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Legislation Outlook

March 2018

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This monthly legislation briefing is a supplement to your Activ Comply service to help you to plan ahead for maintenance of your ISO 14001, OHSAS 18001, ISO 50001 and ISO 27001 systems. In addition to giving you advance warning about important legislation that will affect your compliance with the standards, we'll provide you with news, newly-published guidance and government consultations that you might find useful, as well as any other significant legislation beyond the scope of the standards listed that we think may have an impact on your organisation. Unlike other services, we only report items of value: we don't waste your time reporting an increase of administrative fees or changes that will only affect enforcement agencies.

February was a fairly a busy month for legislation announcements. As ever, we have analysed all the new legislation so that you don't have to and are only reporting on items of value.
We continue our ongoing GDPR Focus series – this month we focus on data protection by design and by default.

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Upcoming Standard-Related Legislation

ISO 14001

Climate Change Levy (General) (Amendment) Regulations 2018

These Regulations amend the Climate Change Levy (General) Regulations 2001 in relation to the formula used to calculate relief entitlement, effective 1 April 2019. The Regulations amend the definition of "r" within the formula from 0.90 to 0.93 in the case of electricity and from 0.65 to 0.78 in any other case (representing the rates of 93 per cent and 78 per cent relief that will be applicable from 1 April 2019).

Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018

These Regulations come into force on 2 April 2018 to reduce and prevent the pollution of water from diffuse agricultural sources. The Regulations impose obligations on "land managers" (i.e. a person who has custody or control of agricultural land in England) who apply organic manure and manufactured fertiliser to their land.

OHSAS 18001

Gas Safety (Installation and Use) (Amendment) Regulations 2018

These Regulations come into force on 6 April 2018 and amend the Gas Safety (Installation and Use) Regulations 1998 to introduce the following changes:

(i) a person who carries out an examination of a gas appliance following work on the appliance must now examine the combustion performance of the appliance to ensure it is operating safely if it is not reasonably practicable to examine its operating pressure or heat input;

(ii) the time that landlords are required to retain records of gas safety checks is amended from a period of two years to "until there have been two further checks of the appliance or flue under this paragraph or, in respect of an appliance or flue that is removed from the premises, for a period of 2 years from the date of the last check of that appliance or flue"; and

(iii) new provisions for landlords as to when gas safety checks are due, including, in certain circumstances, allowing landlords to extend the date by which the next gas safety check is due for an appliance or a flue in order to align that date with the date by which the next safety check is due for another appliance or flue in the same premises.

News

ISO 45001 to be released this month

The International Organization for Standardization has announced that ISO 45001 will finally be published on 15 March. The new health and safety management standard will replace OHSAS 18001, which will be withdrawn after ISO 45001 is published. Organisations that are certified to OHSAS 18001 will have three years to implement their transition to the new standard.

Report examines impact of Brexit on continued membership of EU environmental bodies

The UK Environmental Law Association has published a report that outlines the UK's ability to retain membership of European environmental bodies post-Brexit. It concludes that the UK will be able to continue its involvement with the European Environment Agency, the European Food Safety Authority, the European Network of Prosecutors for the Environment and the European Environmental and Sustainable Development Advisory Councils Network without any amendment of the underpinning legislation. However, as the rules currently stand, as a third country the UK will not be able to maintain membership of the European Chemicals Agency, the Seville Process or the European Community Urgent Radiological Information Exchange.

Office of Product Safety and Standards set up by UK government

The Office for Product Safety and Standards was created in January by the Department for Business, Energy and Industrial Strategy. The Office will be responsible for managing product safety (including large-scale product recalls and consumer protection) and simplifying regulation as part of the Government's industrial strategy.

David Davis insists workers' rights will not be reduced

During a speech in Vienna in February, the Secretary of State for Exiting the European Union said that the UK will "continue our track record of meeting high standards after we leave the European Union" in relation to safety at work. He added that "the competitive challenge we in the UK and the European Union will face from the rest of the world [...] will not be met by a reduction in standards."

Consultations

National Policy Statement for Geological Disposal Infrastructure

The Department for Business, Energy & Industrial Strategy has launched a consultation seeking views on whether the **National Policy Statement for Geological Disposal Infrastructure** provides an adequate framework to make decisions on development consent applications for underground infrastructure used for the geological disposal of radioactive waste in England.

Draft Regulations Concerning Trade Secrets

The Intellectual Property Office has launched a consultation on the implementation of the EU's Trade Secrets Directive. The Directive seeks to address the uneven protection of trade secrets across the EU by providing minimum standards for measures, procedures and remedies that holders of trade secrets can rely on in cases of unlawful acquisition, use, or disclosure.

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GDPR Focus: Data Protection by Design and by Default

This month we look at a new accountability provisions introduced by Article 25 of the GDPR, which oblige controllers of personal data to implement data protection by design and by default.

Data protection by design requires that data protection is embedded into the design specifications of new systems and technologies. A controller must "implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data-protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing". In practice, this provision will impact a number of areas within an organisation, such as IT and HR, where those responsible for design and development must take data protection into account for the entire lifecycle of the system or process they are developing.

Data protection by default requires a controller to actively implement measures to prevent excessive personal data from being processed. A controller must "implement appropriate technical and organisational measures for ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed". The practical implications for organisations are significant. For example, measures will need to be in place to prevent employees from accessing personal data that is not relevant to their role, and to ensure that the strictest privacy settings apply automatically where a customer acquires a new product or service.

Practical Guidance

The GDPR does not provide any practical guidance on the technical or organisational measures that organisations could take to comply with the requirement of data protection by design and by default. It does make the suggestion that a controller could become certified to an approved certification mechanism in order to demonstrate compliance. However, no such certification mechanism has yet been approved by the European Data Protection Board.

In the absence of regulatory guidance, the following practical measures will help achieve compliance:

- creating a process that can be used each time a new system is designed or procured to ensure that data protection by design and default are fully considered;
- reviewing the drafting of data collection forms (both paper- and web-based) to ensure that excessive data is not collected;
- implementing automated deletion processes for particular personal data or measures to ensure that personal data is flagged for deletion after a particular period; and
- pseudonymising data where possible.

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If you want to review previous items in the GDPR Focus series, you can do this in your Activ system on the **Legislation Outlook** tab. If you receive this briefing by e-mail, contact us to request previous months' issues.

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GDPR is now in Activ Comply

The requirements of the GDPR are available in your Activ Comply system as a supplementary 'standard' at no extra cost.

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