RS•C

health, safety and environment legislation

A POCKET GUIDE

R. DAY, J. A. READER, *and* E. ROWLAND

Health, Safety and Environment Legislation

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Preface

'Ignorance of the law excuses no man'

John Selden, legal antiquarian and politician, (1584–1654)

During the last decade, following the publication of the Government's White Paper, 'This Common Inheritance' in 1990, concern for the environment has continued to grow. Moreover, re-organisation of the Government's management of the environment with the establishment of the Environment Agency has been associated with a proliferation of environmental legislation. For those in business, employers and employees, it is always difficult to decide on the best ways to remain well informed on environmental legal requirements and individual responsibilities. Since ignorance of the law is no defence, familiarity with the law throughout the organisation must be encouraged. *A Pocket Guide to Environmental Law*[1] was first published in 1993 to provide compact, up to date, information in a readily accessible and easily manageable form – a 'first port of call' for environmental law. It was easily carried to provide immediate information out on site and could be used as a primary reference document in the office.

Long before care for the environment was a popular topic, concern for the health and safety of industrial workers was well established. *Redgrave's Factories Acts*[2] was first published more than 120 years ago. The legal framework for health and safety legislation is more established than that for environmental legislation; the major piece of legislation, for the former, being the Health and Safety at Work *etc*. Act 1974, and from 1974 numerous regulations have been made under the Act to keep the law up to date.

In the last few years, health and safety management and environmental management have shared more and more common ground; accordingly, following the success of the *Pocket Guide to Environmental Law*, last published in October 1997, the environmental law text provided by Edward Rowland has now been rewritten and updated by Bob Day who has also written a new section on Health & Safety Law, the vast majority of which concerns the Regulations made under the Health and Safety at

Work *etc*. Act 1974. The two closely related sections on Health & Safety and Environment are presented together in this single volume.

The enlarged guide is still intended to be an easily carried preliminary reference document which is supplementary to larger and more detailed volumes and CDs on Health & Safety and Environmental Law. The guide is not intended to give legal advice and readers should seek professional aid when dealing with specific situations.

For the Guide to retain a conveniently small size, it contains the most relevant Acts and Regulations omitting certain specific areas of limited application, for example, Health and Safety of Offshore Installations.

Each of the 98 subsections is divided into 12 parts for easy access to information:

1. The relevant Acts and/or Regulations.
2. Key dates related to that legislation.
3. The purpose of the legislation.
4. The methods by which that purpose is to be achieved.
5. The relevant regulatory authorities.
6. What and whom the legislation covers.
7. The requirements of employers/employees to meet the legislation.
8. What needs to be disclosed.
9. Any complementary legislation.
10. Related EC legislation.
11. Comments.
12. Related documentation.

The readers attention is drawn to the most recent additions; namely, information on CHIP 3, July 2002 (Section 3.4), Genetically Modified Organisms, October 2002 (Section 9.1), Control of Asbestos at Work, November 2002 (Section 3.2), COSHH, November 2002 (Section 3.6) and Control of Lead at Work, November 2002 (Section 3.8). All the material is current as of 21 November, 2002.

Finally, it pays to be proactive and not to be forever fighting a rearguard action. The relevant regulatory authorities, in my experience, have been understanding and helpful in discussing difficulties that may arise in the management of Health & Safety and Environmental topics. They have knowledge, from a wide assortment of operations, which should never be ignored.

We would like to thank Mrs Janet Freshwater CChem MRSC, Commissioning Editor, and her colleagues at The Royal Society of Chemistry, for their help and support in the publication of this guide.

J.A. Reader

1. E. Rowland, *Pocket Guide to Environmental Law*, 1st edition, 1993, ILX Publishing.
2. Redgrave's Factories Acts has undergone several changes over the years and is now available as *Redgrave's Health and Safety*, 4th edition, 2002, Butterworth & Co.

The editor would appreciate any suggestions for additions or deletions and corrigenda for a further edition.

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A HEALTH AND SAFETY

1 GENERAL

1.1 General Framework

LEGISLATION

- Health and Safety at Work *etc.* Act 1974.

