Legislation Outlook

May 2020

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 45001, 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 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 will potentially impact your organisation. Unlike other services, we only report items of value: we don't waste your time on items such as an increase in administrative fees or changes that only affect enforcement agencies.

When legislative changes are announced with short notice (<1 month) they are not reported here. All changes are automatically delivered direct into your Activ Comply system as they come into effect so you can be confident that you are always 100% up to date.

Everyone has been affected by the disruption caused by coronavirus, but you can continue to rely on Activ Comply. We are maintaining our legal database and will continue to inform you as legislative changes occur. As we all adopt to the 'new normal', please remember that our legal team is still available to support you - call or email them using the details below if you need any assistance or training.

Given the understandable lack of 'long lead time' legislation, we have decided once again to devote the Legislation Outlook to providing a

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summary of the latest official coronavirus guidance from the Health and Safety Executive.

Focus: Coronavirus Guidance

Last month we provided a summary of all the official coronavirus guidance. Since then the HSE has published more specific guidance. We have provided a summary of that guidance below, along with links to the source documents should you wish to look at the guidance in more detail.

Respiratory Protective Equipment

The use of facemasks for the purpose of preventing the spread of coronavirus is becoming more common in workplaces outside of the usual healthcare setting. Face masks rely on having a good seal on the wearer's face - an inadequate fit can reduce the protection provided and lead to immediate or long-term ill-health or can even put the wearer's life in danger. The HSE has published guidance on carrying out a fit test before using any respiratory protective equipment for the first time. The guidance also contains links to a poster and video that detail how to put disposable facemasks on correctly and how to do a pre-use seal check or fit check.

RIDDOR

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) requires you to make a report in relation to coronavirus in the following circumstances:

- A dangerous occurrence report must be made where an unintended incident at work has led to possible or actual exposure to coronavirus, such as a lab worker accidentally smashing a glass vial containing coronavirus.
- A case of disease report must be made where a worker has been diagnosed as having COVID 19 and there is reasonable evidence that it was caused by exposure at work, such as a health care professional being diagnosed after treating patients with the disease.
- A report of a death due to exposure to a biological agent must be made where a worker dies as a result of exposure to coronavirus from their work and this is confirmed as the likely cause of death by a registered medical practitioner.

More information relating to RIDDOR reporting for coronavirus is available here.

COMAH Sites

The HSE has produced guidance for managing major hazard establishments that are subject to the Control of Major Accident Hazard Regulations 2015 (COMAH) regarding the potential increase of risk from reduced staffing levels or increased staff fatigue during the outbreak.

COMAH risk assessments require operators to ensure that necessary resources (including staff levels and competencies) are in place for a COMAH site's safe operation. The guidance includes the following control measures that should be considered to reduce the risk posed from reduced staffing levels:

- Postponing COMAH-critical tasks;
- Carrying out tasks consecutively rather than concurrently or delaying operations;

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- Reducing throughput or the number of batches;
- Rebalancing shifts;
- Calling in support from other sites; and
- Carrying out a partial shut down.

Existing risk assessments may also need to be revised to take account of fatigue where workers are covering for sick colleagues. The guidance includes the following control measures that should be considered to reduce the risk of errors posed from increased fatigue levels:

- Scheduling COMAH-critical tasks to the start of shifts or to fully staffed shifts;
- Increasing the frequency and length of rest periods during extended shifts;
- Lightening work loads by postponing non-essential work, reducing throughput or running operations sequentially, instead of concurrently; and
- Reviewing COMAH-critical tasks to ensure work has been done correctly.

Where these measures do not result in an adequate safety level, it may be necessary to shut down. The criteria for taking the decision to shut down should be clear and pre-determined, and a sufficient number of staff should be authorised to make the decision to ensure that illness does not prevent the decision being taken in time.

The HSE has also produced other guidance in relation to the following COMAH obligations:

- Safety reports - where upper-tier establishments intend to make a change that would trigger either a new or revised safety report that is directly related to coronavirus response or impacts, but the current circumstances unavoidably prevent them from producing such a report, they should contact their competent authority's COMAH Intervention Manager (CIM) as soon as possible;
- Planned external emergency plan tests – the competent authorities have acknowledged that, due to the outbreak, emergency resources normally involved in testing external emergency plans are likely to have been diverted elsewhere and will be unable to participate in tests. The competent authorities will not ask the organising local authority to cancel any scheduled test, but they have instructed local authorities to agree to any requests to postpone tests; and
- COMAH notification requirements – organisations that are not normally subject to COMAH may increase their dangerous substance inventories to take them above the threshold at which COMAH applies in order to support the coronavirus response. Before increasing the levels of substances above the COMAH threshold, the organisation will need to notify the competent authority a reasonable time in advance. This is usually three to six months, but if the changes are in support of the coronavirus response, a shorter timescale can be agreed. Where this is the case, operators should contact their CIM urgently.

