

The Law & Legionella

(& HSE's Enforcement strategy)

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- No specific law relating to control of legionella (e.g. compared with asbestos & lead)
- Overarching obligations under Sections 2 & 3 Health & Safety at Work Act etc 1974

- HSWA qualified by “so far as is reasonably practicable”
- S3 Decided case R v Board of Trustees of the Science Museum 1993
- Pivotal in support of approach taken in ACOP & L8

Science Museum Case

- Defence submitted that no actual risk to public health had been proved
- Trial judge directed that :-
 - Did not need to prove that MoP had inhaled legionella bacteria
 - Did not need to prove that the legionella bacteria was present out with the building
 - Sufficient to prove that there had been **a risk of** it being there

Notification to LA of operational cooling tower

- Notification of Cooling Towers and Evaporative Condensers Regulations 1992
- Regulation 3

Regulations

- More specific requirements contained in Control of Substances Hazardous to Health Regulations 2002 (notably Regs. 6, 7, & 12)
- Management of Health & Safety at Work Regulations 1999 (Regulation 5)

COSHH

- Regulations 6 & 7– Suitable & sufficient risk assessment/control hierarchy
 - Identify sources of legionella
 - Define measures necessary to prevent exposure (i.e. eliminate)
or, if not reasonably practicable
 - Define the means of control

- COSHH Reg 12
- Information, instruction and training

MHSWR 1999 Regs 5 & 7

- Who carries out the assessment?
 - Duty holder is required to appoint a responsible person who assumes day-to-day managerial responsibility.
 - External support can be enlisted (duty holder must make reasonable checks to ensure competence of person appointed)
 - Code of Conduct

- Despite the absence of a prescriptive legal framework specifically for legionella, practical advice & guidance to assist you in demonstrating compliance is contained in:

“The control of legionella bacteria in water systems – Approved Code of Practice & Guidance” L8

L8 ACOP

- Approved by the HSC
- Advice on how to comply with COSHH
- Special legal status
- In court, failure to follow the ACOP puts the onus on the defendant to prove compliance with COSHH in some other equally effective way

Management of Change

- Embedded in the COMAH Regs
- Non COMAH sites might well appreciate what it can offer
- Duties under MHSWR Reg 3
- Annual checks & review of risk assessment

- Other relevant references:
 - Control of substances hazardous to health (5th edition) – Approved Code of Practice & Guidance. L5
 - Management of health & safety at work – Approved Code of Practice & guidance. L21

HSE Enforcement Strategy

- Three enforcement mechanisms available to Inspectors:
 - Prohibition Notice
 - Improvement Notice
 - Prosecution

Prohibition Notice/Prosecution

- Absence/inadequate assessment
 - No water treatment programme
 - No evidence of cleaning and or disinfection procedures
- all of which can lead to a risk of serious infection

Prohibition Notice/Prosecution

- Evidence of a clearly defined risk from the presence of organic contamination & absence of (or defective) drift eliminator
- Cumulative evidence of risk (over the longer term)

Improvement Notice

- Failure to notify under NCTEC Regulations
- Inadequate assessment (under COSHH)
- Absent system schematic
- Failure to provide safe access
- Defective/absent drift eliminator
- Failure to keep system clean e.g. no pack removal