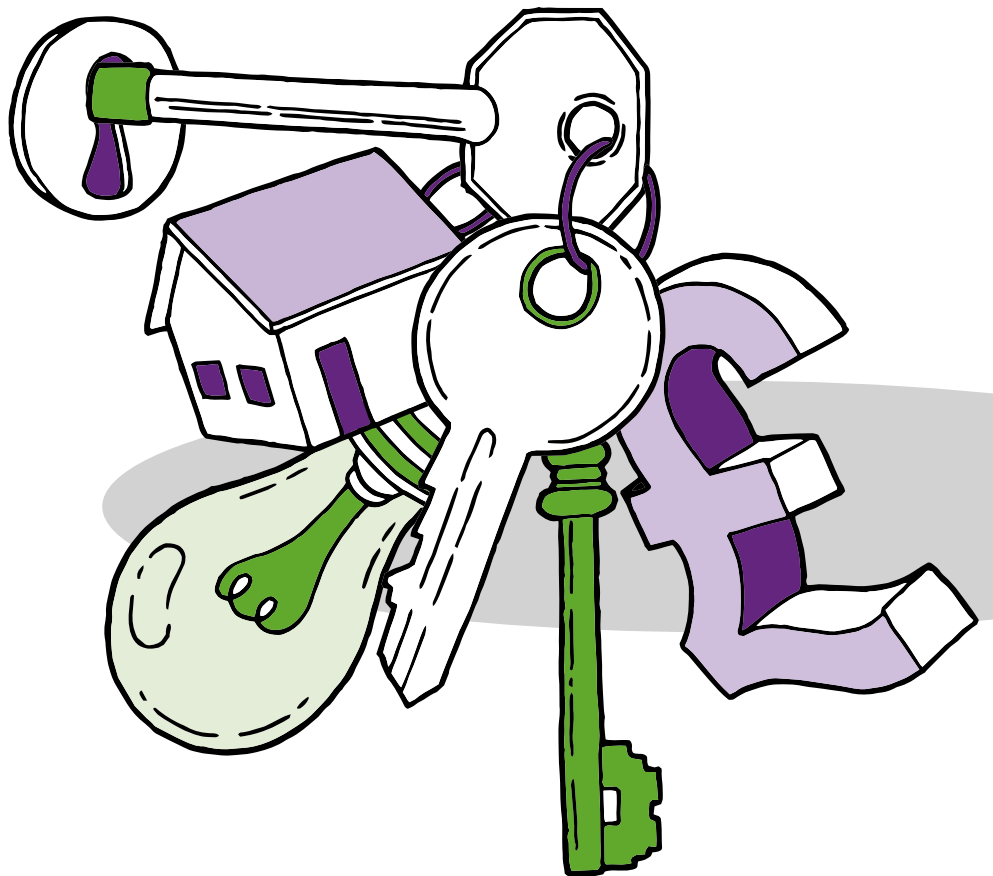


compliance monitoring

in council buildings (Scotland)



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1. Background

Councils have a duty to ensure buildings under their control comply with appropriate statutory, regulatory and corporate standards. This task has become increasingly complex, onerous and difficult in the context of various potentially competing drivers including:

- An increasing burden of legislative and regulatory duties falling on building occupiers.
- Delegation of relevant budgets and responsibilities to individual establishments, notably schools but with ultimate accountability still seen as resting with the corporate body of the council.
- The consequences of increased delegation bringing about a significant reduction in resources retained centrally to develop and monitor compliance with relevant standards.
- Decreasing critical mass and control in delivery of property related services through outsourcing, budget reductions and fragmentation of resources.
- Governance arrangements in establishments are becoming increasingly more complex through the move to shared services and partnering arrangements that do not fit easily with traditional landlord and tenant definitions.

Councils now regularly face challenges in terms of their ability to control and manage what goes on in buildings which they own, and which are used by staff or clients for which they have legal responsibility. An example of this is individual schools, where they have both the freedom and the financial resources to procure significant building projects without calling on the assistance of the local authority.

In addition to this, councils are faced with a wide range of health and safety responsibilities that fall on building occupiers. Even where rigid policies and procedures are set out at corporate level, responsibilities for their implementation are frequently delegated to service managers in individual properties who do not always appreciate the importance of ensuring that regular checks and control measures are carried out and recorded.

Councils are faced with the situation where day to day responsibility and the majority of available resources are delegated to premises level but with the ultimate accountability remaining at corporate level. The corporate property officer can ensure that all relevant policies and procedures are in place, but is faced with the situation of simply not knowing the level of compliance across the whole portfolio for which they have responsibility. The discovery of non-compliance is often only made as a result of an incident on a particular site, by which time it is too late to do anything about it. In addition to the direct consequences of any incident, the council could be faced with damage to its reputation, financial loss, individual officers could face legal proceedings and in the worst case, lives of building users could be lost.

This document highlights the key areas where some sort of compliance monitoring is required, along with some background information. It establishes the status of each area (eg statutory, recommended good practice), suggests good practice frequencies and provides links to further information.

This document is not a legal document and should be read as a guidance note for those responsible for the management of local authority buildings. The aim of the document is to provide a summary of relevant responsibilities and to assist premises managers to organise appropriate testing and inspection of systems and equipment within their premises.

A great deal of the content of this document is generic and can be related to all building types. However, there may be specific items that require monitoring in particular building types for example industrial units, depots, workshops and schools that are not covered in this guide.

This guide is not intended to be exhaustive for all situations and specialist advice should always be taken in areas of uncertainty. This document cannot replace professional advice and premises managers are strongly advised to obtain such advice.

Please note that this document relates to Scottish Law. There are separate guides to cover England and Northern Ireland.

2. Introduction

The basis of British health and safety law is the Health and Safety at Work etc Act 1974 (HSWA). The HSWA sets out the broad principles for managing health and safety legislation in most workplaces. The HSWA came into force on 1 April 1975, and still remains the main health and safety legislation in existence today.

The HSWA places a general duty on employers to “ensure so far as is reasonably practicable the health, safety and welfare at work of all their employees”¹. Section 3 of the Act (the “general duty to others”) also requires employers to conduct their undertaking in a way that does not pose risk to the health and safety of non-employees. This section is designed to give protection to the general public and other non-employees such as children at school and contractors. A local authority’s activities are ones to which Section 3 of the HSWA is likely to be particularly relevant as the majority of premises occupied by local authorities are open to the general public. Section 3 of the HSWA imposes a clear duty on local authorities to conduct their undertakings in such a way as to ensure, so far as is reasonably practicable, the safety of the public using the premises.

In addition to the health and Safety at Work etc. Act 1974, there are Approved Codes of Practice (ACOPs) as well as Health and Safety Executive (HSE) guidance documents plus standards to be considered.

ACOPs are codes of practice which are approved by the HSE with the consent of the secretary of state. ACOPs give guidance with regard to the intentions of Acts and Regulations. Non-compliance with an ACOP is not in itself an offence, although failure to observe an ACOP can be used in evidence in criminal proceedings.

If a contravention of an ACOP relevant to an offence is proved, the court must regard the offence as proved unless the defendant can show that the law was complied with otherwise than by following the ACOP. ACOPs are often regarded as an extension of the law.

HSE guidance documents contain advice on requirements to be followed and actions that an employer should take in order to comply with the law. HSE guidance itself does not have any legal status.

Although following HSE guidance does not in itself guarantee safety at work nor will it prevent prosecution under HSWA. It is regarded as reflecting best practice at the time of its publication. Care should be taken however to ensure that guidance documents referred to are not out of date as they may have been superseded by higher standards of practice.

The Health and Safety (Offences) Act 2008 came into force in January 2009 and amends Section 33 of the Health and Safety at Work etc. Act 1974. The 2008 Act does not introduce any new legal duties or change any existing ones. It does however give the courts greater powers of sentencing including an increase in the level of penalties for those caught not complying with the existing duties.

The main implications of the 2008 Act were:

- to widen the range of offences for which an individual can be imprisoned
- increasing the length of prison sentences from the magistrates’ courts from six months to 12 months (in accordance with the Criminal Justice Act 2003)
- increasing the maximum penalties that can be imposed from £5,000 to £20,000 for breaches in the lower courts (but see below)
- enabling certain offences which could previously only go to trial in lower courts to be triable in either the lower or higher courts.

It should be noted that the maximum sentence for health and safety offences depends on the date that the offence was committed and the court that passes sentence. Section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force on 12 March 2015 and had the effect of increasing the level of most fines for health and safety offences available for magistrates’ courts from £20,000 to an unlimited fine. However, the increase only applies in respect of offences committed after 12 March 2015.

1 The Health and Safety at Work etc Act 1974, www.hse.gov.uk/legislation/hswa.htm

The Corporate Manslaughter and Corporate Homicide Act 2007 introduced a new statutory offence of ‘corporate manslaughter’. This new offence came into force on 6 April 2008. The Corporate Manslaughter and Corporate Homicide Act 2007 does not in itself impose any specific new health and safety duties, but clarifies criminal liabilities of companies, including large organisations, where serious failures in management of health and safety result in a fatality.

The offence of ‘corporate manslaughter’ applies where an organisation owes a duty of care to the victim. For local authorities this ‘duty of care’ falls within the following broad categories:

- to its employees or to others working for it eg contactors
- as the occupier of premises
- when constructing or maintaining buildings, infrastructure or vehicles, or when using plant or vehicles
- in connection with the supply of goods or services
- when carrying out other activities on a commercial basis.

Public policy decisions made by a public authority (including in particular the allocation of public resources or the weighing of competing public interests) are excluded from being a relevant duty of care.

Section 1 (3) of the Corporate Manslaughter and Corporate Homicide Act 2007 states that:

“An organisation is guilty of an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1)”.

Senior management is defined in Section 1 (4) (c) as the persons who play significant roles in:

- the making of decisions about how the whole or a substantial part of its activities are to be managed or organised; or
- the actual managing or organising of the whole or a substantial part of those activities.

A key factor in establishing an individual’s responsibility will be what amounts to a ‘substantial part’ of an organisation’s activities. Senior management could cover both those in direct operational management as well as those in strategic or regulatory compliance roles.

The Corporate Manslaughter and Corporate Homicide Act 2007 does not require any proof of an individual being guilty of an offence. Additionally under the Act failures of a number of senior managers can be aggregated rather than relying on the conduct of one single ‘directing mind’. Local authorities should keep their health and safety management systems under review, in particular, the way in which their activities are managed and organised by senior management.

3. Health and safety in Scotland

Workplace health and safety legislation is a matter which is reserved to the UK Parliament and therefore the power to make or change health and safety legislation has not been devolved to the Scottish Parliament.

Health and safety law is therefore the same across Great Britain however there is a major difference in how crime is prosecuted. In Scotland health and safety executive (HSE) inspectors report to the crown office and procurator fiscal service (COPFS), who decide whether or not to institute criminal proceedings in the public interest. COPFS supports the Health and Safety Commission’s Enforcement Policy Statement. This is not the case in England and Wales where HSE inspectors have the power to prosecute.

In Scotland the way in which reports from the HSE are dealt with by the procurator fiscal, can result in charges put forward by the HSE being rejected as a whole, or in part, or in different charges being created. The fiscal can also accept “not guilty” pleas to some charges when “guilty” pleas are offered to other charges.

There are variations related to health and safety enforcement in Scotland. One such example is, “unlike the position in England and Wales, the prosecution is not entitled to recover the costs of the investigation and an accused person who is acquitted is also unable to recover costs.” – Enforcement Guide (Scotland).

Further guidance:

the HSE website holds useful links to relevant guidance: www.hse.gov.uk/enforce/enforcementguidesc/index.htm

4. Duties on managers and directors

Where an offence is committed under the HSWA by a body corporate with the “consent, connivance or neglect” of any director, manager, secretary or other similar officer, that person may be prosecuted as well as the body corporate. This means that senior personnel such as managers, directors and indeed the corporate property officer within an authority have special responsibilities to ensure that health and safety is properly managed within their organisation and in areas under their remit. Enforcement inspectors tend to look closely at the role of directors and managers and the position of the individual in the management structure when carrying out inspections.

