applies even though the tenant may not have any control over these services.

### **32. Slips and Trips**

As well as responsibilities under the Health and Safety at Work etc Act 1974, The Workplace (Health and Safety and Welfare) Regulations 1992 impose a specific requirement that floors must be suitable and in good condition. They must also be free from obstructions and people must be able to move around safely.

Steps and staircases should be regularly inspected for wear and tear. It is preferable for them to have;

- High visibility, non slip, square nosing on the step edges
- A suitable handrails
- Steps of equal heights
- Steps of equal width.

More detailed guidance is available from the HSE website [www.hse.gov.uk/slips/index.htm](http://www.hse.gov.uk/slips/index.htm):

### **33. Topple Test**

Burial authorities in England and Wales have a general duty under the Local Authorities' Cemeteries Order 1977 (LACO) to maintain burial grounds in good order. Different legislation applies in Scotland. Many burial ground operators, if they employ people, will also have duties under the Health and Safety at Work etc Act 1974.

There is no specific requirement to carry out 'topple testing'. The 'duty holder' must however do what is reasonably practicable to ensure that visitors and those working in burial grounds are not exposed to risks to their health and safety. Any action taken to

manage memorials or other aspects of the burial ground should be proportionate to the level of risk, and undertaken in a sensitive way.

The Ministry of Justice website <http://www.justice.gov.uk/> provides information on burial ground matters in England and has produced guidance to help burial authorities adopt sensible and proportionate approaches to manage the overall low risk presented by memorials. It has also published a number of FAQs to address queries about the guidance.

### **34. Tree Safety**

As well as responsibilities under the Health and Safety at Work etc Act 1974, an occupier of land where a tree stands has responsibilities under the Occupiers Liability Act 1957 and 1984. An occupier of land on which a tree stands will normally be liable for any personal injury or other damages caused by a tree breaking or falling where a tree is hazardous because of decay or structural weakness and shows external signs of being in such a condition. It should be noted that within the provisions of the previously mentioned Acts the court expect occupiers to be prepared for children to behave less carefully than an adult for example, by climbing trees which may have weak branches.

Therefore it is important that a "suitable and sufficient" risk assessment should be carried out on the trees on a site. An effective system for identifying the risks from trees should meet the requirements set out in the management of Health and Safety at Work regulations 1999 and the associated ACoP see also the Health and Safety Executive Guide Five Steps to Risk Assessment previously referred to.

The HSE in circular; 'Management of the risk from falling trees' suggest that a suitable risk assessment for trees should address the following:

1. "An overall assessment of risks from trees, particularly identifying groups of trees by their position and degree of public access. This will enable the risks associated with tree stocks to be prioritised and help identify any checks or inspections needed. As a minimum, trees should be divided into two zones: one zone where there is frequent public access to trees (e.g. in and around picnic areas, schools, children's playground,); and a second zone where trees are not subject to frequent public access. As a rough guide 'trees subject to frequent public access are those that are closely approached by many people every day. Amps may be useful as individual records for individual trees are unlikely to be necessary if zones and the trees in the zones are clearly defined.
2. For trees in a frequently visited zone, a system for periodic, proactive checks is appropriate. This should involve a quick visual check for obvious signs that a tree is likely to be unstable and be carried out by a person with a working knowledge of trees and their defects, but who need not be an arboriculture specialist. Duty holders should ensure that any system that is put in place for managing tree safety is properly applied and monitored.
3. A short record of when an area or zone or occasionally an individual tree has been checked or inspected with details of any defects found and action taken.

4. A system for obtaining specialist assistance/remedial action when a check reveals defects out with the experience and knowledge of the person carrying out the check.
5. A system to enable people to report damage to trees, such as vehicle collisions, and to trigger checks following potentially damaging activities such as work by the utilities in the vicinity of trees or severe gales.
6. Occasionally a duty holder may have responsibility for trees that have serious structural faults but which they decide to retain. Where such a condition is suspected and the tree also poses a potentially serious risk because, for example its proximity to an area of high public uses, a specific assessment for that tree and specific management measure, are likely to be appropriate.
7. Once a tree has been identified by a check to have a structural fault that presents an elevated risk, action should be planned and taken to manage the risk. Any arboricultural work required should be carried out by a competent arboriculturist; as such work tends to present a relatively high risk to the workers involved. Duty holder should not be encouraged to fell or prune trees unnecessarily.
8. Inspection of individual trees will only be necessary where a tree is in, or adjacent to, an area of high public use, has structural faults that are likely to make it unstable and a decision has been made to retain the tree with these faults.
9. Monitoring to ensure that the arrangements are implemented in practice.”