KEY DATES

- Duties on employers and others in force from 1/4/75. Other sections in force from 1/9/74 or 1/1/75.

PURPOSE

- To secure the health, safety and welfare of persons at work and to protect persons other than persons at work against the risk to health or safety arising from work activities.

APPROACH

- Establish general legal duty to ensure health, safety and welfare of anyone affected by work activities.
- Establish the Health and Safety Commission (HSC) and the Health and Safety Executive (HSE) to take appropriate action to further objectives of Act.
- Enables detailed Regulations and Codes of Practice to be passed under the Act.
- Provides enforcement regime – making breach a criminal offence.
- Establishes Employment Medical Advisory Service.

REGULATORY AUTHORITY

- HSE.
- Environmental Health Departments of local authorities.

COVERAGE

- Legislation applies to all work places and all persons at work, except for servants in domestic premises. Crown bodies, *e.g.* HM Forces are covered but they cannot be prosecuted under the Act.

COMPLIANCE REQUIREMENTS

- Employers must comply with a duty to ensure the health, safety and welfare of all their employees so far as is reasonably practicable. This is one of the most important sections of the Act and in essence the employer must provide a safe system of work. A non-exhaustive list of examples includes: making adequate provisions for safety with respect to plant and systems of work, articles and substances, information, instruction and training, supervision, place of work and working environment.
- A permit to work system may be an appropriate system to demonstrate compliance with the above duty in certain circumstances, *e.g.* hot work.
- Employer of five or more employees must prepare and revise a written health and safety policy including organisation and arrangements to carry out the policy. This policy and any revisions must be brought to the notice of all employees.
- Employers and the self-employed are obliged to ensure, so far as is reasonably practicable, that persons other than their employees are not exposed to risks to their health and safety.
- Persons in control of premises to ensure, so far as is reasonably practicable, that the premises are safe and without risks to health.
- Designers, manufacturers, importers and suppliers of articles and substances for use at work to ensure adequate health and safety information is available for foreseeable uses.
- Employees are required to take care of their own safety and that of others and cooperate with their employer.
- No-one must intentionally, or recklessly, interfere with safety measures and equipment.
- Employers may not charge for provision of safety measures specifically required by law.

DISCLOSURE

- Employees are required to be informed of the safety policy.
- Articles and substance safety information.
- Any improvement or prohibition notices will be on a public register.

COMPLEMENTARY LEGISLATION

- Management of Health and Safety at Work Regulations 1999.
- All health and safety legislation made under the Act which is the vast majority of legislation in the Health and Safety section.

RELATED EC LEGISLATION

- Relevant EC Directives are listed under the summary of Regulations most of which are enacted by Regulations made under this Act for the Health and Safety section.

COMMENTS

- The Act establishes the HSC and HSE and specifies their composition and functions.
- The Act is enabling legislation which means provision is made for Regulations and Approved Codes of Practice to be made under the Act. The intention is to replace all health and safety piecemeal legislation in force prior to the Act with new up to date legislation.
- The Act's intention is to make health and safety as important as any other company function, *e.g.* finance. Therefore breach of the Act and associated Regulations is a criminal offence punishable by fines and/or imprisonment. Criminal liability on individual persons (within a company) can occur if breach of the legislation is committed with the consent, connivance or neglect of that person. This liability is restricted to directors, managers, company secretary or anyone purporting to act in such capacity within the company.
- The HSE and local authorities have the power to appoint inspectors under the Act. The inspectors have very wide powers

including entering premises for specified purposes, issuing improvement notices (notice specifying an act must be done in a specified time) and prohibition notices (notice prohibiting certain specified acts either indefinitely or until specified remedial measures are undertaken) and taking away certain articles.

- The Act contains powers conveyed on the HSC to require information to be disclosed to them in specified circumstances.
- The Act maintains the Employment Medical Advisory Service and specifies its functions and powers.
- The main duty under the Act is to maintain a safe system of work and this will involve looking at and checking procedures, practices *etc.* However, there was no strict legal duty to conduct formal written risk assessments until the Management of Health and Safety at Work Regulations 1992 (now re-enacted as 1999 Regulations) introduced this requirement.