It is worth therefore, considering in a little more detail what is meant by the words ‘consent’, ‘connivance’ and ‘neglect’:

- Consent – the director/manager is aware that an offence is being committed but agrees to it.
- Connivance – the director/manager is equally aware of what is going on and, while not directly encouraging the offence allows it to carry on (effectively turns a blind eye).
- Neglect – the director/manager is under a duty to do something but fails to do so.

In prosecutions under the HSWA, the burden of proof is on the employer to prove that they have done everything ‘reasonably practicable’ to safeguard the health and safety of employees, non-employees or members of the public.

This document only provides a brief explanation of the main areas of compliance monitoring that a premises manager would be expected to be aware of and implement. However, health and safety legislation is becoming less and less prescriptive and does not normally provide specific details with regard to inspection and testing frequencies and regimes. It now focuses more on risk based assessments which can be very much dependent upon individual circumstances such as; the use the building is put to, the user groups, the construction, age and condition of the building, previous maintenance regimes, and the building location. It is therefore often left to the responsible person to decide, once a risk assessment has been carried out, what the control measures should be. Therefore this document merely provides an outline of the law covering this area and for further detail and specific information for individual circumstances it will be necessary to refer to the relevant legislation, ACOP and/or British Standards.

5. The management of health and safety

The general duties imposed by the HSWA are supported by more detailed provisions in the Management of Health and Safety at Work Regulations 1999 (MHSWR). Under the MHSWR (regulation 7), employers need to appoint one or more competent persons to assist in undertaking the measures necessary for compliance with the requirements and prohibitions imposed by legislation. It also requires employers to consider appointing a competent person who is in their employment in preference to one who is not.

Under the MHSWR a person is deemed to be competent if they have an adequate combination of training and experience or knowledge and other qualities.

There are three main areas in terms of what constitutes a competent person:

- core knowledge of the subject
- experience to apply that knowledge correctly
- personal qualities needed to undertake functions effectively.

Once a person is deemed to be competent arrangements must be put in place to ensure that this level of competence is retained eg through regular training.

In order to ensure that the health and safety arrangements within an organisation are effective, there must be systems in place to ensure that the risks which arise from the organisation's activities are identified and controlled.

The Management of Health and Safety at Work Regulations 1999 require employers to manage health and safety by assessing risk.

6. Risk assessment

Where a risk assessment is required it should be "a suitable and sufficient assessment of the risks." A suitable and sufficient assessment of risks would:

- correctly identify any significant risk that is reasonable foreseeable
- enables the assessor to decide what action needs to be taken and what the priorities should be
- be appropriate for the type of activity
- remain valid for a reasonable time
- reflect what employers may reasonably practicably be expected to know about the risks associated with their undertaking.

Risk assessments can be time consuming however, the time and effort put into an assessment should be broadly proportional to the degree of risk. It is difficult to provide precise guidelines as to what would be considered to be "a suitable and sufficient assessment of risks" as this has not yet been tested in a court of law and therefore the aforementioned suggested areas can merely be used as guidance.

A risk assessment must be reviewed and updated where necessary, for example if there are developments that could possibly suggest that the risk assessment is no longer valid, or where the original circumstances have changed to a significant extent, or a new or changed use of the premises is introduced (this need not necessarily be a changed use for the entire premises). An example where a part change of use of a premises may trigger the need for a risk assessment to be reviewed and updated could be where a school introduces a childcare facility or an out of hours club. It is regarded as good practice to carry out a regular review of any risk assessment regardless of whether any changes have occurred. The HSE has produced a useful guide, [Risk assessment, a brief guide to controlling risks in the workplace](#).

As mentioned above, in prosecutions under the HSWA it is up to the defendant to prove that it was not reasonably practicable or practicable to do something. In practice this can be very difficult to satisfy as at the time of the prosecution there is the benefit of hindsight. It is vital therefore that risk assessments and the decisions to implement or reject certain safety measures are correctly recorded and retained for future reference.

Under the Management of Health and Safety Regulations 1999, employers have a duty to ensure that the necessary arrangements are in place to monitor and review any preventative and protective measures that have been implemented. The ACOP recommends that proactive measures are taken for periodically monitoring and reviewing the health and safety management system employed. This implies that there is a need for the organisation to carry out audits on the arrangements that it has put in place.

A safety audit will examine the organisation's systems and the implementation of these systems to determine if and where they are failing. An audit is not the appropriate tool to use if there is no safe system in place, or if it is already known that there are weaknesses in the systems.

7. Duty holder

Throughout this document the term duty holder is used and it is worthwhile defining exactly what is meant by this term. Often the duty holder is the person or organisation that has clear responsibility for the maintenance or repair of the premises (non-domestic) through an explicit agreement such as a lease or contract.

The actual extent of the duty will depend on the specific details of the agreement. However where there is no agreement or contract, or where one exists but is silent on such matters, the duty is placed on whoever has control of the premises, or part of the premises. The duty to manage covers all non-domestic premises, including industrial, commercial, or public buildings such as offices, shops and schools.

In local authorities it can often be unclear who the 'duty holder' is, and in order to avoid confusion there should be a named 'duty holder post' at each establishment.

Where a building is vacant, the duty is placed on whoever has control of that building. Authorities should have clear procedures in place to ensure that there is a recognised duty holder. An appropriate risk assessment should be carried out and the building regularly inspected. The frequency of inspection of vacant buildings may not be the same for all vacant buildings and will need to take into consideration the findings from the risk assessment, (see also Section 36 - vacant buildings).

8. Landlord responsibilities on termination of a lease

As mentioned in Section 7 above the duty holder is the person or organisation that has clear responsibility for the maintenance or repair of premises through an explicit agreement such as a lease or contract. Where an agreement terminates, the landlord should have in place (and have implemented) handover procedures to ensure that the outgoing tenant has complied with all relevant legislation.

9. Fees for intervention

In 2012 the HSE introduced '[Fees for Intervention](#)' (FFI) under the Health and Safety (Fees) Regulations 2012. These place a duty on HSE to recover its costs for carrying out its regulatory duties from those found to be in material breach of health and safety law. This means that if you are found to be in material breach of the law, the HSE can recover its costs from you by charging a fee for the time and effort that is spent on assisting you to put the matter right, investigating and taking enforcement action.

FFI applies to all businesses and organisations inspected by HSE, except for:

- self-employed people who don't put people at risk by their work
- those who are already paying fees to HSE for the work through other arrangements
- those who deliberately work with certain biological agents.

FFI only applies to work carried out by HSE's inspectors and not for other regulators such as local authorities and environmental health officers.

What is a material breach?

A material breach is where a health and safety law has been broken and the inspector determines that it is serious enough for them to notify you in writing. This will either be a notification of contravention, an improvement or prohibition notice, or a prosecution.

Before notifying you in writing, the inspector must apply the principles of HSE's [Enforcement Policy Statement](#) and [Enforcement Management model](#).

Examples of material breaches include: materials containing asbestos in a poor or damaged condition resulting in the potential to release asbestos fibres; not providing guards or effective safety devices to prevent access to dangerous parts of machinery; or lack of water treatment or a monitoring programme.

How will the FFI be calculated?

The fee will be based on the time taken by HSE to identify the material breach, assisting your authority to put it right and investigating and taking enforcement action.

This will include time spent:

- carrying out visits (including all the time on site during which the material breach was identified)
- writing notifications of contraventions, improvement or prohibition notices, and reports
- taking statements
- obtaining specialist support for complex issues.

The time taken for the above will be multiplied by the FFI hourly rate to provide the amount that must be paid by your authority. As at April 2019 the hourly rate is £154 for the latest hourly rate. This is subject to change – see www.hse.gov.uk/fee-for-intervention/index.htm. There may also be actual costs to pay if third party involvement is required.

Further guidance

The HSE has a useful guide, [Guidance on the application of Fee for Intervention \(FFI\)](#).

10. Schedule of activities

Aspect	Service requirement	Statutory/ recommended/ best practice	Frequency/regularity	Links to other information/ documents	Relevant legislation / British Standard / ACOP
Air conditioning systems	Inspection		Three to five years depending on maintenance of system	www.gov.scot/publications/building-standards-technical-handbook-2019-non-domestic/	Building (Scotland) Act 2003 www.sepa.org.uk/regulations/climate-change/fgases-and-ods/ www.gov.uk/government/collections/fluorinated-gas-f-gas-guidance-for-users-producers-and-traders
Asbestos register/ management plans		Statutory	When circumstances dictate eg if changes to the premises have been made	www.hse.gov.uk/services/education/asbestos-faqs.htm www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/650935/Managing_asbestos_in_your_school.pdf	Control of Asbestos Regulations 2012
Burial ground and memorial safety	Risk assessed inspection	Statutory		www.legislation.gov.uk/asp/2016/20/contents/enacted www.gov.scot/publications/burial-ground-memorial-safety-guidance-scotland-local-authorities/pages/1/	Burial and Cremation (Scotland) Act 2016
Car parking and vehicle/ pedestrian segregation	Risk assessment				The Workplace (Health, Safety and Welfare) Regulations 1992 (regulation 17)
Compulsory display of notices	Checks made to ensure correct and up to date information is displayed	The display of most information statutory	Regular checks to ensure information is still on display and is current		Various

Aspect	Service requirement	Statutory/ recommended/ best practice	Frequency/regularity	Links to other information/ documents	Relevant legislation / British Standard / ACOP
Construction (Design and Management) Regulations 2015	On letting of a construction project	Statutory	As required – on letting of a construction project	www.hse.gov.uk/construction/cdm/2015/index.htm	Construction (Design and Management) Regulations 2015
Contractor qualification check	Checks made on contractor's qualifications ie National Inspection Council for Electrical Installation Contracting (NICEIC), Electrical Contractors' Association (ECA)	Statutory or good practice	On appointment of contractor	See also sections on Gas Safety Regulations and Electricity at Work Regulations	Where contractors are appointed directly by the premises manager then checks should be made to ensure that they have the appropriate qualifications to carry out the specified work. This is covered by various pieces of legislation, such as Electricity at Work Regulations 1989, Gas Safety Regulations 1998 etc.
Control of substances hazardous to health (COSHH) risk assessment	Check on storage and use of hazardous materials	Statutory	Annual (best practice)	www.hse.gov.uk/coshh/index.htm COSHH A Brief Guide to the Regulations COSHH Approved Code of Practice (NB this is a priced publication)	The Control of Substance Hazardous to Health Regulations 2002 (as amended)
Duct hygiene (air conditioning, plenum heating)	Inspection and testing	Statutory	Annual inspection and testing – thorough cleaning routine determined from testing / inspection results	HSE guidance: 'Controlling airborne contaminants at work'	Workplace (Health, Safety and Welfare Regulations) 1992 and COSHH LEV Testing

Aspect	Service requirement	Statutory/ recommended/ best practice	Frequency/regularity	Links to other information/ documents	Relevant legislation / British Standard / ACOP
Equality Act 2010	Inspection	Statutory	Checks to be made whenever alteration/changes are made to the building or the external environment	Disability Discrimination Act 1995 Disability Discrimination Act 2005 BS8300	Equality Act 2010 (see also Disability Discrimination Act 1995 and 2005 and BS8300 for background) The Building (Scotland) Regulations 2004 The Building Regulations 2010
Electrical – PAT	Portable appliance testing	Statutory	Variable but can be up to annual	The Provision and Use of Work Equipment Regulations 1998	The Provision and Use of Work Equipment Regulations 1998 (PUWER)
Electrical – fixed electrical installations	Schematic of supply route and primary distribution	Best practice	Annual update	Simple precautions - Work on electrical equipment machinery or installations	Electricity at Work Regulations 1989 and BS 7671 IET Wiring Regulations
	Inspection of fixed wiring and all distribution boards and safety devices	Highly recommended	Annual	The Electricity at Work Regulations 1989 Electrical safety council's best practice guide on periodic inspection reporting	Electricity at Work Regulations 1989 and BS 7671 IEE IET Wiring Regulations
Electrical stage lighting	Testing of all fixed wiring and all distribution boards	Statutory	Five yearly (or more frequently as determined by competent person)		Electricity at Work Regulations 1989 and BS 7671 IEE IET Wiring Regulations
	Testing of all distribution boards in mobile accommodation	Statutory	Annual		Electricity at Work Regulations 1989 and BS 7671 IEE IET Wiring Regulations
Electrical stage lighting	Inspection and testing		Annually inspection and test by competent person		
Electrical stage lighting	Inspection and testing of portable dimmer racks with no fixed cabling, plugs, sockets, flexible leads		Every three months and after every alteration		

