



A BRIEF EXPLANATION OF THE LEGAL OBLIGATIONS UNDER LEGIONELLOSIS LEGISLATION

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Explanation of the Legal Obligations Under Legionellosis Legislation in relation to the Health and Safety at Work Act, COSHH and the ACOP

Background information

Those persons involved in the operation, service and supply of equipment and systems for the use and re-use of water are concerned to ensure compliance with the ACOP in order to prevent the spread of legionella bacteria and in order to avoid the personal risk of being prosecuted for corporate manslaughter.

The current code of practice for the control of legionella bacteria in water systems came into effect on the 8th January 2001. It applies to the risk of legionella bacteria in circumstances where the Health and Safety at Work Act Applies.

The guidance on legionella was first introduced by the Health and Safety Executive in 1987. It was replaced in 1990 by the Approved Code of Practice – “The prevention and control of legionellosis (including Legionnaires’ disease). This was again revised and updated in 1995 (The 1995 Health and Safety Executive Approved Code of Practice L8 which was supplemented by the technical guidance document HSG70 and the 1998 hot and cold water system supplement MSC 150).

The documents mentioned as above were formally replaced with the current Approved Code of Practice in 2001. The new code of practice was formulated to rectify the weaknesses of the previous documents and to further reduce the risk of Legionella outbreaks caused by poorly maintained and managed water systems.

The Approved Code of Practice and Guidance offers practical information on the latest control methods and is designed to help employers and contractors carry out their responsibilities effectively.

It is generally accepted that if cooling towers and other water systems and operators follow the Approved Code of Practice and Guidance, they can be confident that their systems will present minimal risk to employees or the public.

Obligations of the “Duty Holder and “Responsible Person”

It is accepted that there is a reasonably foreseeable risk of exposure to legionella bacteria in any undertaking involving a work activity, trade or business where water is used or stored and where there is a means of creating and transmitting water droplets/aerosols/mists which may be inhaled.

The Health and Safety Commission has consistently identified inadequate management, lack of training and poor communication as contributory factors in legionnaires’ outbreaks. It is therefore vital that those involved in assessing and controlling the risks are competent, well trained and aware of their duties.

A suitable and sufficient assessment of the risk of exposure to legionella bacteria should be undertaken by the person on whom the Statutory Duty Falls such persons may include:

- 1) The employer or self employed person of the premises if there is a risk to others.
- 2) The person who is in control of the premises or systems which present a risk to other.

NB: Risk Assessments conducted by third parties are conducted on the Duty Holders behalf!

The person on whom the statutory duty falls (The duty Holder) is required to have access to competent help to assess the risks of exposure to others and the necessary control measures to be undertaken. The “Competent Person” may or may not come from the same organisation as the person with control of the premises/ machinery but most often will be from a specialist consultancy.

Water treatment companies, suppliers and installers may also support the responsible persons.



It is the Duty Holders responsibility to take all reasonable steps to ensure the competence of those carrying out work who are not under their direct control and that responsibilities and lines of communication are properly established and clearly laid down.

The duty holder must appoint a person to take day-to-day responsibility for controlling any identified risk of legionella bacteria. The appointed **responsible person** should be a manager, director or have similar status and sufficient authority, competence and knowledge of the installation, their duties and the overall health and safety management structure and policy in the organisation.

The Approved Code of Practice has had the effect of creating a chain of command with the "Duty Holder" / the "person on whom the statutory duty falls" at the helm with those to whom assessment of the risk has been delegated also being responsible. Whilst assessment of the risk can be delegated by the duty holder, the duty holder nevertheless remains ultimately responsible at all times for ensuring a competent assessment of the risk is being undertaken.

The Safety Representative and Safety Committee Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996 require employers to consult trade unions, safety representatives, other employee representatives or employees where there are no representatives, about health and safety matters.

The Approved Code of Practice 2001

Point 18 of the Code of Practice advises that the Code applies to the control of legionella bacteria in any undertaking involving a work activity and to premises controlled in connection with a trade, business or other undertaking where water is used or stored and where there is a means of creating and transmitting risk of exposure to legionella bacteria.

The Code advises at point 19 that there is a reasonably foreseeable risk of exposure to legionella bacteria in:

- Water systems incorporating a cooling tower;
- Water systems incorporating an evaporative condenser;
- Domestic Hot and Cold water systems and
- Other plant and systems containing water which is likely to exceed 20°C and which may release a spray or aerosol during operation or when being maintained.

The guidance notes to the Code confirm that a water system includes all plant/ equipment and components associated with that system e.g all associated pipe work, pumps, feed tanks, valves, showers heat exchangers, quench tanks and chillers etc.

