

# Health and safety legislation update for April 2020 and beyond

- Introduction
- Coronavirus Legislation
- Brexit
- Grenfell
- Looking back
- Key prosecutions
- Looking forwards

## Introduction

Coronavirus (COVID-19) has become a top priority for employers all over the world. The pandemic event is putting pressure on already stretched employers to do more to keep up to date and protect the health, safety and welfare of their employees.

Employers, faced with this unprecedented challenge, must do everything they can to ensure their business, employees and those who may come into contact with the business are not exposed to risk.

As well as having a legal duty of care under the Health and Safety at Work etc. Act 1974 to ensure the safety of employees in the workplace, businesses also have duties to ensure that the way work is carried out does not have a negative impact on the safety and health of others affected by its work, such as members of the public and contractors. Risk assessments must cover the right topics. Employment law needs to be addressed. And with most employers having to advise widespread working from home following government measures, there are processes about managing remote workers that need to be applied.

On top of all of that, there is 'emergency legislation' now in force to address the challenges posed by the outbreak, allowing "extraordinary measures" never seen in peace time in the UK.

## Coronavirus Legislation

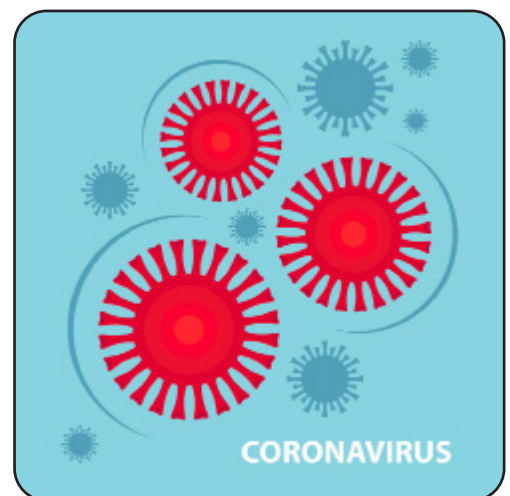
### What's in the emergency legislation?

The legislation gives the government wide-ranging powers unlike any other recent legislation. Ministers have stressed that the powers in the legislation would only be used "when strictly necessary" and would remain in force only for as long as required to respond to the crisis. The powers will be debated and voted on every six months to ensure Parliament is "content with its continuation", ministers have said.

The legislation includes:

- multiple sections aimed at reducing the pressure on frontline sectors, such as by relaxing rules around detention under mental health laws and increasing the use of audio and video links in courts
- measures to restrict events and shut down premises such as pubs
- powers to close the borders in the event that the Border Force is under intense pressure due to staffing shortages.

To support businesses, the legislation allows employers to reclaim statutory sick pay funds from HMRC to help with the burden of increased staff absence. For workers, it will scrap the three-day waiting period so that they can receive the payments from the day they stop working. More details are set out below.



# Health and safety legislation update for April 2020 and beyond

## Coronavirus Act 2020

The Coronavirus Bill was introduced in the House of Commons on 19 March 2020 (Bill 122). It received Royal Assent on 25 March 2020 and is now in force.

The purpose of the Act is to enable the Government to respond to an emergency situation and manage the effects of the Covid-19 pandemic. A severe pandemic could infect up to 80% of the population leading to a reduced workforce, increased pressure on health services and death management processes.

The Act contains temporary measures designed to either amend existing legislative provisions or introduce new statutory powers which are designed to mitigate these impacts.

The Act aims to support Government in the following:

- increasing the available health and social care workforce
- easing the burden on frontline staff
- containing and slowing the virus
- managing the deceased with respect and dignity
- supporting people.



## Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020

These emergency Regulations came into force on 13 March. The Regulations provide that a person who is isolating themselves, as far as possible, from other people, in line with guidance provided by Public Health England, NHS National Services Scotland and Public Health Wales relating to coronavirus, is deemed to be incapable of work, and therefore entitled to Statutory Sick Pay. This, says the government, is essential to ensure people follow government advice regarding self-isolation in order to minimise the risk to public health.

## Coronavirus (Scotland) Act 2020

The Coronavirus (Scotland) Bill received Royal Assent on 6 April 2020.

The purpose of the Act is to enable the Government to respond to an emergency situation and manage the effects of a covid-19 pandemic. It contains temporary measures designed to either amend existing legislative provisions or introduce new statutory powers which are designed to mitigate these impacts.

The measures set out are deemed essential to respond to this current emergency and cover a range of measures intended to ensure that:

- renters are protected while confined to their homes
- the justice system is able to deliver essential services
- public services, business and consumers can still operate despite new restrictions.