Aspect	Service requirement	Statutory/ recommended/ best practice	Frequency/regularity	Links to other information/ documents	Relevant legislation / British Standard / ACOP
Emergency lighting	Inspection and testing of system	Statutory	Variable but recommend monthly checks by premises manager to check functionality, RCD (residual current device (circuit breaker)) test. To include stop button functional test. <ul style="list-style-type: none"> ■ Every six months – one hour duration test ■ Annual full duration test 		Electricity at Work Regulations 1989 and Regulatory Reform (Fire Safety) Order 2005 BS 5266 Part 1:2016
Extraction systems including fume cupboards	Inspection and testing of dust extraction equipment	Best practice	Annual		Control of Substances Hazardous to Health 2002 (as amended)
	Local exhaust ventilation	Statutory	Every 14 months	HSE.GOV.UK Controlling airborne contaminants at work GOV.UK Bulletin 101 – Guidelines on ventilation, thermal comfort, and air quality in schools	Control of Substance Hazardous to Health 2002 (as amended) British Standard BS EN 14175-3 applies to the installation of fume cupboards
Fire risk assessment and emergency plan	Fire risk assessment	Statutory	Whenever any changes are made that will impact on the original assessment	Fire Scotland Act (as amended) 2005 Scottish Government Publication: Fire Safety Guidance Booklet: Are you aware of your responsibilities?	Fire Safety (Scotland) Act 2005 as amended and Fire Safety (Scotland) Regulations 2006 Fire Safety (Scotland) Amendment Regulations 2010
Fire detection and alarm systems	Inspection and testing of system	Best practice	Daily and weekly test with formal quarterly and annual inspections by competent person	See links under fire risk assessment	Fire Safety (Scotland) Act 2005 as amended and Fire Safety (Scotland) Regulations 2006 BS 5839-1:2017 Fire detection and fire alarm systems for buildings. Code of practice for design, installation, commissioning and maintenance of systems in non-domestic premises

Aspect	Service requirement	Statutory/ recommended/ best practice	Frequency/regularity	Links to other information/ documents	Relevant legislation / British Standard / ACOP
Fire doors	Inspection		Weekly	See links under fire risk assessment	Fire Safety (Scotland) Act 2005 as amended and Fire Safety (Scotland) Regulations 2006
Fire fighting equipment	Inspection and maintenance extinguishers	Best practice	Monthly	See links under fire risk assessment	Fire Safety (Scotland) Act 2005 as amended and Fire Safety (Scotland) Regulations 2006
	Inspection and testing of fire sprinkler system	Best practice	Annual, although further checks may be necessary for specific insurance requirements	See links under fire risk assessment	Fire Safety (Scotland) Act 2005 as amended and Fire Safety (Scotland) Regulations 2006
First aid equipment	Inspection		Regular checks to ensure no equipment is outside of expiry date	HSE – First aid at work	Health and Safety (First Aid) Regulations 1981 as amended by the Health and Safety (Miscellaneous Amendment) Regulations 2002
Fuel oil storage	Plan of primary pipe work and main isolation points	Best practice	Annual update	Scottish Government: Guidance Note for the Water Environment (Oil Storage) (Scotland) Regulations 2006	The Water Environment (Oil Storage) (Scotland) Regulations 2006
	Visual condition inspection	Recommended	Annual	www.gov.uk/guidance/storing-oil-at-a-home-or-business	The Water Environment (Oil Storage) (Scotland) Regulations 2006
	Maintenance checks on all pipe work devices	Best practice	Annual	www.hse.gov.uk/pubns/books/156.htm	The Water Environment (Oil Storage) (Scotland) Regulations 2006
Gas safety	Gas safety inspections and certificates	Statutory			The Gas Safety (Installations and Use) Regulations 1998 The Gas Safety (Installation and Use) (Amendment) 2018
Gas appliance	Identification and location	Statutory	Annual updating		The Gas Safety (Installations and Use) Regulations 1998 The Gas Safety (Installation and Use) (Amendment) 2018

Aspect	Service requirement	Statutory/ recommended/ best practice	Frequency/regularity	Links to other information/ documents	Relevant legislation / British Standard / ACOP
Gas pipe work	Servicing for efficient operation, combustion	Recommended for all premises Statutory duty on landlords	Annual servicing to include check on ventilation, adequate flues, heat input combustion conformance, appliance is stable and safety devices working		The Gas Safety (Installations and Use) Regulations 1998 The Gas Safety (Installation and Use) (Amendment) 2018
	Visual condition inspection and testing if required	Recommended	Annual		The Gas Safety (Installations and Use) Regulations 1998 The Gas Safety (Installation and Use) (Amendment) 2018
Glazing	Checks	Statutory	Initial survey of building to identify areas where safety glazing should be in place, ongoing checks that any glazing replacements are with safety glass as required		Workplace (Health, Safety and Welfare Regulations 1992) and Building Regulation Part M
Hydrotherapy pools and swimming pools	Risk assessment			The Health and Safety Executive publication HSG179 Managing health and safety in swimming pools (HSG179)	Health and Safety Act Work Act 1974
Lifts and hoists	Thorough examination, full maintenance and inspection	Statutory	Every six months minimum for passenger lifts Every 12 months for goods lifts After substantial and significant changes have been made	The Lifting Operations and Lifting Equipment Regulations 1998 HSE Publications: Simple guide to the Lifting Operations and Lifting Equipment Regulations 1998 Guidance: Thorough examination and testing of lifts	Lift Operations and Lifting Equipment Regulations 1998

Aspect	Service requirement	Statutory/ recommended/ best practice	Frequency/regularity	Links to other information/ documents	Relevant legislation / British Standard / ACOP
Lightning conductors	Inspection and testing	Best practice	Every 11 months full test to assess adequacy of earthing, evidence of corrosion, alterations to structure (by competent persons to BS 7430)	HSE guidance: 'Earthing'	BS 6551, 1992
Mobile buildings, stability	Structural inspection of mobile accommodation	Best practice	Annual (depending on age)		BRE Digest 374 1992
Playground & gymnasium equipment – fixed	Inspection and testing	Best practice	Annual		BS EN 1176-1:2017 BS 1892-4:2003 BS 7188:1998+A2:2009, BS 7044-4:199
Radon	Risk assessment			www.hse.gov.uk/pubns/books/l121.htm	Ionising Radiation Regulations 2017
Shared premises	Risk assessment		As required		Regulation 11 of the Management of Health and Safety at work Regulations 1999
Slips and trips	Risk assessment		As required	www.hse.gov.uk/slips/index.htm	The Workplace (Health and Safety and Welfare) Regulations 1992
Tree safety	Risk assessment		Annual and following any works that could have caused damage and high winds	www.hse.gov.uk/foi/ internalops/sims/ag_ food/010705.htm www.forestresearch.gov.uk/ documents/6944/fcpg13.pdf	Health and Safety at Work etc Act 1974 Occupiers Liability Act 1957 and 1984
Vacant buildings	Risk assessment		As required		Occupiers Liability Act 1984

Aspect	Service requirement	Statutory/ recommended/ best practice	Frequency/regularity	Links to other information/ documents	Relevant legislation / British Standard / ACOP
Water hygiene and safety (Legionnaires' disease etc)	Risk assessment	Statutory	Risk assessments reviewed regularly or in any case if there is a reason to believe original assessment is no longer valid	HSE Legionnaires' Disease – further information	Health and Safety Act Work Act 1974 Control of Substances Hazardous to Health Regulations 2002 (COSHH) The Notification of Cooling Towers and Evaporative Condensers Regulations Legionnaires' Disease – The Control of Legionella Bacteria in Water Systems Approved Code of Practice
Water hygiene and safety Legionnaires' disease Water systems Cold water systems	Plan of primary pipe work and main isolation points	Best practice	Annual updating		Health and Safety Act Work Act 1974
	Visual condition and compliance inspection	Recommended	Annual		Control of Substances Hazardous to Health Regulations 2002 (COSHH)
	Tank condition and compliance inspection	Statutory	Annual		The Notification of Cooling Towers and Evaporative Condensers Regulations 1992
	Water quality check	By exception from supply company	By exception		Legionnaires' Disease – The Control of Legionella Bacteria in Water Systems Approved Code of Practice BS 8580-1:2019
Water hygiene and safety Legionnaires' disease Water systems – low pressure hot water systems	Visual condition inspection	Recommended	Annual		Health and Safety Act Work Act 1974
	Maintenance checks on all pipe work devices (strainer, valves, blending valves, pumps etc)	Best practice	Annual updating		Control of Substances Hazardous to Health Regulations 2002 (COSHH) Legionnaires' Disease – The Control of Legionella Bacteria in Water Systems Approved Code of Practice

Aspect	Service requirement	Statutory/ recommended/ best practice	Frequency/regularity	Links to other information/ documents	Relevant legislation / British Standard / ACOF
Water hygiene and safety Legionnaires' disease Water systems	Water systems risk assessment	Statutory	Bi-annual review, any change to the system to initiate a review or user can initiate		Health and Safety Act Work Act 1974 Control of Substances Hazardous to Health Regulations 2002 (COSHH) Legionnaires' Disease – The Control of Legionella Bacteria in Water Systems Approved Code of Practice BS 8580-1: 2019
	Water quality checks	Statutory	Subject to risk assessment		
Water and surface temperature	Water and surface temperature	Statutory	Risk assessment	www.hse.gov.uk/pubns/hsis6.htm	Education (School Premises Regulations) 1999 Health and Safety at Work etc Act 1974 Management of Health and Safety at Work Regulations Provision and Use of Work Equipment Regulations 1998
Workstation assessment	Analysis of workstation of display screen equipment user to assess any health and safety risks	Statutory	Change of equipment environment, employee or relocation of workstation	www.hse.gov.uk/msd/dse	Health and Safety (Display Screen Equipment) Regulations 1992 as amended by the Health and Safety (Miscellaneous Amendments) Regulations 2002
Working at height	Risk assessment			The Work at Height Regulations 2005 HSE Guide to Work at Height Regulations 2005	Work at Height Regulations 2005 Management of Health and Safety Work Regulations 1999 The Workplace (Health, Safety and Welfare) Regulations 1992
Working at height – safety cradles	Inspection and testing	Statutory	Annual	www.hse.gov.uk/pubns/priced/ l113.pdf www.hse.gov.uk/pubns/priced/ l24.pdf	Lifting Operations and Lifting Equipment Regulations 1998

11. Air-conditioning systems

Under the Energy Performance of Buildings Directive there is a requirement for the inspection of air conditioning systems over 12kW. The legislation which makes the implementation of the Directive possible is the Building (Scotland) Act 2003. The requirement for the inspection of air conditioning units came into force on 1 May 2007. Guidance on the process for inspection and reporting is held in Chartered Institution of Building Services (CIBSE) document TM44.

This inspection covers the assessment of the efficiency and sizing of the system compared to the cooling requirements of the building. Inspections may only be carried out by organisations that have entered into a protocol with The Scottish Government.

Inspections of existing buildings are being phased in as follows:

- For systems with an effective output of more than 250kW – from 4 January 2009, inspections to be completed by 4 January 2011
- For all other systems over 12kW from 4 January 2011.

For completely new air conditioning systems, the first inspection should be not later than five years after the acceptance of the completion of the commissioning of the system to standard 6.7 (see *Technical Handbooks* (5, 6) section 6, 'Commissioning building services'). For existing systems, the accredited expert doing the inspection has the discretion to set the frequency of inspections ranging from three years for poorly maintained and inefficient systems up to five years for those systems that are well maintained and demonstrate excellent levels of efficiency.

The following issues should be considered in setting an inspection of systems more frequently than five years:

- (a) inefficiency of system
- (b) significantly oversized in relation to the cooling requirements
- (c) evidence that the design is not fit for purpose
- (d) evidence of poor installation
- (e) evidence of lack of maintenance
- (f) control system out of adjustment
- (g) age of system.

