

## Statutory Inspections during Covid-19

The Covid-19 pandemic has introduced a range of challenges for businesses with many restrictions on normal operations. This may include difficulty of getting support from contractors in carrying out statutory inspections, examinations and test of plant and equipment or the need to close premises. Failure to carry out a statutory inspection, examination and test would be a breach of legislation, which could lead to a range of potential enforcement actions including prosecution, although some requirements will not apply when premises are not in use. However, failure to maintain some systems, particularly fire sprinkler systems and detection systems may invalidate the insurance for the premises even if the premises are not in use.

Although the Health and Safety Executive is not carrying out any inspections of industries outside of the major hazard sector, they have made clear that the responsibility for ensuring that statutory inspection, examination and testing of plant and equipment remains with the dutyholder (normally the owner or user).

There is a wide range of legislation that requires statutory inspections, examinations and tests. Many of these will apply across all sectors but some will provide more industry specific requirements. Much of this legislation is goal setting, detailing what is to be achieved without being prescriptive on how it is achieved. Compliance with these goals is often achieved by following HSE and industry guidance, British Standards and manufacturer information. While these may set recommended time frames for maintenance, inspection and testing of plant and equipment, they are not strict statutory requirements, and failure to follow them would not necessarily be a breach of legislation. However, there are some statutory requirements for thorough examination and inspection or testing, for plant such as lifts, lifting equipment, pressure systems and local exhaust ventilation, which include a set time frame e.g. Lifting Operations and Lifting Equipment Regulations 1998 (LOLER), Pressure Systems Safety Regulations 2000 (PSSR) and Control of Substances Hazardous to Health (COSHH).

It should also be noted that a Director may commit an offence under Section 37 of the Health and Safety at Work etc. Act 1974 if there is a breach of legislation, which occurred with their consent, connivance or neglect. This could potentially lead to a prosecution of them as an individual when it has been proven that the company committed an offence due to their consent, connivance or neglect. Consent and connivance both imply knowledge and that a decision was made with such knowledge. The Court of Appeal has considered that consent required the defendant knowing the material facts that constituted the offence and having agreed to conduct business on the basis of those facts; in this case this could include knowingly using plant or equipment that is outside of maintenance.

Engineers working at the premises should follow current guidance on distancing and good hygiene as recommended by Public Health England, as well as any site rules. This is to protect the engineers carrying out the work as well as anyone who may be affected by their work or presence. The HSE advises that where it identifies employers not complying with the relevant Public Health England guidance e.g. not taking appropriate action to socially distance, it will consider actions to improve control such as issue of enforcement notices.

Dutyholders should consider whether it is essential to continue to use plant and equipment in the current circumstances. It is not appropriate for persons to be put at risk to carry out statutory examinations, inspections and tests for plant and equipment, which is not essential for the safe operation of premises. If taking plant out of use is putting vulnerable persons at risk, a careful decision would need to be made and it may be prudent to seek further advice from the Health and Safety Executive for these specific circumstances. It is important that this should only be considered when failure to keep plant and equipment operating poses a genuine risk to vulnerable persons' safety from rather than cause an inconvenience.

It is essential that irrespective of statutory inspection, examination or test that plant and equipment is maintained in good working order and is safe for continued use. If there are any identified faults with plant or equipment, which could lead to a risk from its operation, it should be taken out of use and securely isolated to prevent further use until the necessary repairs have been completed.



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## Key points

- Assess which plant and equipment require statutory inspections and examinations and when these are due.
- Make an assessment to determine if any plant or equipment is essential for safety or operation of the premises – if plant or equipment is not required, it could be taken out of use.
- Liaise with the relevant contractors who carry out statutory inspections and examinations to determine what level of service they can provide (for hospitals, care homes or infrastructure essential to the running of the country, it would be prudent to draw your contractors attention to this).
- If a decision is made to continue to use plant or equipment despite it not having had the relevant statutory examination and inspection in order to safeguard life, it is essential that this reasoning is recorded.
- Inform your insurance company if any planned inspection and testing is not being completed or if premises or part of the premises are closed.
- If closing premises for a period of time, and where it is decided to shut off the power to services such as electrical, gas, water and ventilation systems, plant shutdowns should be undertaken in accordance with manufacturer instructions to ensure that it is done safely. On subsequent restart manufacturer guidance should be followed to ensure that the plant is re-energised safely and to avoid potential damage.
- Follow Public Health England recommendations on hygiene and social distancing (maintain two metres between people).

## Legal Duties

- Construction (Design and management) Regulations 2015 (CDM)
- Control of Substances Hazardous to Health Regulations 2002 and HSE Approved Code of Practice L8
- Control of Substances Hazardous to Health Regulations 2002 (COSHH)
- Electricity at Work Regulations 1989
- Gas Safety (Installation and Use) Regulations 1998
- Health and Safety at Work etc. Act 1974
- Lifting Operations and Lifting Equipment Regulations 1998 (LOLER)
- Pressure Systems Safety Regulations 2000 (PSSR)
- Provision and Use of Work Equipment Regulations 1998 (PUWER)
- Regulatory Reform (Fire Safety) Order 2005
- Work at Height Regulations 2005 (WAH)
- Workplace (Health Safety and Welfare) Regulations 1992.

### Case law

A granite supplier was prosecuted and fined £30,000 and ordered to pay costs of £4,906 for failing to ensure that lifting equipment was examined and maintained to ensure it was safe to use. An HSE investigation identified that the six-monthly statutory examination and inspection of lifting accessories as required under the Lifting Operations and Lifting Equipment Regulations 1998 had not been carried out, and when they had been, the same faults were being identified and the company were not carrying out repairs.

## Other relevant Barbour resources

- Covid-19 Statutory Inspections Technical Guide.

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