# Health and safety legislation update for April 2020 and beyond

## Working Time (Coronavirus) (Amendment) Regulations 2020

The Working Time (Coronavirus) (Amendment) Regulations 2020 amends the Working Time Regulations 1998 to create a further exemption relating specifically to COVID-19. As such, workers who have not taken all of their statutory annual leave entitlement due to COVID-19 will now be able to carry it over into the next 2 leave years, under the measures introduced on 27 March 2020.

Currently, almost all workers are entitled to 28 days holiday including bank holidays each year. However, most of this entitlement cannot be carried between leave years, meaning workers lose their holiday if they do not take it. There is also an obligation on employers to ensure their workers take their statutory entitlement in any one year – failure to do so could result in a financial penalty.

These regulations will allow up to four weeks of unused leave to be carried into the next two leave years, easing the requirements on business to ensure that workers take statutory amount of annual leave in any one year. The aim of the change is so that staff can continue working in the national effort against the coronavirus without losing out on annual leave entitlement.

## Fire Safety Bill

The Fire Safety Bill was introduced in the House of Commons on 19 March 2020 (Bill 121).

Its purpose is to clarify that the Regulatory Reform (Fire Safety) Order 2005 (the Fire Safety Order) applies to external walls (including cladding, balconies and windows) and individual flat entrance doors in multi-occupied residential buildings. This will be of particular interest to:

- building owners
- leaseholders
- managers for multi-occupied residential buildings.

These are likely to be the responsible persons and those who need to ensure that they have assessed the fire safety risks of the premises for which they are responsible, and have taken the necessary fire precautions as a result of that assessment. The Fire Safety Bill will also affirm Fire and Rescue Authorities have the relevant enforcement powers to hold owners or managers to account.

The provisions in the Bill extend and apply to England and Wales.

[Click here](#) for the Bill and the [explanatory notes](#).

MPs will next consider the Bill at Second Reading. The date for second reading has not yet been announced.

## Brexit

Minor amendments have been made to regulations to remove EU references, but the legal requirements for employers remain the same as before Brexit Day (officially 31 January 2020). Therefore, your duties to protect the health and safety of those affected by your work have not yet changed. The UK is now in the 'transition period', which began immediately after Brexit day and is due to end on 31 December 2020. During this 11-month period, the UK will continue to follow all of the EU's rules.

**European Union (Withdrawal Agreement) Act 2020** received Royal Assent on 23 January and has been passed into law. It implements the agreement made between the UK and the EU regarding the arrangements for the withdrawal of the UK from the EU.

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# Health and safety legislation update for April 2020 and beyond

## Grenfell

### Public Inquiry

The Grenfell Tower Inquiry has been suspended for the foreseeable future after the prime minister tightened restrictions on social distancing, in the wake of the Coronavirus crisis.

Prior to the suspension:

The full report on Phase 1 of the Public Inquiry into the fire at Grenfell Tower was published in October 2019.

Phase 2 was underway before the suspension, calling witnesses involved with refurbishing the tower and installing the cladding, including members from Kensington and Chelsea borough council and the private construction companies responsible for the design. It seeks to identify how the building failed so drastically to prevent a disaster of this scale. The hearings are likely to conclude sometime in 2021 with the report to follow.

### Fifth report from the Independent Grenfell Recovery Taskforce

The Independent Grenfell Recovery Taskforce published its final report in March. The Taskforce was set up by the Secretary of State for Communities and Local Government after the Grenfell Tower fire.

It has worked with the Royal Borough of Kensington and Chelsea (RBKC) in developing and putting in place a long-term recovery plan for the bereaved, survivors and wider community.

The report assesses progress made against the eight recommendations from the previous last report and areas where there remain concerns.

The report concludes that whilst there has been progress against all of the recommendations, they are not yet fully implemented. There has been significant progress in re-housing, stronger programme management and leadership has improved. The Council has further to go in demonstrating pace, changing its culture and improving its relationship with the wider community.

## Looking back

A round-up of some key legislation/guidance that has come into force so far this year:

### Carcinogens and Mutagens (Miscellaneous Amendments) Regulations 2020

These Regulations came into force on 2 March 2020.

The purpose of the instrument is to:

- protect workers, and seafarers who are not workers, on United Kingdom ships from the risk of harm from exposure to carcinogenic or mutagenic substances at work
- ensure an equivalent level of protection for workers on ships and seafarers who are not workers, as for workers ashore
- increase protections for those coal mine workers who work below ground in relation to exposure to one carcinogen, namely respirable crystalline silica dust (RCS dust).

The territorial extent of regulations 1 to 6 (affecting merchant shipping and fishing vessels), is the United Kingdom. The territorial application of this instrument, in relation to workers on ships, is all United Kingdom ships whether in the United Kingdom or anywhere else in the world, and all workers on such vessels irrespective of nationality, ethnic origin, religion, gender etc.