It should be noted that a number of individual systems each 12kW or less, but taken together totalling more than 12kW, within one building or fire-separated part of a building, would only qualify for inspection if they are linked by way of a central control.

Further information is available from the Scottish Government: [Inspection of Air Conditioning Systems over 12kW](#).

Under the Fluorinated Greenhouse Gases Regulations 2015, if you have certain equipment you are responsible for getting it checked for fluorinated gas (F gases) leaks. Such equipment includes stationary air-conditioning equipment. Inspection intervals will depend on the amount of F gas in the equipment and how much the F gas contributes to global warming but ranges from three monthly to annually. Government has published guidance to help comply with the regulations.

Fluorinated gas: guidance for users. www.gov.uk/government/collections/fluorinated-gas-f-gas-guidance-for-users-producers-and-traders

Scottish Environmental Protection Agency provide information on regulation related to F gases. www.sepa.org.uk/regulations/climate-change/fgases-and-ods

12. Asbestos

The Control of Asbestos Regulations 2012 (CAR) came into force on 6 April 2012. These regulations update previous asbestos regulations to take account of the European Commission's view that the UK had not fully implemented the EU Directive on exposure to asbestos (Directive 2009/148/EC).

In practice the changes are fairly limited. They mean that some types of non-licensed work with asbestos now have additional requirements, ie notification of work, medical surveillance and record keeping. All other requirements remain unchanged.

The duty to manage asbestos is contained in Regulation 4 of the Control of Asbestos Regulations 2012. It requires a duty holder to:

- take reasonable steps to find out if there are materials containing asbestos in non-domestic premises, and if so, its amount, where it is and what condition it is in
- presume materials contain asbestos unless there is strong evidence that they do not
- make and keep up to date a record of the location and condition of the asbestos containing materials or materials which are presumed to contain asbestos
- assess the risk of anyone being exposed to fibres from the materials identified
- prepare a plan that sets out in detail how the risks from these materials will be managed
- take necessary steps to put the plan into action
- periodically review and monitor the plan and the arrangements to act on it so that the plan remains relevant and up to date
- provide information on the location and condition of the materials to anyone who is liable to work on or disturb them.

There is also a requirement on anyone to co-operate as far as necessary to allow the duty holder to comply with the requirements.

Under Regulation 4 the duty holder must ensure that a suitable and sufficient assessment is undertaken to determine whether asbestos is on the premises and should take into account the likely condition of any asbestos. Once the assessment has been completed, then the conclusions from the assessment and any subsequent reviews must be recorded. In addition to this the duty holder must also consider building plans, other relevant information and the age of the premises, and inspect reasonably accessible parts of the premises.

Where asbestos is identified or suspected the duty holder must:

- determine the risk from asbestos
- prepare a written plan identifying the areas of the premises concerned and the measures necessary for managing the asbestos risk
- implement the measures in the plan
- record the measures taken to implement the plan.

These measures should include means for:

- monitoring the condition of any asbestos or suspected asbestos
- maintaining the asbestos or safely removing it
- providing information which identifies the location and condition of identified asbestos to any person likely to disturb it. This would include caretakers and contractors working on the premises, the information must also be made available to the emergency services.

The assessment and written plan must both be reviewed if they become invalid or if there have been significant changes to the premises. (The ACOP states that as a minimum, the management plan, including records and drawings, should be reviewed every 12 months).

Under Regulation 5, employers must not undertake work in demolition, maintenance or any other work which exposes or is liable to expose employees to asbestos in respect of any premise unless either:

- a) that employer has carried out a suitable and sufficient assessment as to whether asbestos, what type of asbestos, contained in what material and in what condition is present or is liable to be present in those premises; or

b) if there is doubt as to whether asbestos is present in those premises, that employer:

- i. assumes that asbestos is present, and that it is not chrysotile alone, and
- ii. observes the applicable provisions of the regulations.

Under Regulation 6, an employer must not carry out work which is liable to expose employees to asbestos unless the employer has:

- a) made a suitable and sufficient assessment of the risk created by that exposure to the health of those employees and of the steps that need to be taken to meet the requirements of these regulations
- b) recorded the significant findings of that risk assessment as soon as is practicable after the risk assessment is made; and
- c) implemented the steps referred to in a) above.

The assessment described above should:

- identify the type of asbestos to which the employee is liable to be exposed
- assess the nature and degree of likely exposure
- consider the effectiveness of control measures
- take into account the results of air monitoring and medical surveillance
- identify the measure necessary to prevent or reduce asbestos exposure to the lowest level reasonably practicable.

Any significant findings from this assessment should be recorded and then reviewed regularly. In particular, if there are any reasons to suspect that the situation has changed or to suggest that the original assessment was inaccurate, then the assessment should be reviewed as soon as possible.

Under Regulation 7, employers must prepare a written plan of work prior to any work commencing that may expose their employees to asbestos. This plan must include details of how the asbestos work will be undertaken and a copy of the plan must be kept on the premises.

It should be noted that under Regulations 8 and 9 work with asbestos cannot be carried out unless the employer holds a licence granted by the HSE. Further details are on the HSE website.

Under Regulation 10, employees that are liable to be exposed to asbestos, who supervise asbestos work or who undertake work in connection with their employer's duties under the regulations must be given adequate and regular information, instruction and training. This is to ensure their own and other employees' safety.

Where reasonably practicable employers must prevent employee exposure to asbestos. However if this is not possible then under Regulation 11 exposure must be reduced to the lowest level reasonably practicable and the number of employees likely to be exposed reduced to the lowest number that is reasonably practicable.

As mentioned earlier the CAR 2012 introduced some changes in that some non-licensed work needs to be notified to the relevant enforcing authority. There is also a requirement from 6 April 2012 to keep brief written records of non-licensed work which has to be notified eg copy of the notification with a list of workers on the job, plus the level of likely exposure of those workers to asbestos. This does not require air monitoring on every job, if an estimate of degree of exposure can be made based on experience of similar past tasks or published guidance.

Additionally, the CAR 2012 requires that by April 2015, all workers/self-employed doing notifiable non-licensed work with asbestos must be under health surveillance by a doctor. Workers who are already under health surveillance for licensed work need no have another medical examination for non-licensed work. However medicals for notifiable non-licensed work are not acceptable for those doing licensed work.

The above is only meant to provide an outline of the requirements of the Control of Asbestos Regulations 2012 and does not cover the detailed requirements for employees and contractors working with asbestos.

Further guidance:

The Health and Safety Executive www.hse.gov.uk/asbestos

Asbestos management in schools, Education and Skills Funding Agency <https://www.gov.uk/government/publications/asbestos-management-in-schools--2>

Managing and Working with Asbestos: Control of Asbestos Regulations 2012. Approved Code of Practice and Guidance, L143. ISBN 9780717666188.

Asbestos Essentials: A Task Manual for Building, Maintenance and Allied Trades of Non-licensed Asbestos Work, HSG210 (2017). ISBN 9780717666652.

13. Burial ground and memorial safety

Burial authorities in Scotland under the Burial and Cremation (Scotland) Act 2016 have a general duty of care to maintain memorials, burial grounds and related structures. Staff and visitor safety is a statutory obligation for a local authority under Health and Safety at Work Act 1974 – as amended and the Occupier's Liability (Scotland) Act 1960.

Memorial stability is to be inspected with processes including assessment, recording and reporting. All 32 Scottish local authorities are burial authorities. Other interested organisations concerned with memorial safety are private burial authorities as well as other statutory bodies such as Historic Environment Scotland. Additional groups include archaeological and conservation societies, cemetery friends and local community groups.

For more information see Scottish Government advice and guidance: www.gov.scot/publications/burial-ground-memorial-safety-guidance-scotlands-local-authorities

14. Car parking and pedestrian/vehicle segregation

The Workplace (Health, Safety and Welfare) Regulations 1992 (Regulation 17) covers the layout of traffic routes, traffic management systems and the provision of signage. The main areas of the regulation are:

- Every workplace shall be organised in such a way that pedestrians and vehicles can circulate in a safe manner.
- Traffic routes in a workplace shall be suitable for the persons or vehicles using them, sufficient in number, in suitable positions and of sufficient size. It may sometimes be difficult to provide 'sufficient separation' between pedestrians and vehicles where layouts and traffic routes have already been constructed, therefore the regulation is qualified by the statement 'so far as is reasonably practicable'.
- All traffic routes shall be suitably indicated, where necessary, for reasons of health and safety.

A risk assessment should therefore be carried out to include, traffic movement within the site, pedestrian/vehicle segregation, car parking and how the routes are signed. This risk assessment should consider these areas at different key times of the day eg if the property is a school, at pupil arrival/departure times.

15. Compulsory display of notices

There are a number of notices and documents that employers have to display on their notice board or anywhere where the information is easily accessible to employees. There are some very specific requirements depending on the type of property however in general terms employers are required to post the following:

- Details of the person in charge of the first aid box.
- Any information necessary to comply with fire safety legislation.
- A certificate of insurance as required by the Employers Liability (Compulsory Insurance) Act 1969.
- A thermometer on each floor.
- A copy or abstract of relevant regulations (where still relevant).

16. Construction (Design and Management) Regulations 2015

The Construction (Design and Management) Regulations 2015 (CDM 2015) came into force on 6 April 2015. They replace the previous Construction (Design and Management) Regulations 2007.

The CDM Regulations cover the management of health, safety and welfare when carrying out construction projects. They have far-reaching implications for virtually everyone involved in a construction project. These 'duty holders' have specific responsibilities, in particular the client.

Under the CDM Regulations, a client is defined as any person for whom a project is carried out. This is irrespective of whether the project is carried out by another person or in-house.

For any project, the client has an overriding duty to ensure that arrangement made for managing it would be carried out, as far as it reasonably practicable, without risk to the health and safety of any person including members of the public.

The client must also ensure that there are suitable welfare arrangements for the workers and if the work involves the construction of a building that will be used as a workplace, the client must ensure that once completed it will comply with the Workplace (Health, Safety and Welfare) Regulations 1992.

It is important that those managing premises have an understanding of the requirements of CDM Regulations, however this is a detailed subject and requires specialist knowledge.

This section refers to The Construction (Design and Management) Regulation 2015 which replaced the CDM 2007 Regulations. The CDM 2015 Regulations are in force, but it is useful to be aware of the main changes introduced. These included:

- simplifying the ACOP, complemented by the HSE and joint HSE-industry guidance
- removing the role of the CDM co-ordinator and replacing with that of the principal designer
- replacement of the detailed competence requirements with a more general framework based on information, instruction, training and supervision
- changing notification and threshold requirements
- increased focus on client responsibilities (and removal of domestic client exemption).

17. Contractor qualification checks and duty to manage

Where a person responsible for the management of a local authority property appoints a contractor, this should be carried out in accordance with the local authority's procurement procedures, or in consultation with the local authority, to ascertain whether call-off contracts are already in place to cover such areas of work. Where this is not possible, that person must ensure that the contractor that is proposed for carrying out the work has a current health and safety policy approved by the local authority, has current suitable insurances in place, and where necessary has the appropriate qualifications, for example Gas Safe Register or NICIEC registered for work in connection with gas and electrical installations respectively.

Although contractors have their own responsibilities under health and safety legislation, those who employ contractors also have a responsibility for their contractor's health and safety, since in most cases it is the employer who controls the workplaces and in many cases dictate the working practices. It is the extent of this control that determines the extent of the responsibilities of the employer toward the contractor.

Contractors should have a thorough appreciation of the standards and performance that are expected. From the outset they should be familiar with the health and safety policy statement, and relevant procedures. This should include:

- any particular hazards of the workplace and work activities
- how to report accidents/incidents

- emergency procedures including fire safety arrangements.

Managers and supervisors within the authority with responsibility for managing contract work, need to know all details of the project and its agreed safety measures.

18. Control of substances hazardous to health

The Control of Substances Hazardous to Health Regulations 2002 (COSHH) (as amended) place a duty on employers to control the risks to employees and others which arise from exposure to substances hazardous to their health that are associated with the employers' work activities. This can be done through identifying, assessing and where possible preventing or adequately controlling exposure to the hazardous substances. The purpose of the regulation is to prevent ill health.