RELATED DOCUMENTATION

- Safety policy.
- All documentation relating to health and safety.

1.2 General Management Framework

LEGISLATION

- Management of Health and Safety at Work Regulations 1999 (SI 1999 No. 3242).

KEY DATES

- In force from 29/12/99.

PURPOSE

- To establish more stringent requirements regarding health and safety organisation, training, health surveillance and information and to impose obligations to temporary workers, pregnant women and young persons in line with the UK's obligation to enact EC Directives.

APPROACH

- Requires employers to undertake self assessment of the risks associated with their work, to identify and implement the necessary controls, and to put in place the management structure, systems and procedures, to maintain adequate control of safety risks.

REGULATORY AUTHORITY

- HSE.
- Environmental Health Departments of local authorities.

COVERAGE

- All persons at work, except for servants in domestic premises. Crown bodies, *e.g.* HM Forces are covered but they cannot be prosecuted under the Regulations.

COMPLIANCE REQUIREMENTS

- Risk assessments to be carried out by employers and the self-employed to ascertain what they have to do to comply with obligations under health and safety legislation. Such assessments are to be reviewed if there is a significant change or there is reason to believe an assessment is no longer valid. Written risk assessments are required if the employer employs five or more employees.
- Any preventative and protective measures identified should conform to the following order of preference:
  - Avoid risk.
  - Evaluate unavoidable risks.
  - Combat risks at source.
  - Adapting work especially design equipment to alleviate certain activities, *e.g.* monotonous work.
  - Adapting to technical progress.
  - Replacing dangerous by non-dangerous or less dangerous.
  - Develop an overall prevention policy.
  - Giving collective protective measures priority over individual measures.
  - Giving appropriate instruction to employees.
- Employers must make, give effect to and in certain cases record appropriate health and safety arrangements.
- Employers must appoint an adequate number of competent persons (as defined) to enable them to comply with health and safety legislation. If there is a competent person employed by the employer that person shall be the competent person in preference to a competent person not in his employment.
- Employers shall establish, and give effect to, procedures for serious and imminent danger areas.
- Employers shall ensure that any necessary contacts with external services, *e.g.* first-aid are arranged.
- Employers are obliged to give certain specified information on health and safety to their employees including the risk assessments required under these Regulations.
- Certain specific obligations are detailed concerning employers duties towards other employees from different companies who are working on their premises.

- Employers must ensure that employees are provided with adequate health and safety training and consider individually their capabilities when entrusting tasks to them.
- Employees must use machinery, equipment, dangerous substances, means of production and any safety equipment in accordance with any relevant training and instructions.
- Employers must provide temporary workers with health and safety information prior to commencement of work.
- Employers shall ensure that employees are provided with adequate health surveillance considering the risks to their health and safety.

DISCLOSURE

- Employees have the right to know the outcome of the assessments and details of emergency procedures.
- Employees have the right to know the risks arising from contractors or other employers on the site.
- Employers must disclose risk information to other employers on site.
- Employers must provide employees with such information as is necessary to do their particular job safely.
- Health surveillance can raise clinical confidentiality issues. Employees have the right to know the results.

COMPLEMENTARY LEGISLATION

- Health and Safety at Work *etc.* Act 1974.

RELATED EC LEGISLATION

- EC Directive 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work (*the Framework Directive*).
- EC Directive 91/383 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (*the Temporary Workers Directive*).

COMMENTS

- The Health and Safety at Work *etc.* Act 1974 together with these Regulations establish the framework for the management of health and safety at work.
- Section 2 Health and Safety at Work *etc.* Act 1974 provides that employers must ensure a safe system of work but these Regulations, whilst still being general in terms, expand on how to provide such a safe system *e.g.* by specifying risk assessments must be undertaken.
- The Regulations are general and more specific guidance is available in *L21 Management of Health and Safety at Work – ACOP.*
- Note: requirements concerning pregnant workers and young persons are covered separately in the Employees section.

RELATED DOCUMENTATION

- Written risk assessments.
- Employees training records.
- Health surveillance records.
- Health and Safety structure and responsibilities.
- Serious and imminent danger procedures and employee records of training in such procedures.