The territorial extent of regulation 7 (affecting mines), is Great Britain. The territorial application of this instrument, in relation to mines, is Great Britain, and any premises and activities specified in the Health and Safety at Work etc. Act 1974.

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# Health and safety legislation update for April 2020 and beyond

## **EH40/2005 (updated to 4th Edition)**

In January, the HSE published a revised version of EH40/2005 which details some new and revised Workplace Exposure Limits for 13 carcinogenic substances. These revised limits may mean that you need to review your COSHH risk assessments to ensure exposure is controlled to as low as reasonably practicable.

The new or revised entries are for the following substances:

- Hardwood dusts (including mixed dusts)
- Chromium (VI) compounds
- Refractory ceramic fibers
- Respirable crystalline silica
- Vinyl chloride monomer
- Ethylene oxide
- 1,2-Epoxypropane
- Acrylamide
- 2-Nitropropane
- O-Toluidine
- 1,3-Butadiene
- Hydrazine
- Bromoethylene



## **Welding fume risk**

At the start of the year, the HSE announced that during the period January 2020 to March 2020 they would be inspecting sites across the country which carry out metal fabrication work to check that employers are controlling exposure to welding fumes and metalwork fluids.

HSE has now revised its Control of Substances Hazardous to Health (COSHH) direct advice for welding:

COSHH advice sheets: welding, cutting and surface preparation

- WL0 - Advice for managers
- WL2 - Welding in confined/limited/restricted spaces
- WL3 - Welding fume control
- WL14 - Manual gas and oxy-gas cutting
- WL15 - Plasma arc cutting: fixed equipment
- WL16 - Arc-air gouging (air-carbon arc gouging)
- WL18 - Surface preparation: pressure blasting (small items)
- WL19 - Surface preparation: pressure blasting (medium-sized items)
- WL20 - Surface preparation: pressure blasting (large items)
- WL21 - Weld cleaning with pickling paste.

If you're an employer, you must know what you have to do to make sure your business complies with health and safety law and these enforcement changes.

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# Health and safety legislation update for April 2020 and beyond

## Changes and Amendments to the IATA Dangerous Goods Regulations (DGR) 61st edition 2020

These important changes and amendments were introduced to the 61st edition of the IATA Dangerous Goods Regulations. They came into force on 1st January 2020. These changes are related to the limitation, identification, packing, marking/labelling and documentation of dangerous goods transported by air.

## New Building Safety Regulator

The Government announced that a new building safety regulator, which was established immediately, would be part of the HSE. The purpose of the new building safety regulator is to improve building safety and performance standards, including overseeing a new, more stringent regime for higher risk buildings.

## Building Safety Advice for Building Owners, Including Fire Doors

Issued in January, this document brings together a number of advice notes for building owners on the measures they should take to ensure their buildings are safe.

It covers the safety of external wall systems (including spandrel panels and balconies), smoke control systems, fire doors and what short-term measures should be put in place should a significant safety issue be identified. It additionally reflects the independent panel view that cladding material comprised of ACM (and other metal composites) with an unmodified polyethylene core should not be on residential buildings of any height and should be removed.

## Building Regulations

### *The Future Homes Standard*

This consultation set out the Government plans for the Future Homes Standard to be introduced by 2025. It is the first stage of a two-part consultation about proposed changes to the Building Regulations.

The consultation included proposals for revising the Approved Documents for Part L and F to make them easier to navigate and to support efforts to simplify Approved Documents more generally.

The consultation closed on 7 February 2020; the government is currently analysing feedback.

## Key prosecutions

### £150k fine after equipment falls onto worker

*(Northern Ireland)*

A Co Antrim firm was fined £150,000 after an employee was seriously injured when a heavy piece of equipment weighing around 1 tonne landed on him when it was being unloaded. Briggs Equipment UK Ltd pleaded guilty to five breaches of health and safety legislation.

### Construction firm fined £260k after fall from height

Sir Robert McAlpine Ltd has been sentenced for safety breaches after a worker fell 4.8 metres through an unprotected opening. The worker was attaching straps to a water tank whilst preparing to move it to a lower floor of a water tower at the property, in order to paint the floor. He fell through an opening that did not have fixed edge protection. Sir Robert McAlpine Ltd pleaded guilty to breaching Section 3 (1) of the Health and Safety at Work etc Act 1974, Regulation 3(1) of the Management of Health and Safety at Work Regulations 1999 and Regulation 13(1) of the Construction (Design and Management) Regulations 2015.