The [Control of Substances Hazardous to Health \(Amendment\) Regulation 2004](#) (COSHH 2004) introduced changes to the regulations; a simpler exposure limit was introduced so that workplace exposure limits replaced occupational exposure standards and maximum exposure limits.

In addition to this eight new principles of good practice were introduced by the amendment regulations which apply regardless of whether a substance has an occupational exposure standard or maximum exposure limit.

From April 2005 employers are required to:

- apply the eight principle of good practice to control substances hazardous to health
- ensure that the workplace exposure limit is not exceeded
- ensure that exposure to substances which can cause occupation asthma, cancer or damage to genes that can be passed on from one generation to another are reduced as low as is reasonably practicable.

COSHH (Schedule 2A) sets out the eight principles of good practice that employers should adhere to:

1. Design and operate processes and activities to minimise emission, release and spread of substances hazardous to health.
2. Take into account all relevant routes of exposure inhalation, skin absorption and ingestion when developing control measures.
3. Control exposure by measures that are proportionate to the health risk.
4. Choose the most effective and reliable control options which minimise the escape and spread of substances hazardous to health.
5. Where adequate control of exposure cannot be achieved by other means, provide, in combination with other control measures, suitable personal protective equipment.
6. Check and review regularly all elements of control measures for their continuing effectiveness.
7. Inform and train all employees on the hazards and risks from the substances with which they work, and the use of control measures developed to minimise the risks.
8. Ensure that the introduction of control measures does not increase the overall risk to health and safety.

Further guidance:

COSHH [A brief guide to the regulations](#), HSE

19. Equality Act 2010

The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. It replaced previous anti-discrimination laws with a single Act, making the law easier to understand and strengthening protection in some situations. It is however useful to understand the earlier legislation.

The [Disability Discrimination Act 1995](#) (DDA) was introduced to prevent discrimination in employment, provision of goods, services and facilities, the selling or letting of land and property, education and transport. Under Part 111 of the DDA service providers had to address any physical features which make it impossible or unreasonably difficult for disabled people to use their services. This Act was significantly extended by the Disability Discrimination Act 2005, which gave disabled people rights in the areas of:

- employment
- education
- access to goods, facilities and services, including larger private clubs and transport services
- buying or renting land or property, including making it easier for disabled people to rent property and for tenants to make disability-related adaptations
- functions of public bodies, for example issuing of licenses.

The DDA Act 2005 and other legislation has now been superseded by the Equality Act 2010.

The Equality Act 2010 was intended to simplify the numerous regulations, statutory orders and codes within the DDA in connection with the duty to make reasonable adjustments to physical features at premises. However in reality the Equality Act has not made any real changes to the requirements on 'service providers.'

It is therefore worth considering first the requirements under DDA before considering any 'changes' introduced through the Equality Act.

The DDA was aimed at protecting the rights of a wide range of disabled people besides wheelchair users, including:

- blind and partially sighted people
- deaf and hearing-impaired people
- facially disfigured people
- people with long-term illnesses or hidden impairments, for example, those with arthritis, asthma, diabetes, or Alzheimer's disease
- people with learning disabilities, for example, those with dyslexia
- people with mental illness.

Under the DDA, service providers had to make reasonable adjustments to their premises to overcome physical barriers to access. They had to ensure that as far as possible, disabled customers were treated in the same way as non-disabled customers.

Service providers and those responsible for managing buildings needed to ensure that all customers could use their service effectively. An access audit had to be carried out to identify those areas where there were physical features which made it impossible or unreasonably difficult for a disabled person to use the service, whether or not this was related to the building from which the service was being provided.

The access audit still forms the basis of an action plan to consider issues such as physical constraints, alternative ways of providing the service and the reasonableness of making the adjustments identified by the access audit.

This may include the provision of any necessary extra help or special equipment as well as for example, adjustments to stairways; building entrances and exits; internal and external doors; gates; toilet, washing, and public facilities etc.

The service provider can remove, alter, or bypass the physical feature causing difficulty to a disabled person. Alternatively the service could be provided in an alternative way, this may include management solutions.

Whichever course of action the service provider decides to take the action plan should contain clear details of what is being done and what is not in terms of adjustments and the reasoning behind such decisions. This will help in the event of a customer complaint and assist in monitoring the premises should the facilities or services change in the future.

The access audit and action plan should be reviewed if there are alterations made to the premises or if the use of the premises is changed.

Under the Equality Act 2010, a single 'objective justification test' has been introduced although the requirement to make reasonable adjustments still remains. Through the single 'objective justification test' the organisation must show that its conduct was a 'proportionate means of achieving a legitimate aim.' It is difficult to carry out a direct comparison with the requirements under the DDA.

The [Equality Act 2010 Code of Practice](#) gives more information on what is a legitimate aim:

- It should be legal.
- It should not be discriminatory in itself.
- It must represent a real, objective consideration.
- A service provider solely aiming to reduce costs cannot expect to satisfy the test.

While the Equality Act does not define term 'proportionate,' the Code of Practice gives more information:

- European law views treatment as proportionate if it is an 'appropriate and necessary' means of achieving a legitimate aim.
- 'Necessary' does not mean that the action is the only possible way of achieving the legitimate aim, it is sufficient that the same aim could not be achieved by less discriminatory means.
- If there is a greater financial cost of providing a less discriminatory approach, then this in itself cannot provide justification for the course of action taken. Cost can only be taken into account as part of the justification for the course of action taken if there are other good reasons for adopting it.

The Equality Act 2010 has made no real change to the requirements on the duty holders to make reasonable adjustments for disabled persons and the duty is set out in Part 2 of the Act which is summarised below:

- Where a provision, criterion or practice puts a disabled person at a substantial disadvantage compared with people who are not disabled, the duty holder should take reasonable steps to avoid the disadvantage
- Where a physical feature puts a disabled person at a substantial disadvantage compared with people who are not disabled, the duty holder should take reasonable steps to avoid the disadvantage
- Where a disabled person would be put at a substantial disadvantage, compared with people who are not disabled, without the provision of an auxiliary aid, the duty holder should take reasonable steps to provide the auxiliary aid.

When considering if an adjustment is reasonable, typical factors that should be considered include the:

- type of business
- size (and turnover) of the business
- cost of the adjustment
- level of disruption to the business while the work is being carried out
- practicality of carrying out the adjustment
- level of benefit to the disabled customers and employees.

If a building is listed, then the planning issues associated with this can override the requirement to make reasonable adjustments.

As under the DDA an access audit of premises will form the basis of an action plan to consider issues such as physical constraints, alternative ways of providing the service and the reasonableness of making the adjustments identified by the access audit (see earlier).

20. Electrical safety

Electrical safety in all work places and/or work activities is specifically legislated for over and above the general duty of care owed by employers to their employees and members of the public under Sections 2 and 3 of the Health and Safety at Work Act (1974). This expansion of responsibility for electrical safety was brought about by The Electricity at Work Regulations 1989 which came into effect on 1 April 1990.

Portable Appliance Testing (PAT)

A portable electrical appliance can be defined as an electrical appliance which is normally connected to a lead and a plug and which can usually be easily moved.

The Provision and Use of Work Equipment Regulations 1998 (PUWER) covers the safe provision and use of all work equipment including portable electrical appliances. The maintenance of such equipment falls under the Electricity at Work Regulations 1989 (EWR) (PAT testing) and is part of the duty holders responsibility under PUWER.

There are three main electrical equipment classifications: Class I (earthed), Class II (double insulated) and Class III.

- Class I equipment has its live components protected by basic insulation and is surrounded by a metal enclosure. This metal enclosure could become live in the case of the basic insulation failure and is protected by being earthed. The supply cable will have an earth wire in addition to the normal live and neutral. Examples of this sort of equipment include electric cookers, free standing electric heaters and some kettles, toasters and IT equipment.
- Class II equipment separates the user from live conductors by two sets of insulation so does not rely on an earth for insulation.
- Class III equipment is supplied from a safety isolation transformer and will not exceed 50V. Typical uses include IT equipment such as answering machines and chargers for mobile phones.

As there is such a wide range of portable electric equipment available which can be used in very varied environments the risks that are present can be very different and therefore a range of control measures is required. It is necessary to carry out a risk assessment to determine the maintenance requirement for each piece of equipment and the following five steps should be followed:

1. Identify all portable appliances that need to be maintained and tested. An inventory of this equipment should be made.
2. Carry out an assessment of the risk posed by each type of equipment.
3. Categorise into high, medium or low risk (for example a PC that is rarely, if ever moved would be a low risk).
4. Determine if the appliance needs to be tested and examined or examined only, taking into account the tests that can be carried out on Class II and Class III appliances are very limited.
5. Determine the frequency of examination/testing.

There are three types of maintenance activities that are usually carried out on portable electrical appliances:

1. User checks should be carried out on hand held appliances, Class I (earthed) and frequently moved equipment and in particular, on cable leads and extension leads.
2. Formal visual examination – this is a more formal examination of the equipment than a user check. All electrical appliances should be subject to such an examination at pre-determined intervals and only a competent person should carry them out.
3. Combined inspection and test; Class I apparatus and leads and extension leads should be subject to a routine test in conjunction with the formal examination. A purpose made portable appliance tester should be used. Any competent person can normally carry out testing using such devices but some formal training is recommended. A record should be made and kept of the tests.

Unfortunately there are no statutory frequencies for any of the above maintenance measures, however in order to satisfy the general legal requirement to prevent “danger” some, all or a combination of the maintenance activities as set out above should be carried out. The HSE provides some guidance as to frequency and type of inspections for different appliances in its guidance leaflet – [Maintaining portable electric equipment in low-risk environments](#).

The risk assessment carried out on the equipment will determine any further measures that will be required to be implemented.

Fixed Electrical Installation tests

The Electricity at Work Regulations 1989 state that all electrical systems and equipment used in the working environment should be in a safe condition. The installations should be maintained to prevent danger. The HSE recommend that to comply with the regulations, an appropriate system of periodic visual inspection and testing by a competent person should be implemented at all places of work. The frequency of inspection must be determined taking into account:

- the type of installation
- its use and operation
- the frequency and quality of maintenance
- the external influences to which it is subjected.

Further guidance:

Electrical Safety First www.electricalsafetyfirst.org.uk

21. Emergency lighting

Emergency Lighting is lighting that is installed in a building to provide a degree of illumination when the normal lighting fails. In terms of fire safety the most important component of an emergency lighting system has historically been the “escape lighting,” which is provided to illuminate escape routes to an extent sufficient to enable occupants to evacuate the building in safety.

BS 5266 Part 1 covers the emergency lighting of premises and was updated and republished in 2016 as BS 5266 Part 1:2016. The update was required to reflect the development and changes of national and international standards, but also to reflect the practice of allowing people to stay in premises in case of power supply failures rather than evacuating them unnecessarily. The standard includes recommendations for routine inspection and testing of emergency lighting. This includes daily, monthly, six monthly and three yearly regimes of inspection and/or testing.

22. Extraction systems

The Health and Safety at Work etc. Act 1974 requires employers to provide and maintain working conditions that are safe and without risk to the health of employees, so far as is reasonably practicable. COSHH (see Section 16) expands on this general duty and requires employers to prevent worker exposure to hazardous substances or, where this is not reasonably practicable, to ensure adequate control. Employees are required to make full and proper use of the control measures provided and to report any defects in them promptly to their employer.

Adequate control may mean the installation of suitable extraction systems. Where such systems are installed, they must be adequately maintained to ensure that they are kept in an efficient and effective working order, and they must be examined and tested against their performance standard. Records of these checks must be kept for at least five years. Local Exhaust Ventilation Systems (LEVs) must be examined and tested generally every fourteen months. The HSE has produced guidance, “Controlling airborne contaminants at work – A guide to local exhaust ventilation (LEV).”

Controlling airborne contaminants at work, www.hse.gov.uk/pUbns/priced/hsg258.pdf

The design and operation of fume cupboards in schools, previously covered under Building Bulletin 88 (Fume Cupboards in Schools), is now covered by [G9 Fume Cupboards in schools](#). Building Bulletin 101 (Guidelines on Ventilation, thermal comfort and indoor air quality in schools) was published in 2018 and includes reference to fume cupboards in schools, and sources of further information.

23. Fire safety

The Fire (Scotland) Act 2005 as amended specifies who has responsibility for fire safety in non-domestic premises in Scotland.

