

DHO Statutory Duty Holder Obligations

Section one of the LCA's 9 service provider commitments requires that we ensure our clients are made aware of their legal obligations with regard to Legionella legislation. The following briefly describes the obligations of a building operator or owner.

The HSE leaflet: A brief guide for dutyholders - <http://www.hse.gov.uk/pubns/indg458.pdf> briefly describes the obligations of a dutyholder with regards to legionella.

We recommend you take the time to read this leaflet as a starting point.

The hierarchy of legal documents that dutyholders' need to be aware of are outlined below:

The Health and Safety at Work etc. Act 1974

Sections 2, 3, 4 and 6 are defined within ACoP L8 as applicable to Legionella control. The first 2 sections cover the primary requirements for Legionella control: -

(2) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

(3) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

http://www.legislation.gov.uk/ukpga/1974/37/pdfs/ukpga_19740037_en.pdf

The Management of Health and Safety at Work Regulations 1999 (MHSWR)

These regulations provide a broad framework for controlling health and safety at work. As well as requiring risk assessments, they also require employers to have access to competent help in applying the provisions of health and safety law; to establish procedures to be followed by any worker if situations presenting serious and imminent danger were to arise; and for co-operation and co-ordination where two or more employers or self-employed persons share a workplace.

http://www.legislation.gov.uk/uksi/1999/3242/pdfs/uksi_19993242_en.pdf

The Control of Substances Hazardous to Health Regulations 2002

Regulations 6, 7, 8, 9 and 12 are particularly relevant to Legionella control. Regulation 6, Assessment of the risk to health created by work involving substances hazardous to health, is perhaps the most relevant.

An employer shall not carry out any work which is liable to expose any employees to any substance hazardous to health unless he has –

- made a suitable and sufficient assessment of the risk created by that work to the health of those employees and of the steps that need to be taken to meet the requirements of these Regulations; and
- implemented the steps referred to in sub-paragraph (a).
- Legionella bacteria are classified as substances hazardous to health and therefore a Legionella risk assessment can be considered a mandatory requirement in all workplace buildings with water systems.

http://www.legislation.gov.uk/uksi/2002/2677/pdfs/uksi_20022677_en.pdf

The Notification of Cooling Towers and Evaporative Condensers Regulations 1992

This regulation requires the registration of evaporative cooling devices.

Subject to this regulation and to regulation 4. It shall be the duty of each person who has, to any extent, control of premises to ensure that no notifiable device is situated on those premises unless the information set out in the Schedule to these Regulations has been notified in writing, on a form approved for the time being for the purposes of these Regulations by the Health and Safety Executive, to the local authority in whose area the premises are situated.

<http://www.legislation.gov.uk/uksi/1992/2225/made>

The Health and Social Care Act 2012

These regulations don't specify in particular legionella but are to:

- Safeguard its future the NHS needs to change to meet the challenges it faces – only by modernising can the NHS tackle the problems of today and avoid a crisis tomorrow.
- The Health and Social Care Act 2012 puts clinicians the centre of commissioning, frees up providers to innovate, empowers patients and gives a new focus to public health.

<http://www.legislation.gov.uk/ukpga/2012/7/contents>

ACoP and Guidance L8 2013

Approved Code of Practice

This Code has been approved by the Health and Safety Executive, with the consent of the Secretary of State. It gives practical advice on how to comply with the law. If you follow the advice you will be doing enough to comply with the law in respect of those specific matters on which the Code gives advice. You may use alternative methods to those set out in the Code in order to comply with the law.

However, the Code has a special legal status. If you are prosecuted for breach of health and safety law, and it is proved that you did not follow the relevant provisions of the Code, you will need to show that you have complied with the law in some other way or a Court will find you at fault.

Guidance (within L8)

This guidance is issued by the Health and Safety Executive. Following the guidance is not compulsory, unless specifically stated, and you are free to take other action. But if you do follow the guidance you will normally be doing enough to comply with the law. Health and safety inspectors seek to secure compliance with the law and may refer to this guidance.

Downloadable as a PDF free of charge from the HSE website –

<http://www.hse.gov.uk/pubns/priced/l8.pdf>

HSG274 Technical Guidance

The guidance in each part of HSG274 gives practical advice and examples of good practice in how to achieve what is required under L8. HSG274 is published in three parts:

HSG274 Part 1

This document gives specific guidance for evaporative cooling systems. Appendix 1 and 2 give useful practical advice on what should be found in a Legionella risk assessment and in a written scheme of control.

Downloadable as a PDF free of charge from the HSE website –

<http://www.hse.gov.uk/pubns/priced/hsg274part1.pdf>

HSG274 Part 2

This document gives specific guidance for hot and cold water systems. Appendix 2.1 and 2.2 give useful practical advice on what should be found in a Legionella risk assessment and in a written scheme of control.

Downloadable as a PDF free of charge from the HSE website –

<http://www.hse.gov.uk/pubns/priced/hsg274part2.pdf>

HSG274 Part 3

This document gives some basic guidance for other risk systems that are not covered in Part 1 or Part 2. For other risk systems, assessment and control of risk must be from first principles of legionella control. These systems require the most competent and knowledgeable assessors and contractors.

Downloadable as a PDF free of charge from the HSE website –

<http://www.hse.gov.uk/pubns/priced/hsg274part3.pdf>

HSG282

This document from HSE gives guidance on Legionella control in spas pools.

HSG220

This guidance is intended to help those providing and managing care homes - to give them a better understanding of the real risks and how to manage them effectively. It has been extensively rewritten, with a number of new topics, and brings together key messages on risks to both workers and residents. It will also be of interest to others working in social care.

This new edition was published during a period of change. At the time of publication (June 2014), HSE and local authorities investigate serious worker and resident incidents. Under the Enforcing Authority Regulations, HSE regulates homes with nursing and local authority owned or run care homes. Other homes are regulated by local authorities.

However, from 1st April 2015 the Care Quality Commission (CQC) in England became the lead investigator of incidents where residents have been harmed because of unsafe or poor quality care.

<https://www.hse.gov.uk/pubns/books/hsg220.htm>

HTM 0401

This document from the department of health gives specific guidance for healthcare for control of Legionella and other waterborne pathogens. Part A gives guidance on design, build and commissioning. Part B gives guidance on operational management. Part C gives guidance on control of pseudomonas aeruginosa in augmented care settings. Supplement D08 gives guidance on thermostatic mixing valves in healthcare settings. All parts are available as free PDF downloads.

<https://www.gov.uk/government/publications/hot-and-cold-water-supply-storage-and-distribution-systems-for-healthcare-premises>

A brief guide for dutyholders INDG458

This document is available as a free PDF download via <https://www.hse.gov.uk/pubns/ind458.htm>

Record Keeping:

It is the Dutyholder's responsibility to ensure that all legionella records are kept in the legionella record keeping system for a minimum of 5 years.