# Health and safety legislation update for April 2020 and beyond

## Worker killed on his first day

A vehicle recovery and repair company was sentenced after a new worker suffered fatal crush injuries during maintenance work on his first day on the job. The employee of Albert Road Recovery and Repair, was killed when a rigid vehicle fell suddenly from an inadequate axle support prop at Middlemarch Business Park in Coventry. Now dissolved, Essex-based Albert Road Recovery and Repair was found guilty of breaching s 2(1) of the Health and Safety at Work Act and was fined £20,000, the highest amount available to the court.

## Café boss fined £39k for exposing staff to asbestos

The boss of a café in Teignmouth and his company have been ordered to pay £39,000 in fines and costs after he defied a council ban to retrieve property from the wrecked building. Ralph Brown put staff at risk from asbestos by getting them to return to the beach front Beachcomber café on Teignmouth seafront a week after a fire there in the summer of 2017. Brown resigned as director of the company last year, was fined £1,000 and the company was fined a total of £10,000. They were ordered to pay a total of £28,982.41 costs

## £600,000 fine for Telford yoghurt company

A Telford yoghurt manufacturing company was fined £600,000 after two employees suffered serious injuries following the release of an acidic cleaning solution. One of the employees of T M Telford Dairy Ltd suffered serious burns from contact with one per cent nitric acid cleaning solution that had a temperature of 650C, when working on a faulty valve on a "cleaning in place" system on the company site in Donnington Wood. T M Telford Dairy Ltd of Donnington Wood, Telford pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc Act 1974 and was fined £600,000 with costs of £14,379.45.

## Property management firm fined after fire

A resident who was unable to access an emergency escape route during a fire was found standing on a windowsill hanging from guttering and had to be rescued by firefighters. Management company Harper Stone Properties Ltd was fined after pleading guilty to a series of fire safety failings after the 2016 blaze at the block of flats on Green Lanes in Palmers Green. The company was fined £20,000 and ordered to pay £10,000 costs after London Fire Brigade inspected the property following the fire and highlighted breaches of the Regulatory Reform (Fire Safety) Order 2005.

## Agency worker suffers leg amputation after standing in the wrong place

Waste management company Peter Norris (Haulage) Ltd was fined £140,000 after an agency worker suffered a lower leg amputation after being struck by a moving excavator. The worker, who had been observing a tipping activity in the blind spot of the excavator, had his leg crushed by the machine which had reversed to accommodate another vehicle tipping off waste in an adjacent part of the site. Peter Norris (Haulage) Ltd of Tower Bridge House, St Katharine's Way, London, pleaded guilty to a breach of Section 3(1) of the Health and Safety at Work etc. Act 1974. The company was fined £140,000 and ordered to pay full costs of £9,322.48.

## Young worker seriously injured in fall

A construction firm has been fined after a 17-year-old worker fell more than three metres through an opening for a roof light. He fell through a sheet of insulation covering a skylight when walking across an unmarked and unguarded area on the first floor of a construction site, and suffered multiple broken bones in his right leg and foot. Mark Holland Group Limited of Victoria House, Churchill Road, Leckhampton, Cheltenham pleaded guilty to breaching Regulation 13(1) of the Construction (Design and Management) Regulations 2015 and was fined £55,620.

# Health and safety legislation update for April 2020 and beyond

## €100,000 fine handed down following asbestos exposure

A fine of €100,000 was imposed on McAleer and Rushe Contracts UK Ltd, a UK-registered construction company, following an earlier guilty plea to a charge under the Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations 2006 and 2010. The case arose following the exposure of a number of workers to asbestos fibres at a construction site under the control of McAleer and Rushe Contracts UK Ltd in Dublin city centre on 23 June 2016.

## Viridor fined £400k after vehicle crushes worker

A waste management company pleaded guilty to causing a life changing injury to one of its employees. On 27 February 2017, an employee of Viridor Waste Management Limited was crushed by a reversing 22.5 tonne shovel loader driven by an on-site contractor at Viridor's Crayford Materials Recycling Facility site in Crayford. The HSE found that Viridor Waste Management Limited failed to organise the workplace in such a way that pedestrians and vehicles could circulate in a safe manner. This prosecution is the fourth in four years for this company, two of which related to fatal incidents. Viridor Waste Management Limited of Crayford Creek, Dartford, was found in breach of Regulation 4(1) of the Workplace (Health, Safety and Welfare) Regulations 1992 by virtue of Regulation 17(1). The company was fined £400,000.

## Looking forwards

**Dangerous Substances, Flammable Liquids and Fuels, Retail Stores Regulations 2019** (applicable to Ireland, coming into force 1st April 2020)

**Electrical Safety Standards in the Private Rented Sector, England, Regulations 2020** (applicable to England, coming into force 1st June 2020)

**Safety, Health and Welfare at Work, General Application Amendment, Regulations 2020** (applicable to Ireland, coming into force 1st April 2020)

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