For more detailed guidance in this area see HSE website: [Management of the risk from falling trees](#) and the [Forestry Commission web site Hazards from trees: A general guide](#)

### **35. Vacant Buildings**

Under the Occupiers Liability Act 1984 the ‘occupier’ of a building has a duty of care to unlawful visitors to buildings, such as trespassers, where the occupier knows:

- of risks on the premises which may adversely affect the health and safety of trespassers
- that trespassers may enter, or be present on, the premises
- those risks can be reasonably controlled or protected against

This is in addition to those duties placed on an ‘occupier’ of a building under the Health and Safety at Work Act etc Act 1974.

### **36. Water Hygiene and Safety**

#### **Legionella**

As stated previously under s2 of the Health and Safety at Work etc Act 1974 employers so far as is reasonably, practicable, have to ensure the health, safety and welfare at work of all employees. The risk assessment of work activities and premises required under the Management of Health and Safety at Work Regulations 1999 is of particular relevance when considering the health and safety risks from disease. Under the Control of Substances Hazardous to Health Regulations 2002 (as amended) (COSHH)

pathogenic bacteria, including legionellae are deemed to be “substance hazardous to health” and therefore are subject to the assessment, prevention/control and monitoring, provision of these Regulations.

The Health and Safety at Work etc Act 1974 covers the risk from legionella bacteria which may arise from work activities. In addition to the legislation mentioned above The Notification of Cooling Towers and Evaporative Condensers Regulations and Legionnaires’ Disease – The Control of Legionella bacteria in water systems Approved Code of Practice apply to the control of legionella bacteria in water systems.

An employer or a person in control of the premises (e.g. a landlord), must identify and assess the sources of risk; (it may be necessary to call on outside assistance to complete this), prepare a scheme (or course of action) for preventing or controlling the risk and implementing and managing the scheme. A person must be appointed to be managerially responsible, sometimes referred to as the ‘responsible person’. This responsible person must keep records and check that what has been done is effective; and, if appropriate, notify the local authority that there is a cooling tower(s) on site. In order to carry out the risk assessment an employer should find out if the water systems (including the equipment associated with the system such as pumps, heat exchangers, showers etc) are likely to create a risk. If after carrying out the risk assessment it is considered that the risks are insignificant then no further action is needed other than to review the assessment periodically in case anything changes in the system.

If a risk is identified which cannot be prevented then proper controls must be introduced. In order to control the risks it will be necessary to implement a successful management policy, have competent staff and ensure that proper control strategies are put in place. One way of preventing the risk of legionella is by looking at the type of water system needed. For example it may be possible to replace a wet cooling tower with a dry air cooled system. .

A written scheme should be prepared which sets out how it is intended to control the risk from legionella. This should:

- describe the system (an up to date schematic diagrams will be adequate to do this),;
- advise who is responsible for carrying out the assessment and managing its implementation;
- set out the safe and correct operation of the system;
- describe what control methods and other precautions will be used and,
- provide details of the checks that will be carried out on the control scheme and how often they will be carried out.

It is important to appoint someone to take responsibility for managing the control scheme that has been put in place. The ‘responsible person’ needs to be competent – this means that they need to have sufficient knowledge and experience of the system to enable them to manage and control the scheme effectively. If there is more than one person responsible for managing the system and/or control scheme, then it is important to ensure that everyone knows their responsibilities and how they fit into the overall management of the system.

Where contractors are employed to carry out water treatment or other work it is still the responsibility of the appointed responsible person to ensure that the treatment is carried

out to the required standards. Before appointing a contractor it is necessary to be satisfied that they are capable of doing the work to the required standard. The Health and Safety Executive has prepared A Code of Conduct for Service Providers to assist with this.

The significant findings from the risk assessment should be kept in writing along with details of any monitoring or checking that is carried out. A written record should also be kept of the written scheme and who is responsible for managing the scheme prepared, the results of the routine monitoring should also be recorded and all of these records need to be kept for a minimum of five years. Risk assessments should be updated every two years or earlier if circumstances change i.e. when any changes are made to the system.

Further Guidance

<http://www.hse.gov.uk/legionnaires/> where you will find useful links to the following documents:

- **Legionnaires' disease - Essential information for providers of residential accommodation**
- **Legionnaires Disease - A guide for Employers**
- **Legionnaires Disease: The control of legionella bacteria in water systems, approved code of practice and guidance (L8)** Health and Safety Executive, 2000. ISBN 0717617726. Available from HSE Books
- **Legionnaires' Disease: Controlling the risks associated with using spa baths [PDF 24kb]**
- **HSE Research Report RR140 Evaluation of HSC's ACOP and guidance 'Legionnaires disease: control of legionella bacteria in water systems' (L8)**

#### **Water and Surface Temperature Restrictions**

There is a risk of scalding to individuals from surface areas such as radiators and hot water pipes and from water which is too hot at point of use for example washbasin and baths.

