

# Health and safety legislation update for October 2019 and beyond

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## Health, safety and Brexit

Brexit uncertainty has dominated the headlines for some time now, with many businesses unsure of the legal ramifications of the options still on the table.

In terms of duties around health and safety, the Health and Safety Executive (HSE) has recently issued clear guidance which states that duties to protect the health and safety of people affected by your work will not change with Brexit.

The HSE states: "You should continue to manage risk in your business in a proportionate way."

### **Maintaining standards**

The [EU \(Withdrawal\) Act 2018](#) ensures that, whatever the outcome, we can provide certainty on health and safety for duty holders across the UK. The Act corrects minor inaccuracies, such as changing 'European Union' to 'United Kingdom'.

To support the Act, three HSE-led Statutory Instruments convert current EU regulation into domestic law:

- [Chemicals \(Health and Safety\) and Genetically Modified Organisms \(Contained Use\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#)
- [Health and Safety \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2018](#)
- [Health and Safety \(Amendment\) \(EU Exit\) Regulations 2018](#)

Guidance, including [Health and safety made simple](#), and [HSE guidance on Brexit](#) will help you to comply with the law.

See the Brexit box above for guidance to help you prepare in the event the UK leaves the EU without a deal (and therefore without an implementation period).

The Government has made changes to legislation. The changes ensure regulation of chemicals continues if the UK leaves the EU without a deal. Amendments are to:

- [Chemicals \(Health and Safety\) and Genetically Modified Organisms \(Contained Use\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#)
- [Pesticides and Fertilisers \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019](#)
- [Pesticides \(Maximum Residue Levels\) Amendments etc \(EU Exit\) Regulations 2019](#)
- [Plant Protection Products \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019](#)
- [REACH etc. \(Amendments etc.\) \(EU Exit\) Regulations 2019](#)



### **Brexit box:**

[Government advice: How to prepare if the UK leave the EU with no deal](#)

[Government advice for businesses about the implications of leaving the EU](#)

[HSE guidance: Brexit](#)

[HSE guidance: no deal Brexit](#)

[HSE guidance: Brexit – maintaining standards](#)

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## Looking back

### **HSE and Local Authorities**

In April 2019 the Health and Safety Executive (HSE) and Local Authority (LA) representative bodies developed a joint statement of commitment which set out a vision for consistent regulation across HSE and LA enforced businesses. The statement aimed to reinforce the legal duty of LAs and the HSE as enforcers of workplace safety. LAs will be expected to use national and local intelligence to target poor performing sectors, work with other LAs to review activities and annually report their safety and health enforcement activity to the HSE.

### **2019: The Government's proposed legislation following the Taylor Review of Modern Working Practices**

In July 2017, [Good Work: the Taylor Review of Modern Working Practices](#) was published, which included 53 recommendations. The review considered a range of issues, including the implications of new forms of work, the rise of digital platforms and the impact of new working models on employee and worker rights, responsibilities, freedoms and obligations.

In 2018 the [Government published its response](#) to the review, and in July 2019 it announced:

- workers would be given enhanced rights to tackle unscrupulous employers who do not comply with the law
- a new body would enforce holiday pay for vulnerable workers and ensure agency workers are not underpaid
- a second phase of the government's 'Good work plan' focuses on protecting vulnerable workers.

### **Drone safety - Air Navigation Amendment Order 2018 – applicable to the UK**

This [new legislation](#) extends the 'no-fly' zone around airports, and:

- bans drones from flying within 5km of runways
- imposes penalties for breaking the law on misusing drones range from fines to life imprisonment if the device is intentionally used to cause violence
- from 30 November 2019, drone operators using drones weighing 250g or more will have to register their device with the Civil Aviation Authority (CAA) and take an online safety test. Anyone who fails to register or sit the competency tests could face fines of up to £1,000.



### **Proposals to reduce ill health-related job loss**

A consultation was launched seeking views on different ways in which government and employers can take action to reduce ill health-related job loss.

The proposals include giving employees with health conditions the right to request workplace adjustments on health grounds, entitling employees returning from a period of sickness absence to a flexible, phased return to work funded partly through their statutory sick pay (SSP) entitlement and partly through their usual wages and fining organisations that do not pay staff the SSP they are entitled to.

The consultation closed on 7 October 2019.

### **Manual Handling at Work a Brief guide – INDG 143 Revision 4 Draft**

The HSE invited views on this updated guide.

The leaflet (which was previously published in 2012) provides practical guidance on reducing the risk of injury from hazardous manual handling. It aims to help employers comply with their duties under the Manual Handling Operations Regulations 1992.

The HSE has revised the leaflet to bring it into line with its legal guide to the regulations (L23) and current ways of working. It now includes more advice on simple filters to help identify low-risk tasks which do not need further assessment. Also removed are the safe lifting tips from the leaflet, although the HSE note that these will be available from their website. There is no change in policy or regulation.

The consultation closed on 24 September 2019.

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## ***Banning Tyres Aged 10 Years and Older***

This consultation sought feedback on a proposed ban on tyres aged 10 years and older from heavy goods vehicles, heavy trailers, buses, coaches and minibuses.