Since August 2005 a number of amendments have been made to the Act and several statutory instruments made under the Act.

On 1 October 2006, the [Fire Safety \(Scotland\) Regulations 2006](#), brought into force Part 3 of the [Fire \(Scotland\) Act 2005](#). This introduced a new fire safety regime in Scotland, which is based on fire safety risk assessment and covers most premises in Scotland that are not private dwellings. The guidance document, [Practical Fire Safety Guidance for Existing Non-Residential Premises](#), published by the Scottish Government consolidates and supersedes a number of individual guides. The document is aimed at improving duty holders' understanding of requirements.

Under the Act anyone who has control, to any extent, of premises (other than private dwellings) will have some responsibility for ensuring that those occupying the premises (whether they are employees, residents, visitors or other) are safe from harm caused by fire. In general terms the greater the degree of control exercised over the premises the greater the responsibility.

The duties imposed under the legislation fall under seven categories as set out in Practical Fire Safety Guidance for Existing Non-Residential Premises are:

1. Carrying out a fire safety risk assessment of the premises.
2. Identifying the fire safety measures necessary as a result of the fire safety risk assessment outcome.
3. Implementing these fire safety measures using risk reduction principles.
4. Putting in place fire safety arrangements for the ongoing control and review of the fire safety measures.
5. Complying additionally with the specific requirements of the fire safety regulations.
6. Keeping the fire safety risk assessment and outcome under review.
7. Record keeping.

Responsibility for complying with the premises fire safety duties lies with the employer and those who operate or have control of the premises to any extent. Persons with fire safety responsibilities are duty holders. Employers have obligation to ensure safety of employees in the event of fire, so far as practicable. In shared premises employers or duty holder with control of a part of the premises are required to co-ordinate in respect of compliance. In most cases enforcement of Part 3 of the 2005 Act is conducted by Scottish Fire and Rescue Service enforces.

A fire safety risk assessment is simply an organised and methodical review of the premises and the activities that take place within the premises and the potential for a fire to occur. It should take into consideration that if a fire did occur the harm that it could cause to the people in and around the premises. The aims of a fire safety risk assessment are:

- to identify hazards and to reduce the risk of those hazards causing harm to as low as is reasonably practicable. A hazard is a situation that can give rise to a fire and risk is the potential for a fire to occur and cause death or injury
- to determine what fire safety measures and management policies are necessary to ensure the safety of people in the building, should a fire occur.

The assessment process is set out in the following steps:

Step 1) Identify people at risk

Step 2) Identify fire hazards

Step 3) Evaluate the risk

Step 4) Decide if existing fire safety measures are adequate

Step 5) Formulate an improvement plan

Step 6) Record fire safety risk assessment information

Step 7) Review of fire safety risk assessment.

As well as carrying out a risk assessment it is important that there is a clearly defined fire safety policy to protect all those using the premises, this should include arrangements for planning, organisation, control, monitoring and review of fire safety measure. As well as the fire safety policy there should be an emergency fire action plan and arrangements for this to be implemented should it ever be necessary. A copy of the fire action plan should be kept on the premises.

The purpose of the emergency fire action plan is to ensure that people on the premises are fully informed on what to do if there is a fire and that the appropriate action is taken in the event of a fire and the premises can be safely evacuated.

The results of the fire safety assessment should be considered when drawing up the emergency fire action plan, along with any procedures for those occupying the premises including disabled people.

For those employees that have physical or sensory impairment factors such as the inability of the person to recognise alarms/evacuate the building without assistance, length of time for them to evacuate the building must be taken into consideration. Any potential adjustments and/or systems required to ensure the safety of the individual need to be identified and implemented.

The Fire Safety (Scotland) Amendment Regulations 2010 came into force on 21 January 2011. These regulations have introduced a new regulation into the Fire Safety (Scotland) Regulations 2006 this places a duty on employers to consider the capabilities of their employees in relation to fire safety when entrusting any tasks to them.

Fire instructions and drills

All employees must receive regular instruction and training to ensure that they understand the action to be taken in the event of a fire.

Fire detection and alarm systems

The owner or the person having control of the premises should appoint a competent person to carry out any necessary work to maintain the system in correct working order; this should include the keeping of records.

The scale and complexity of a fire detection and alarm system will depend upon the type of premises it is designed to protect and the type of fire risk present. In the UK, most fire-alarm installations are designed in accordance with BS 5839-1:2017 Fire detection and fire alarm systems for buildings – Part 1: Code of Practice for systems design, installation, commissioning and maintenance of systems in non-domestic premises. This specifies various levels of systems based upon life safety or property safety.

Fire detection and alarm systems should have a weekly alarm test with all call points being tested over 13 week cycle. The system should also be subject to quarterly and annual inspections and tests by a competent person.

Fire doors

All fire doors and associated hardware must remain in efficient working order and should be regularly checked and maintained by a competent person in accordance with the relevant British Standard and the manufacturer's recommendations. It is advisable to keep a record of any maintenance. The inspection of fire doors should include some or all of the following:

- Self-closing devices operate properly.
- Hold open devices release when the fire alarm operates.
- Glazed panels are intact and undamaged.
- Warning signs are in place “Automatic Fire Door – Keep Clear”.
- Door opens and closes freely and there is no physical damage to the door.
- There is no distortion or warping of the door or frame.
- Seals and smoke strips are in place and not damaged.
- Hinges and locks are properly lubricated.

Fire fighting equipment

Extinguishers

It is recommended that these are inspected monthly to ensure that they are in their proper position and have not been discharged, or suffered loss of pressure or damage. These should be maintained and inspected by a competent person at least once a year. This involves a visual inspection of the extinguisher and a check of the contents and stored pressure. A written record should be kept of the date of the last maintenance examination and this should usually be attached to the body of the extinguisher. In any case they should be inspected at intervals not exceeding those detailed in British Standard BS 5306-3:2017.

Hose reels

Hose reels are for the use of the fire service and staff should not normally be trained in the use of this equipment. All hose reels should be inspected on a yearly basis by a competent person.

Fixed systems

Fixed systems are those which when activated by the warning/alarm system, release the extinguishing medium eg sprinkler systems. All fixed systems should be inspected on a yearly basis or to manufacturer’s guidelines. It is advisable to keep a record of any maintenance and testing.

Fire service facilities

Facilities for the fire service may include dry riser, access for emergency vehicles, emergency switches for installations and information in respect of the premises and its contents. Where these facilities are provided they should be maintained and kept in good order.

24. First aid equipment

The Health and Safety (First Aid) Regulation 1981 as amended by the Health and Safety (Miscellaneous Amendments) Regulations 2002 require employers to provide adequate and appropriate equipment, facilities and personnel to enable first aid to be given to employees if they are injured or become ill at work. These regulations apply to all workplaces including those with five or fewer employees and to the self-employed.

Under these regulations all establishments should provide at least one first-aid box. All first aid boxes, first aid kits and first aid rooms (where provided) should be checked regularly to ensure no contents are outside their expiry date.

First aid boxes should be made of suitable material, protect the contents and be clearly marked. It should be noted that first aid does not include the treatment of minor illnesses eg headaches – therefore headache pills and/or other medications must not be kept in the first aid box.

An adequate and appropriate number of ‘suitable persons’ must be provided to render first-aid treatment at work. The decision on what is adequate and appropriate should be based on a risk assessment. There is no ratio for the number of first aider to employees although the Approved Code of Practice does offer some guidance:

- Low risk workplaces such as office one trained first aider to every 50 employees with an additional first aider for every 100 employees.
- High risk workplaces, such as light engineering, one trained first aider for five or more employees, with an additional first aider for every 100 employees.

In terms of what constitutes a 'suitable person,' this is defined as a person who has undertaken suitable training, has appropriate first-aid qualification and remains competent to perform their role. Typically, first-aiders will hold a valid certificate of competence in either first aid work (FAW) or emergency first aid work (EFAW). Consideration must also be given to any temporary or exceptional absence of trained first-aid personnel.

It is recommended that first aiders undertake refresher training (annually) to ensure their skills are kept up to date.

In addition to trained first aiders, the organisation may wish to nominate 'appointed persons'. These are not fully trained first aiders but people who will take charge in an emergency.

A record should be kept of all trained first aiders and appointed persons as well as a record of all first aid treatment provided. These records should include:

- date, time and location of the incident
- name and job title of casualty
- treatment details
- details of actions taken immediately after treatment
- name and signature of the person administering the treatment.

Any signage used for first aid equipment or facilities must comply with the Health and Safety (Safety Signs and Signals) Regulations 1996.

Further guidance:

First aid in work www.hse.gov.uk/simple-health-safety/firstaid/index.htm

25. Fuel oil storage

As relates to fuel oil storage, The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) supersedes the prior regulation, The Water Environment (Oil Storage) (Scotland) Regulations 2006. Responsibility for compliance lies with owners as well as anyone leasing a property with fuel oil storage.

The current regulations cover the storage of any kind of oil including petrol, diesel, kerosene, waste oil, vegetable and plant oil.

The regulations cover oil stored at industrial, commercial, institutional premises and farms. Institutional premises (residential and non-residential) cover those in the public and private sector, charities and voluntary group. It also includes schools, village halls, libraries and public sector buildings, nursing homes and occupiers of multi residential dwellings whether privately or publicly owned, blocks of flats or other dwellings where oil is supplied from communal storage facilities and farms. The regulations apply to any kind of container which is being used and which is stored above ground, whether inside or outside of a building.

SEPA provide a practical guide to the "Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended)," which also refers to the "Water Environment (Miscellaneous) (Scotland) Regulations 2017".

All tanks, bunds and pipework should be regularly checked for signs of damage and it is recommended that they are checked at least weekly with a more detailed annual inspection and service by qualified inspectors to ensure that any potential defects are found and rectified.

There are security issues regarding oil storage areas and these areas should be as resistant as possible to unauthorized interference and vandalism. If there are any permanent taps or valves through which oil can be

discharged from the tank to open areas then these should be fitted with a lock and should be locked shut when not in use. Where appropriate, notices should be displayed telling users to keep valves and trigger guns locked when they are not in use. Pumps should also be protected from unauthorised use, taps and valves should be marked to show whether they are open or closed. Where these are not in use then they should be fitted with a blanking cap or plug.

Further guidance:

The Water Environment (Controlled Activities) (Scotland) Regulations 2011, www.legislation.gov.uk/ssi/2011/209/pdfs/ssi_20110209_en.pdf

The Water Environment (Miscellaneous) (Scotland) Regulations 2017, www.legislation.gov.uk/ssi/2017/389/pdfs/ssi_20170389_en.pdf

Oil storage in Scotland, www.sepa.org.uk/regulations/water/pollution-control/oil-storage-in-scotland/#regulationsAffect

The Water Environment (Controlled Activities) (Scotland) Regulations 2011. A Practical Guide, www.sepa.org.uk/media/34761/car_a_practical_guide.pdf

26. Gas safety

The Gas Safety (Installation and Use) Regulations 1998 (GSIUR) place duties on gas consumers, installer, suppliers and landlords. The Gas Safety (Installation and Use) (Amendment) Regulations 2018 came into force on 6 April 2018 and the HSE [Approved Code of Practice L56](#) and guidance gives advice on how to meet the requirements of GSIUR and the amending regulations. The changes to GSIUR do not relax regulatory requirements or reduce safety standards.

It is the duty of the employer to ensure any gas appliance associated pipe work and flues in the work places are maintained in a safe condition. These regulations link with other safety controls on combustion equipment, such as the Building Regulations, which provide standards for ventilation and flues.

By law anyone carrying out work on gas appliance or fittings must be competent, defined as a combination of practical skill, training, knowledge and experience to carry out the job in hand safely. If you employ people to carry out gas work, you must ensure and obtain evidence that the person doing the work is registered with a class of persons approved by HSE. This includes a person who has successfully completed an industry recognised training course followed by assessment of competence relevant to the particular type of gas work involved (see Section 17 Contractor Qualification Checks).

Gas Safety Register replaced CORGI as the register of approved gas engineers in the UK from April 2009. By law a gas appliance or fittings must not be used if it is known or suspected that they are unsafe.