Drivers

The Department for Transport has announced a temporary and limited relaxation of the enforcement of driver's hours rules for drivers involved in the delivery of food, non-food (personal care and household paper and cleaning) and over the counter pharmaceuticals. The announcement makes it clear that driver safety should not be compromised and that employers remain responsible for the health and safety of their employees, other road users, and anyone involved in loading and unloading vehicles.

The HSE has also reported that some drivers are being prevented from using welfare facilities when they deliver. The HSE has made it clear that preventing drivers from accessing facilities is against the law and that those who already provide reasonable access to toilets and handwashing facilities should continue to do so.

Work Equipment

The HSE has reminded organisations that the legal requirements for thorough examination and testing of lifting equipment and pressure systems remain in place, whilst also announcing that it will adopt a 'a pragmatic and proportionate approach' towards enforcement action for non-compliance with statutory requirements which are directly attributable to the coronavirus outbreak. The HSE has also published guidance about its approach to enforcement and maintaining inspection and testing schemes during the coronavirus outbreak. Provided that it can be demonstrated that all reasonable attempts have been made to carry out the examination and testing, the HSE will be to take no action if the only failing is that examination and testing is not carried out by the required date. Equipment should only be used outside of its test regime if it is critical for essential work and it can still be operated safely.

First-Aid

The HSE has published guidance on maintaining the required level of first-aid cover during the coronavirus outbreak. It has also announced a three-month extension on first aid-certificates that expire after 16 March 2020 and requalification training cannot be accessed due to the coronavirus outbreak. The extension applies to the following certifications:

- Offshore Medic (OM);
- Offshore First Aid (OFA);
- First Aid at Work (FAW); and
- Emergency First Aid at Work (EFAW).

Individuals must be able to explain why they have not been able to requalify and demonstrate the steps they have taken to access the training to qualify for the extension.

Divers

The HSE has announced that medical fitness to dive certificates that expire after 16 March 2020 can be used until 1 June 2020, provided that a medical re-examination with an approved medical examiner of divers cannot be obtained because of coronavirus.

Health Surveillance

Legislation that requires mandatory health surveillance still applies during the coronavirus outbreak. However, following advice from Public Health England, the HSE has adopted a proportionate and flexible approach to enable health/medical surveillance to continue. The HSE's guidance sets out the different approaches required for health surveillance obligations under the following Regulations:

- Control of Substances Hazardous to Health Regulations 2002 (COSHH);
- Control of Asbestos Regulations 2012;
- Ionising Radiations Regulations 2017;
- Control of Lead at Work Regulations 2002;
- Control of Noise at Work Regulations 2005; and
- Control of Vibration at Work Regulations 2005.

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The guidance will be subject to ongoing review, so affected organisations will need to ensure that they review the guidance regularly.

What we can do to help

At Activ, we have always looked to support our clients quickly and professionally through their compliance issues. This has not changed during the coronavirus outbreak. Please remember that our legal team is available and will do what it can to assist with any coronavirus-related issues you may have. If you are in a position to use this time as opportunity to review your ISO compliance, we have training webinars available that you may find useful. We are also happy to discuss Activ modules that may assist you with managing the disruption to your organisation caused by coronavirus. Please see below for details how to book a tutorial or demonstration and how to log on to our free webinars.

We are also able to offer a FREE online course via our sister company's e-learning platform, that can be shared with friends, family, and colleagues to help dispel myths and offer sensible advice for how we can all stay safe. You can access this free course here.

Join Live Webinars

Activ Online Management System - Supplier Assessment Tool Overview

When? Tuesday May 12th – 10am

In this webinar we will provide an overview of the Supplier Assessment tool within Activ, including:

- A brief overview of the functionality in the Customers and Suppliers module

- Setting up templates to assess your suppliers

- Scheduling and sending assessments electronically

- Reviewing completed supplier assessments, including recording any areas for improvement or corrective actions

- Scheduling future reviews

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Activ Online Management System - Audit Manager Module Overview

When? Wednesday May 13th – 10am

In this webinar we will provide an overview of the Audit Manager tool within Activ, including:

- Setting up audit templates and checklists

- Scheduling audits and checklists

- Using Audit Manager to conduct in-depth management system audits as well as routine check lists

- Correction action management

- Analytical reports available in Audit Manager

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