The aim of the proposal is to improve road safety.

Views and evidence was also sought on whether to introduce a similar maximum age for tyres fitted to taxis and private hire vehicles

The consultation closed on 1 September 2019.



## ***Safety, Health and Welfare at Work (Diving) Amendment Regulations 2019 – applicable to Ireland***

These regulations were introduced to protect the safety of employees involved in carrying out diving operations in the course of their employment. They set out a clear framework of responsibilities and specify duty holders such as clients, diving supervisor, diving contractor, divers and other persons engaged in the diving project and their duties.

## **Key cases**

Key cases in recent months include:

**Rail firm fined £1m over Gatwick Express window death** - Govia Thameslink Railway Ltd (GTR) was fined £1 million with £52,267 costs, following the death of a man on the Gatwick Express. 24-year-old Simon Brown died on 7 August 2016 when a trackside gantry struck his head as the Brighton to London Victoria train travelling at approximately 60mph was close to Balham Station in South London.

**£126m fine for Southern Water** - Southern Water was fined £126m for spills of wastewater into the environment from its sewage plants and for deliberately misreporting its performance. The penalty will see customers get a rebate of at least £61 each. The Environment Agency has launched a criminal investigation into the case.

**Tesla Engineering worker hit and killed by gantry crane** - Tesla Engineering Ltd, a superconducting electromagnet company, has been sentenced after a worker was fatally hit and crushed by an overhead gantry crane. Dr Craig McEwan, 34, a unit manager of Tesla Engineering Ltd, died while undertaking the making of a superconducting magnet coil. Dr McEwan was working on top of a tank when he became caught between a moving gantry crane and a metal chimney on the top of the tank.

**National Grid fined following worker's death** - An electricity and gas utility company was fined after a worker was killed on Winslow Road in East Claydon. Aylesbury Crown Court heard how Paul Marsden, a sub-station crafts person for National Grid Electricity Transmission was to move a delivery crate containing a compressor with the help of a colleague. Mr Marsden was using a remote-controlled lorry loader crane but as they attempted to attach the slings to the hook, the crane struck Mr Marsden resulting in fatal injuries. National Grid Electricity Transmission PLC was fined £334,000 and ordered to pay costs of £17,673.34.



**Fine after 12-year-old fell from ladder at unsecured site** - Contractor Westdale Services Limited was fined £160,000 after a 12-year-old boy slipped off a scaffold ladder on an inadequately guarded site. On 6 May 2017, two boys were able to climb the rungs of a ladder within scaffolding erected by Westdale Services by placing their feet either side of a ladder guard that did not cover the rungs completely. One boy climbed to the top platform of the scaffold and climbed the uppermost ladder to a height of approximately 10 metres. The ladder slipped, causing him to lose his balance and fall to the ground. He sustained life-changing injuries requiring multiple operations.

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**M & D's Theme Park fined for poor maintenance that led to 'catastrophic failure'** - Theme park operator M & D (Leisure) Limited was fined £65,000 after nine passengers were injured and taken to hospital when a train on one of their roller coasters derailed and crashed to the ground. Hamilton Sheriff Court heard how, on 26 June 2016, at M & D's Theme Park in Motherwell, a train on the Tsunami roller coaster derailed as it was descending through a curve immediately after the lift ramp, at a height of five metres. It crashed to the ground in an area occupied by mini self-drive cars and bikes.

There were nine passengers on board, who were all injured "to the danger of their lives".

**£2.7million fine after boy was electrocuted** - Rail freight company DB Cargo (UK) Ltd was fined £2.7 million, with over £188k in costs following an incident in which a 13-year-old boy suffered life-changing injuries after receiving an electric shock from 25,000-volt overhead line equipment at Tyne Yard in Gateshead.

## Looking forward

### 2019

[Drug Driving, Specified Limits, Scotland Regulations 2019](#) – comes into force 21 October 2019 – applicable to Scotland.

[European Union \(Energy Performance of Buildings\) \(No 2\) Regulations 2019](#) – comes into force 1 November 2019 – applicable to Ireland.

[Ionising Radiation \(Basic Safety Standards\) \(Miscellaneous Provisions\) \(Amendment\) \(EU Exit\) Regulations 2018](#) – comes into force on EU Exit day – applicable to the UK.

[Misuse of Drugs Act 1971 \(Amendment\) Order: Draft 2019](#) – comes into force 15 November 2019 – applicable to the UK.

[Notification of Deaths Regulations 2019](#) – comes into force 1 October 2019 – applicable to England and Wales.

### 2020

[Agency Workers \(Amendment\) Regulations 2019](#) – comes into force 6 April 2020 – applicable to GB.

[Directive 2017/2398 on the Protection of Workers from the Risks Related to Exposure to Carcinogens or Mutagens at Work](#) – comes into force January 2020 – applicable to the UK.

[Employment Rights \(Employment Particulars and Paid Annual Leave\) \(Amendment\) Regulations 2018](#) – comes into force 6 April 2020 – applicable to GB.

[Parental Bereavement \(Leave and Pay\) Act 2018](#) – comes into force in 2020 – applicable to the UK.



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