

Legislation Outlook

October 2017

Tailored updates to legislation are automatically delivered direct into your [Activ Comply](#) system as they come into effect so you can be confident that you're always up to date.

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 a potential 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.

September saw an increase in the volume of new legislation being published, although not very much of it will affect your legal compliance in relation to the standards above. We continue our **GDPR Focus** to help you prepare for the new General Data Protection Regulation. The focus this month is on the new rules for data subjects consenting to the use of their personal data.

Upcoming Standard-Related Legislation

ISO 14001

Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017

These [Regulations](#) come into force on 27 October 2017 and replace the provisions of the Private Water Supplies (Scotland) Regulations 2006. They provide new rules in Scotland to ensure that water from a private water supply (i.e. water not supplied by Scottish Water) meets water quality standards. If you use a private water supply in Scotland, you will need to check to see if you comply with the new Regulations before they come into force at the end of the month.

Landfill Disposals Tax (Wales) Act 2017

Currently, no implementation date for this [Act](#) has been set, but it is expected to come into force on 1 April 2018. On commencement, it will allow the Landfill Tax, the tax paid by landfill operators for disposals of waste at landfill sites, to remain in place in Wales following the devolving of tax collection and management powers to the national assembly. Landfill operators in Wales will need to register with the Welsh Revenue Authority and provide the Authority with quarterly tax returns.

ISO 50001 and ISO 14001

Alternative Fuels Infrastructure Regulations 2017

These [Regulations](#) impose a common set of standards and functionality on electricity recharging points and hydrogen refuelling points for vehicles and seagoing ships at berth. Operators of such alternative fuel infrastructure have until 17 November 2017 to ensure compliance with these new standards.

OHSAS 18001

Regulation (EU) 2017/1510

This [Regulation](#) will come into force on 1 March 2018 and adds new substances to Annex XVII to Regulation (EC) No 1907/2006 (REACH), which lists substances that are classified as carcinogenic, mutagenic or reproductive toxic.

The substances that have been added to Annex XVII are: 1,2-dichloropropane; e-glass microfibers of representative composition; 3,7-dimethylocta-2,6-dienitrile; brodifacoum; lead powder; lead massive; warfarin; tetrahydro-2-furyl-methanol; gallium arsenide; tributyltin compounds; 1,2-benzenedicarboxylic acid, dihexyl ester, branched and linear; imidazole; bisphenol A; phenol, dodecyl-, branched; phenol, (tetrapropenyl) derivatives; chlorophacinone; coumatetralyl; difenacoum; floccoumafen; disodium octaborate anhydrous; disodium octaborate tetrahydrate; bromadiolone; difethialone; perfluorononan-1-oic acid and its sodium and ammonium salts; dicyclohexyl phthalate; triflumizole; and flumioxazin.

From 1 March 2018, the supply of these substances to the general public will be prohibited.

ISO 27001

Data Protection Bill

This [Bill](#) will eventually replace the Data Protection Act 1998 and will mirror the GDPR to ensure that UK organisations can continue to exchange information with the EU after Brexit. It also specifies that the Information Commissioner will continue as the supervisory authority in relation to data protection, as well as providing new powers and duties for the Information Commissioner's Office, in particular the power to levy fines of up to £17m or 4% of global turnover for the most serious data breaches. We will provide more information on any changes made to the Bill as it makes its way through Parliament.

News

Global workplace cancer death rate higher than previously estimated

Research carried out by the International Commission on Occupational Health, the International Labour Organization and the European Occupational Safety and Health Agency has found that occupational exposure to carcinogens kills around 742,000 people a year globally, a substantial increase on the previous estimate of 666,000 and almost double the number of fatal workplace accidents.

HSE sets out priorities for next five years

The Health and Safety Executive has published its plans for regulation and engagement with industries in 19 industry sector plans which cover the next three to five years. The sector plans are available [here](#), and will continue to focus on those industries that either create major hazards or are subject to statutory permitting regimes such as oil and gas. However, the HSE has indicated that the majority of its resources will be targeted at six priority sectors: agriculture, construction, logistics and transport, manufacturing, public services and waste and recycling.

Guidance

Building regulations and fire safety

The terms of reference for the Independent Review of Building Regulations and Fire Safety are available [here](#). The Review will assess the effectiveness of current building and fire safety regulations and related compliance and enforcement issues.

Water

The Environment Agency has updated its technical guidance on the monitoring of discharges to water [here](#), by rewriting section 5.5 to clarify sample storage temperature requirements.

Food

Following the coming into force on 1 April 2017 in Northern Ireland of the requirement to present food waste for separate collection, the Department of Agriculture, Environment and Rural Affairs has produced new guidance [here](#) for food businesses in the region.

Consultations

The Department for Environment, Food & Rural Affairs has released the summary of responses to its consultation on banning the use of **microbeads in cosmetics and personal care products**, available [here](#). It has also published draft legislation [here](#) for the purpose of implementing a prohibition on the manufacture and supply of rinse-off personal care products containing microbeads in England.

GDPR Focus: Consent

This month we focus on the changes to **consent** in the GDPR. The GDPR sets a much higher standard for consent than is currently the case under the Data Protection Act 1998. Within the GDPR, there are six possible legal grounds for lawful data processing; consent is one of these grounds. However, consent is only an appropriate justification where you can explicitly offer people real choice and control over how you use their data.

If you have to rely on consent as the grounds for processing a particular data set you need to make sure that:

- The indication of consent is unambiguous and involves a clear affirmative action. It must be freely given, which may cause difficulties where there is an imbalance in the relationship, such as where personal data is being supplied to an employer or a public authority;
- Consent is separate from other terms and conditions. It must not be a precondition of signing up to a service unless necessary for that service;
- You do not use pre-ticked opt-in boxes. These are specifically banned by the GDPR;
- You keep clear records to demonstrate consent; and
- You tell people who have given consent about their right to withdraw consent, and provide an easy way for those people to withdraw consent at any time. The GDPR states that it must be as easy to withdraw as it was to give consent.

If your existing consent mechanisms do not meet the above standards, you will need to obtain fresh consent once the GDPR comes into force.

Additional consent obligations apply if you offer online services directly to children under the age of 16 (however, this will be lowered to 13 once the [Data Protection Bill](#) comes into force). If you provide such services you will need to make reasonable efforts to verify that consent has been given or authorised by a holder of parental responsibility for the child.

Remember that consent is only one of the lawful grounds for processing. If you are having difficulty fitting the above requirements into your consent mechanisms, you should consider using one of the alternative grounds, namely that the processing of personal data is necessary:

- for the performance of a contract;
- for compliance with a legal obligation;
- to protect the vital interests of a person;
- for the performance of a task carried out in the public interest or in the exercise of official authority; or
- for the purposes of the legitimate interests pursued by the data controller or by a third party.

If you do use a ground other than consent to justify the processing of personal data, the Information Commissioner's Office has made it clear that you should not seek consent as well, as this would be regarded as misleading and inherently unfair.

More on the GDPR next month!

Like to know more?

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