Under the Education (School Premises Regulation) 1999 there is a requirement that the temperature of water at point of use should not be above 43°C for baths and showers and where occupants are severely disabled, in addition to this it is recommended that hot water supplies to washbasins in nursery and primary schools are limited to 43°C

Under these regulations in a special school or teaching accommodation used by a nursery class in a school the surface temperature of any radiator, including exposed pipework, which is in a position where it may be touched by a pupil should not exceed 43°C

The Health and Safety of those individuals who use care services is covered under the general requirements of Section 3 of the Health and Safety at Work Act 1974 and also by the risk assessment requirement of the Management of Health and Safety at Work Regulations. The maximum surface temperature of space heating devices in care establishment should not exceed 43°C and the temperature of water at point of use should be no more than 44°C

The risk of burns from hot surfaces may be reduced by:

1. Providing low surface temperature heat emitters, e.g. cool wall;
2. Locating sources of heat out of reach, e.g. at high-level;
3. Guarding the heated areas, e.g. providing radiator covers, covering exposed pipework;
4. Reducing the flow temperatures (although usually not practicable in existing heating systems without sacrificing their effectiveness).

The risk of scalding may be reduced by carrying out a risk assessment for the individuals concerned and introducing appropriate control measures

Suitable arrangements should be in place to ensure that control measures are in place and functioning effectively. Adequate training and supervision should be given to staff to ensure that they understand the risks and precautions to be taken and also the need to report any difficulties to a responsible person.

Further guidance

<https://www.gov.uk/government/publications/standards-for-school-premises>

HSE <http://www.hse.gov.uk/pubns/hsis6.htm>

### **37. Workstation Assessment**

Under the Health and Safety (Display Screen Equipment) Regulations 1992 employers are required to perform a suitable and sufficient analysis of work stations used by users to enable an assessment of the health and safety risks to be carried out. A user means an employee who habitually uses Display Screen Equipment as a significant part of their normal work. This assessment will need to be reviewed or updated if there is a significant or major change to the equipment, the environment, the furniture, the task or the software. Where a work station is relocated then it should also be re-assessed.

Where an individual workstation is shared by more than one person, then the analysis should be carried out in respect of each person. A record of the analysis should be kept. The user or operator must take part in the assessment as some of the required criteria in the analysis and assessment may be subjective.

Where risks have been identified through the analysis then these must be reduced so far as is reasonably practicable. The risks identified could relate to physical problems, visual fatigue and mental stress and apply to both users and operators, the risks identified in the assessment must be remedied as quickly as possible:

### **38. Working at Height**

#### **Fall Protection**

The Work at Height Regulations 2005 covers all workplaces where work is carried out at height, as well as covering construction sites, the Regulations cover offices, shops and schools. A risk assessment must be carried out under regulation 3 of the Management of Health and Safety at Work Regulations 1999, where possible work at height must be avoided. Where work at height cannot be avoided work equipment must be used to

prevent falls. Where the risk of falls cannot be eliminated, measures must be taken to minimise the distance and consequences of any fall. The duty holder must ensure that equipment used to work at height such as scaffolding and ladders are maintained and inspected. Where such equipment is exposed to conditions which may cause deterioration then they must be inspected at suitable intervals and following any exceptional circumstances.

It should be noted that a ladder can only be used for work at height if:

- The risk assessment had found that the use of more suitable work equipment is not justified because the risk is low and
- The use is for short duration or
- There are existing features on the site which cannot be altered

### **Window Cleaners**

The Workplace (Health and Safety and Welfare) Regulations 1992 require employers, and persons who have control of a workplace to ensure that all windows and skylights in a workplace are designed or constructed so as to enable them to be cleaned safely. This requirement allows equipment used in conjunction with the windows or skylights, or any other safety devices fitted to the building, i.e. anchorage points to be taken into account. The Approved Code of Practice that accompanies these regulations gives a number of measures which may be taken to comply, e.g. anchorage points for safety harnesses, suitable points for tying ladder more than 6m in length and fitting windows that can be cleaned easily from inside.

The Work at Height Regulations 2005 covers window cleaning activities when carried out at height. They specify that a risk assessment must determine the necessity of working at height. Where it is not possible to avoid working at height then a hierarchy of control measures is specified.

Where an independent window cleaner is used the employer should take some measure to check that window cleaners are operating in a safe manner and not engage those who do not appear to be doing so.

### **Further guidance**

[The Work at Height Regulations 2005 \(amended\): A Brief Guide](#)

### **Further information**

The following HSE publications give further general guidance:

[Workplace health, safety and welfare: Workplace \(Health, Safety and Welfare\) Regulations 1992 Approved Code of Practice L24 \(Second edition\) Published 2013](#)

[Workplace health, safety and welfare: A short guide for managers INDG244 HSE Books 1997 \(single copy free or priced packs of 10 ISBN 0 7176 1328 3\) Web version:](#)