In the HSE Approved Code of Practice L56 recommends that effective maintenance of appliances usually involves an ongoing programme of regular/periodic inspections, together with any necessary remedial work. Maintenance should be carried out by a competent registered person. In the absence of specific manufacturers' instructions, the ACOP recommends that effective maintenance should include as a minimum an examination of the physical condition and safe functioning of appliance(s), installation pipework, ventilation and any flue for deterioration; carrying out performance tests; and taking the necessary remedial action.

Further detailed information is available from HSE publications; Safety in the Installation and Use of Gas Systems and Appliances. Gas safety (Installation and Use) Regulations 1998, Approved Code of Practice and Guidance L56 (second edition) HSE Books.

27. Glazing

Glazing requirements are covered under Regulation 14 of the Workplace (Health, Safety and Welfare) Regulations 1992. The duty to comply with the regulations will normally fall to the employer or those in control of the premises. Under the regulation every window or other transparent or translucent surface in a wall, partition, door or gate should, “where necessary for reasons of health or safety,” be of a safety material or be protected against breakage and be appropriately marked.

As the regulation only requires action, “where necessary for reasons of health or safety,” it is necessary to assess every window, door etc to establish whether there is a risk of anyone being hurt if people or objects come into contact with it, or if it breaks.

This risk assessment needs to take into account all relevant factors such as the location of the glazing, the activities taking place, the volume of traffic and pedestrians, and any previous experience of incidents. Glazing in some locations may be a higher risk, for example doors and windows which are at or below waist level, or in particular areas of a building where the activity taking place may increase the risk eg a school hall used for sport.

If it is assessed that there is no risk then it is not necessary to take any further action. Where there is a risk then further action is required in order to comply with the regulations to:

- prevent people or objects coming into contact with the glazing, or
- upgrade the glazing so that if it breaks, it breaks safely, and
- mark large expanses of glazing in some way so that people know it is there.

Following the risk assessment it may be necessary to take further action however this will depend on the individual circumstances examples of further action that may be required could be to replace the glazing with a safety material, or apply a safety film which prevents the glass from shattering in a dangerous manner.

28. Hydrotherapy pools and swimming pools

Under the Health and Safety Act Work Act 1974, it is the responsibility of swimming pool operators to carry out a suitable and sufficient risk assessment of their operations and to identify necessary control measures. A suitable and sufficient risk assessment for a swimming pool would have to take account of the whole user population of the swimming pool (employees, pool users and other people on the premises) and the fact that a fatal incident ie drowning can occur very quickly.

The Health and Safety Executive publication *Managing health and safety in swimming pools* (HSG179, updated 2018) provides a comprehensive guidance document on managing health and safety in swimming pools to assist pool operators and pool hirers put in place appropriate safety precautions. When considering appropriate control measure to be put in place it is recommended that operators take into account this guidance.

Further guidance:

Authoritative guidance on the treatment of water in swimming pools is available from the Pool Water Treatment Advisory Group www.pwtag.org.

Control of legionella and other infectious agents in spa-pool systems: www.hse.gov.uk

29. Lifts and hoists

The maintenance and inspection of lifts and hoists is a complex area covered by numerous pieces of legislation:

- Under Regulation 5 of the Provision and Use of Work Equipment Regulations 1998, lifts need to be maintained in an efficient state, in efficient working order and in good repair and the maintenance log must be kept up to date.
- Under Regulation 9 of the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER), lifts must be tested and inspected by a competent person at regular intervals. This applies to lifts and hoists use to lift people or loads.
- Under the Management of Health and Safety at Work Regulation 1999 there is a duty placed on employers to carry out a suitable and sufficient assessment of risks associated with their work activities. This includes the risks associated with lifts.
- Under the Health and Safety at Work etc Act 1974 (HSWA) there is a duty to ensure the health, safety and welfare at work of all employees. This will include ensuring that safety risks are not created by the type and use of lifts (and escalator) within the premises. This includes ensuring that lifts are maintained, serviced, checked and inspected as required and otherwise checking that they remain in a good, safe condition.
- There are similar duties to non-employees which are created by s3 (1) of the HSWA. Section 4 places similar duties on those in “control” of non-domestic premises that are used as a place of work by someone else’s employees. Basically this places duties on landlords/occupiers of non-domestic premises used as a place of work.
- All lifts supplied after June 1999 must comply with the Lifts Regulations 1997. The regulations require lifts and their associated safety components to satisfy the relevant essential health and safety requirements, meet appropriate national standards, undergo the appropriate conformity assessment procedure, have the CE marking applied (if necessary) and have an EC declaration of conformity.

Under the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER), a duty holder has a legal responsibility to ensure that any lift on the premises is thoroughly examined and safe to use.

In Scotland lifts and hoist equipment are subject to inspection as relates to manual handling in the range of health and social care services. For further information, please refer to the following legislation and guidance:

- Public Bodies (Joint Working) (Scotland) Act 2014
- The Scottish Manual Handling Passport Scheme, www.gov.scot/publications/scottish-manual-handling-passport-scheme

A thorough examination will entail a systematic and detailed examination of the lift and all its associated equipment by a competent person. In order to determine the extent of the thorough examination, the competent person should assess the risks, taking into account factors such as where the lift will be used, frequency of use, the weight of loads to be lifted and its age and condition.

Part of the thorough examination may include some testing, if considered necessary by the competent person. The thorough examination may also be supplemented by inspections carried out at suitable intervals between thorough examinations. These inspections may be done ‘in-house’ by a competent, trained employee. Thorough examination should not be confused with preventative maintenance. The thorough examination may act as a check that maintenance is being carried out properly but is not intended to replace it.

The law requires that all lifts when in use should be thoroughly examined at least every six months if the lift is used at any time to carry people, every 12 months if it only carries loads and after substantial and significant changes have been made.

As well as considering the risks associated with lifts in normal use, it is important to consider the safety of users in the event of the lift breaking down or stopping between floors. It may be appropriate to set up a breakdown response contract in addition to normal maintenance contracts. It may be appropriate to train some employees in lift lowering and emergency door opening. In order to alert people to any problem, consideration should be given to providing a suitable means of raising the alarm (eg alarm call buttons, emergency telephones). In order to avoid panic in the event of an electrical failure it may also be appropriate to provide emergency lighting.

A competent person is someone with sufficient technical and practical knowledge of the lift to be able to detect defects and assess how significant they are. The competent person should also be sufficiently independent and impartial to allow them to make an objective assessment of the lift. It is therefore not advisable for the same person who performs routine maintenance to carry out the thorough examination, as this would mean that they would then be responsible for assessing their own work.

The safe working load of a lift must be determined and displayed in a suitable, prominent place.

Further guidance:

[Thorough examination and testing of lifts.](#)

30. Mobile buildings

Due to the fact that mobile buildings are designed and constructed as temporary structures it is recommended that an annual inspection is carried out on their structural stability. The BRE Digest 374 (1992) Relocatable buildings: structural design, construction and maintenance provides some historic guidance.

31. Playground and gymnasium equipment

Due to the very nature of use that PE equipment is put to it carries a high risk and requires regular inspection. There are various British Standards to cover playground equipment and play surfaces. Some are listed here but this list is not exhaustive:

- BS EN 1176 – playground equipment and surfacing. General safety requirements and test methods
- BS 1892-4:2003 – gymnasium equipment. Sports mats. Specification for combat mats (under review)
- BS 7188:1998+ A2:2009 – impact absorbing playground surfacing. Performance requirements and test methods
- BS 7044-4:1991 – artificial sports surfaces. Specification for surfaces for multi-sports use.

32. Radon

Radon is a gas which is odourless, tasteless and colourless and can only be detected using specialised equipment. Radon occurs naturally in rocks and soils throughout the country although levels tend to be higher in some granite areas. Radon can be found in high concentrations in buildings as it tends to be sucked in to the building from soil.

It may then collect in buildings and under certain conditions can reach concentrations where the risk to people in the workplace requires control under the Ionising Radiations Regulations 2017 (IRR17). These came into effect on 1 January 2018 and replaced the Ionising Radiation Regulations 1999.

One of the changes introduced by the revised regulations was the introduction of a risk-based approach to notifying HSE of any work with ionising radiation (the graded approach), where regulatory control over practices is proportionate to the size and likelihood of exposures resulting from work. To help employers understand how the graded approach applies to their practice(s), the HSE prepared a guidance document [Ionising Radiations Regulations 2017 – Guidance for Notifications, Registrations and Consents](#).

Under the Management of Health and Safety at Work Regulations 1999 in areas affected by radon employers should undertake an initial assessment to determine whether there may be a radon hazard within the workplace, including cellars and basements. Radon surveys should be conducted in any building where its location and characteristics suggest that elevated levels may be found. Due to the fact that radon levels can vary widely throughout the day and from season to season, measurements should be made over a period of three months and the annual average estimated using seasonal correction factors.

Further guidance:

Working with ionising radiation. www.hse.gov.uk/pubns/books/l121.htm

33. Shared premises

Where a building is occupied by more than one user then it is important that the results of any risk assessments are shared with other occupiers of the premises where relevant eg fire safety, the control of vehicle movements asbestos etc.

Under Regulation 11 of the Management of Health and Safety at Work Regulations 1999, there is a duty of cooperation and coordination on those sharing a workplace.

Even if there is no direct control over common areas of the premises, the employer needs to ensure that access and egress through these areas is safe for employees, visitors and contractors. Common areas of premises are those that are used by tenants (or occupiers) but are not controlled by them eg car parks, access routes, internal staircases, corridors and lifts.

Where there are shared services such as an electrical installation, a gas supply and fire safety systems, the tenant needs to ensure that they are (and remain) safe and without risks to the health of employees and visitors. This applies even though the tenant may not have any control over these services.

34. Slips and trips

As well as responsibilities under the Health and Safety at Work etc Act 1974, The Workplace (Health and Safety and Welfare) Regulations 1992 impose a specific requirement that floors must be suitable and in good condition. They must also be free from obstructions and people must be able to move around safely.

Steps and staircases should be regularly inspected for wear and tear. It is preferable for them to have:

- high visibility, non-slip, square nosing on the step edges
- a suitable handrail
- steps of equal heights
- steps of equal width.

Further guidance:

Slips and trips, www.hse.gov.uk/slips/index.htm

35. Tree safety

As well as responsibilities under the Health and Safety at Work etc Act 1974, an occupier of land where a tree stands has responsibilities under the Occupiers Liability Act 1957 and 1984. An occupier of land on which a tree stands will normally be liable for any personal injury or other damages caused by a tree breaking or falling where a tree is hazardous because of decay or structural weakness and shows external signs of being in such a condition. It should be noted that within the provisions of the previously mentioned Acts, the courts expect occupiers to be prepared for children to behave less carefully than an adult for example, by climbing trees which may have weak branches.

Therefore it is important that a “suitable and sufficient” risk assessment should be carried out on the trees on a site. An effective system for identifying the risks from trees should meet the requirements set out in the management of Health and Safety at Work Regulations 1999 and the associated ACOP (see also Section 5 – risk assessment).

The HSE circular Management of the risk from falling trees provides guidance for HSE Inspectors and Local Authority Enforcement Officers and is note intended as a guide to duty holders. It is however useful to note what it says suitable risk assessments for trees should address and include:

- An overall assessment of risks from trees, particularly identifying groups of trees by their position and degree of public access. This will enable the risks associated with tree stocks to be prioritised and help identify any

checks or inspections needed. As a minimum, trees should be divided into two zones: one zone where there is frequent public access to trees (eg in and around picnic areas, schools, children's playground); and a second zone where trees are not subject to frequent public access. As a rough guide 'trees subject to frequent public access are those that are closely approached by many people every day'. Maps may be useful as individual records for individual trees are unlikely to be necessary if zones and the trees in the zones are clearly defined.

- For trees in a frequently visited zone, a system for periodic, proactive checks is appropriate. This should involve a quick visual check for obvious signs that a tree is likely to be unstable and be carried out by a person with a working knowledge of trees and their defects, but who need not be an arboriculture specialist. Duty holders should ensure that any system that is put in place for managing tree safety is properly applied and monitored.
- A short record should be kept of when an area or zone or occasionally an individual tree, has been checked or inspected with details of any defects found and action taken.
- A system for obtaining specialist assistance/remedial action when a check reveals defects beyond the experience and knowledge of the person carrying out the check.
- A system to enable people to report damage to trees, such as vehicle collisions, and to trigger checks following potentially damaging activities such as work by the utilities in the vicinity of trees or severe gales.
- Occasionally a duty holder may have responsibility for trees that have serious structural faults but which they decide to retain. Where such a condition is suspected and the tree also poses a potentially serious risk because, for example its proximity to an area of high public uses, a specific assessment for that tree and specific management measure, are likely to be appropriate.
- Once a tree has been identified as having a structural fault that presents an elevated risk, action should be planned and taken to manage the risk. Any arboricultural work required should be carried out by a competent arboriculturist as such work tends to present a relatively high risk to the workers involved.
- Inspection of individual trees will only be necessary where a tree is in, or adjacent to, an area of high public use, has structural faults that are likely to make it unstable and a decision has been made to retain the tree with these faults.
- Monitoring to ensure that the arrangements are implemented in practice.

Further guidance:

Forestry Commission: Hazards from trees – a general guide: www.forestresearch.gov.uk/documents/6944/fcpg13.pdf

36. Vacant buildings

Under the Occupiers Liability Act 1984 the 'occupier' of a building has a duty of care to unlawful visitors to buildings, such as trespassers, where the occupier knows:

- of risks on the premises which may adversely affect the health and safety of trespassers
- that trespassers may enter, or be present on, the premises
- those risks can be reasonably controlled or protected against.

This is in addition to those duties placed on an 'occupier' of a building under the 'Health and Safety at Work Act 1974.

37. Water hygiene and safety

Legionella

As stated previously under Section 2 of the Health and Safety at Work Act 1974 (HSWA), employers so far as is reasonably practicable, must ensure the health, safety and welfare at work of all employees. Section 3 of the HSWA requires employers to ensure that non-employees who may be affected by work activities are not exposed to risks to their health and safety, and Section 4 places a duty on anyone responsible for the work place to ensure that premises, plant and machinery do not endanger the people using them.

The risk assessment of work activities and premises required under the Management of Health and Safety at Work Regulations 1999 is of particular relevance when considering the health and safety risks from disease. Under the Control of Substances Hazardous to Health Regulations 2002 (as amended) (COSHH), pathogenic bacteria (which includes Legionella) are deemed to be a “substance hazardous to health” and therefore are subject to the assessment, prevention/control and monitoring, provisions of these regulations.

In addition to the legislation mentioned above, the Notification of Cooling Towers and Evaporative Condensers Regulations and Legionnaires’ Disease – The Control of Legionella bacteria in water systems Approved Code of Practice apply to the control of legionella bacteria in water systems.

To comply with their legal duties, an employer or a person in control of the premises (eg a landlord) must identify and assess the sources of risk (it may be necessary to call on outside assistance to complete this), and prepare a scheme or course of action for preventing or controlling the risk and implementing and managing the scheme. A competent person must be appointed to be managerially responsible, sometimes referred to as the ‘responsible person’. This responsible person must keep records and check that what has been done is effective; and, if appropriate under the Notification of Cooling Towers and Evaporative Condensers Regulation 1992, must notify the local authority in writing if there is a cooling tower or evaporative condenser on site.

In order to carry out the risk assessment, an employer should find out if the water systems (including the equipment associated with the system such as pumps, heat exchangers, showers etc) are likely to create a risk. If after carrying out the risk assessment it is considered that the risks are insignificant, then no further action is needed other than to review the assessment periodically in case anything changes in the system.

If a risk is identified which cannot be prevented then proper controls must be introduced. In order to control the risks, it will be necessary to implement a successful management policy, have competent staff and ensure that proper control strategies are put in place. One way of preventing the risk of Legionella is by looking at the type of water system needed. For example it may be possible to replace a wet cooling tower with a dry air cooled system.

A written scheme should be prepared which sets out how it is intended to control the risk from Legionella. This should:

- describe the system (an up to date schematic diagram will be adequate to do this)
- advise who is responsible for carrying out the assessment and managing its implementation
- set out the safe and correct operation of the system
- describe what control methods and other precautions will be used
- provide details of the checks that will be carried out on the control scheme and how often they will be carried out.

It is important to appoint someone to take responsibility for managing the control scheme that has been put in place. The ‘responsible person’ needs to be competent – this means that they need to have sufficient knowledge and experience of the system, and the authority to enable them to manage and control the scheme effectively. If there is more than one person responsible for managing the system and/or control scheme (such as shift managers), then it is important to ensure that everyone knows their responsibilities and how they fit into the overall management of the system.

Where contractors are employed to carry out water treatment or other work, it is still the responsibility of the appointed responsible person to ensure that the treatment is carried out to the required standards. Before

appointing a contractor, it is necessary to be satisfied that they are capable of doing the work to the required standard. A revised British Standard BS 8580-1 (Water quality – risk assessments for Legionella control) was published in 2019 to align with the HSE Approved Code of Practice and associated guidance documents such as [HSG 274 \(Legionnaires' disease – technical guidance\)](#) which were revised in 2014.

The significant findings from the risk assessment should be kept in writing along with details of any monitoring or checking that is carried out. A written record should also be kept of the written scheme and who is responsible for managing the scheme prepared, the results of the routine monitoring should also be recorded and all of these records need to be kept for a minimum of five years. Risk assessments should be updated every two years or earlier if circumstances change ie when any changes are made to the system.

Further guidance:

HSE, www.hse.gov.uk/legionnaires. Useful information and links to numerous guides and documents including:

- Legionnaires' disease – A guide for dutyholders
- Approved Code of Practice and guidance – the control of Legionella bacteria in water systems
- Legionnaires' disease. Technical guidance HSG274
- Control of Legionella bacteria in water systems – Audit checklists
- Legionella and landlords' responsibilities
- Control of Legionella and other infectious agents in spa-pool systems 2017 HSG282

Water and surface temperature restrictions

There is a risk of scalding to individuals from contact with surface areas such as radiators and hot water pipes and from water which is too hot at point of use for example washbasins and baths. Those at particular risk include children, older people, people with reduced mental capacity, reduced mobility, a sensory impairment, or people who cannot react appropriately, or quickly enough, to prevent injury. The risk of scalding/burning should also be assessed in community facilities such as hostels, or staffed and sheltered housing, where vulnerable people may be at risk.

Under the Education (School Premises Regulations) 1999 there is a requirement that the temperature of water at point of use should not be above 43°C for bath and showers in schools.

Under these regulations in a special school, nursery school or teaching accommodation used by a nursery class in a school, the surface temperature of any radiator, including exposed pipework, which is in a position where it may be touched by a pupil should not exceed 43°C.

The health and safety of those individuals who use care services is covered under the general requirements of Section 3 of the Health and Safety at Work Act 1974 and also by the risk assessment requirement of the Management of Health and Safety at Work Regulations. The maximum surface temperature of space heating devices in care establishment should not exceed 43°C and the temperature of water at point of use should be no more than 44°C.

Particular care needs to be taken to manage these risks where water temperatures are circulated above 50°C to control Legionella.

The risk of burns from hot surfaces may be reduced by:

- providing low surface temperature heat emitters, eg cool wall
- locating sources of heat out of reach, eg at high-level
- guarding the heated areas, eg providing radiator covers, covering exposed pipework
- reducing the flow temperatures (although usually not practicable in existing heating systems without sacrificing their effectiveness).

The risk of scalding may be reduced by carrying out a risk assessment for individuals concerned and introducing appropriate control measures.

Suitable arrangements should be made to ensure that control measures are in place and functioning effectively. Adequate training and supervision should be given to staff to ensure that they understand the risks and precautions to be taken and also the need to report any difficulties to a responsible person.

Further guidance:

Managing the risk from hot water and surfaces in health and social care HSI56 www.hse.gov.uk/pubns/hsis6.htm

Standards for school premises. Guidance to help schools and local authorities understand their obligations in relation to the School Premises Regulations 2012. www.gov.uk/government/publications/standards-for-school-premises

38. Workstation assessment

Employers should ensure that they comply with general duties placed on them by health and safety legislation, such as the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999, the Workplace (Health, Safety and Welfare) Regulations 1992 (as amended), and the Provision and Use of Work Equipment Regulations 1998 (as amended).

The Health and Safety (Display Screen Equipment) Regulations 1992 as amended by the Health and Safety (Miscellaneous Amendments) Regulations 2002, require employers to perform a suitable and sufficient analysis of work stations used by users of display screen equipment (DSE) to enable an assessment of the health and safety risks to be carried out. A DSE user means an employee who habitually uses display screen equipment as a significant part of their normal work for continuous periods of an hour or more. This assessment will need to be reviewed or updated if there is a significant or major change to the equipment, the environment, the furniture, the task or the software. Where a work station is relocated then it should also be re-assessed.

Where an individual workstation is shared by more than one person, then the analysis should be carried out in respect of each person. A record of the analysis should be kept. The user or operator must be take part in the assessment as some of the required criteria in the analysis and assessment may be subjective.

Where risks have been identified through the analysis then these must be reduced so far as is reasonably practicable. The risks identified could relate to physical problems, visual fatigue and mental stress and apply to both users and operators. The risks identified in the assessment must be remedied as quickly as possible.

Further guidance:

Working safely with display screen equipment www.hse.gov.uk/msd/dse

39. Working at height

Fall protection

The Work at Height Regulations 2005 are to prevent death and injury caused by a fall from height. The regulations apply to employers or those who control work at height (such as facilities managers or building owners who may contract others to work at height) and covers all workplaces and construction sites where work is carried out at height. Under Regulation 3 of Management of Health and Safety at Work Regulations 1999, a risk assessment must be carried out and where possible work at height must be avoided.

Employers and those in control of any work at height activity must make sure work is properly planned, supervised and carried out by competent people. This includes using the right type of equipment for working at height.

Where work at height cannot be avoided work equipment must be used to prevent falls. Where the risk of falls cannot be eliminated, measures must be taken to minimise the distance and consequences of any fall.

The duty holder must ensure that equipment used to work at height such as scaffolding and ladders are maintained and inspected. Where such equipment is exposed to conditions which may cause deterioration then they must be inspected at suitable intervals and following any exceptional circumstances.

It should be noted that a ladder can be used for work at height if:

- the risk assessment had found that the use of more suitable work equipment is not justified because the risk is low and the use is for short duration or
- there are existing features on the site which cannot be altered.

Employees also have general legal duties to take reasonable care of themselves and others who may be affected by their actions, and to co-operate with their employer to enable their health and safety duties and requirements to be complied with.

Window cleaning

The Workplace (Health, Safety and Welfare) Regulations 1992 cover a wide range of basic health, safety and welfare issues and apply to most workplaces. They do not however apply to construction work on construction sites.

The regulations require employers, and persons who have control of a workplace to ensure that all windows and skylights in a workplace are designed or constructed so as to enable them to be cleaned safely. This requirement allows equipment used in conjunction with the windows or skylights, or any other safety devices fitted to the building such as anchorage points to be taken into account. The [Approved Code of Practice L24](#) that accompanies these regulations gives a number of measures which may be taken to comply, eg anchorage points for safety harnesses, suitable points for tying ladder more than six metres in length and fitting windows that can be cleaned easily from inside.

The Work at Height Regulations 2005 covers window cleaning activities when carried out at height. They specify that a risk assessment must determine the necessity of working at height. Where it is not possible to avoid working at height then a hierarchy of control measures is specified and the employer must ensure that the work is properly planned, supervised and carried out by competent people. All those working at height must have the right skills, knowledge and experience. The requirements for specific competences will depend on the work being done, eg a window cleaner involved in abseiling will require different skills, knowledge and experience from someone only involved in cleaning ground floor windows. The Lifting Operations and Lifting Equipment Regulations 1998 and the Approved Code of Practice L113 require particular safeguards to be considered when using lifting equipment to lift people which includes a suspended cradle used for window cleaning.

Further guidance:

The Work at Height Regulations 2005 (amended): [A Brief Guide](#).

[Workplace health, safety and welfare: A short guide for managers.](#)

www.hse.gov.uk/work-at-height/index.htm

Working at height: A brief guide – www.hse.gov.uk/pubns/indg401.pdf



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