Point 23 of the Code stipulates that a suitable and sufficient assessment is required by the person on whom the statutory duty falls ("The Duty Holder") in order to identify and assess the risk of exposure to legionella bacteria from work activities and water systems on the premises and any necessary precautionary measures. As Stated previously in carrying out the assessment the duty holder is required to have access to "competent help" to assess the risks of exposure to legionella bacteria in the water systems present in the premises and the necessary control measures to be undertaken (Point 24 of the Code). The assessment should include identification and evaluation of the potential sources of risk and:

- The particular means by which exposure to legionella bacteria is to be prevented; or
- If prevention is not reasonably practicable, the particular means by which the risk from exposure to legionella is to be controlled. (See point 25 of the Code)

Where an assessment indicates that there is no reasonable foreseeable risk or an insignificant risk, no further action is required. Should the situation in the particular premises or relevant circumstances change then plainly the assessment needs to be reviewed and any required measures implemented as necessary. (Point 26 of the ACOP)



The guidance notes to the Code advise you that if a risk of legionella is identified, it should be formally recorded and employees or their representatives should be notified and given an opportunity to comment on the assessment and voice concerns. Employers must take account of employees views or those expressed by their representatives.

At point 27 of the Code it clearly states that the assessment of the risk needs to be reviewed regularly and in any case, whenever there is reason to believe that the original assessment may not longer be valid. Risk assessment should be reviewed at least every two years.

Obligations to Manage the risk

Point 39 of the Code clearly states that if the assessment shows that there is a reasonable foreseeable risk and it is reasonably practicable to prevent exposure or control of the risk, the duty holder should appoint a person or persons to take managerial responsibility and to provide supervision for the implementation of the precautions.

The person or persons appointed to carry out the assessment should have the necessary expertise and equipment and in particular they should know how to identify:

- The potential sources and the risks they present
- Measure to be adopted, including precautions to be taken for the protection of people concerned, and their significance; and
- Measures to be taken to ensure that controls remain effective, and their significance (See point 40 of the Code.

The Code at points 41 and 42 provides that the duty holder should ensure the competence of the persons appointed and management and communication procedures should be reviewed periodically.

The Guidance to the Code stresses that employment of contractors or consultants does not absolve the duty holders of the responsibility for ensuring that control procedures are adhered to.

Obligations for preventing and controlling the risk from exposure to legionella bacteria

Where the risk assessment undertaken reveals a reasonably foreseeable risk, measures to remove the risk of exposure have to be implemented (Point 52 of the Code). If such avoidance is not possible a written scheme for controlling the risk should be implemented and properly managed. The scheme should specify measures to be taken to ensure that it remains effective.

The written scheme should include a variety of tasks and control measures including precautions which may include controlling the release of water spray and avoidance of water temperatures and conditions that favour bacterial growth.

The guidance notes to the Code advise that the frequency and extent of the monitoring will depend on the operating characteristics of the system.

Obligations regarding Record Keeping

At point 66 of the Code it is advised that the persons appointed to take managerial responsibility of the risks should ensure that the appropriate records are kept.

The guidance notes to the Code recommend that the records of the assessment undertaken should be signed by those people performing the various tasks assigned to them.

Point 67 of the Code recommends that the records should be retained throughout the period for which they remain current and for at least two years after this point. Further records detailing results of any monitoring, inspections, testing or checks should be retained for at least five years.



The deadline for issuing and serving legal proceedings claiming personal injury is three years from the date of injury or diagnosis. The deadline for bringing a claim for negligence is six years from the date of cause of action (Date of injury loss or infection) or three years from the date of knowledge of such injury or loss. There is no limitation period for a charge of corporate manslaughter.

It is important to consider these timescales when considering the relevant period to retain documents. It is recommended that all records are maintained for a minimum of six years.

Responsibility of manufacturers, importers, suppliers and installers

Whilst the Code of Practice mainly deals with the duties on employers and those responsible for the control of premises, others have duties too.

Point 70 of the Code states that those responsible for the design, manufacturing, importing, or supplying of water systems that that may create a risk of exposure to legionella bacteria should, so far as reasonably practical:

- Ensure that the water system is so designed and constructed that it will be safe and without risk to health when used at work; and
- Provide adequate information for the user about the risk and measures necessary to ensure that the water systems will be safe and without risks to health when used at work. This should be updated in the light of any new information about significant risks to health and safety that becomes available.

In addition at point 71 the Code states that the suppliers or products and services including consultancy and water treatment services, aimed at preventing or controlling the risk of exposure to legionella bacteria should so far as is reasonably practicable:

- Ensure measures are so designed and implemented that they will be effective, safe and without risk to health when used at work.
- Provide adequate information on products and the specific application including detail of their limitations
- Ensure all defects or limitations in the clients systems are made known to the responsible person and duty holders.
- Ensure their staff have the required abilities and tools, experience, information, instruction, training and resources to carry out their work competently and safely.

Reporting of Injuries Diseases and Dangerous Occurrences Regulations RIDDOR

Legionellosis is a reportable disease in accordance with the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR).

The responsible person shall report any confirmed case of legionella infection to the relevant enforcing authority on a form approved for the purposes of this Regulation. A confirmed case will need to be confirmed by a medical practitioner prior to reporting.

The Control of Substances Hazardous to Health Regulations COSHH.

The COSHH regulations impose duties on employers to protect employees and other persons who may be exposed to substances hazardous to health and also imposes certain duties on employees concerning their own protection from such exposure.

Legionella bacteria is included under the COSHH Regulations as a biological agent. It is important to read the COSHH regulations in combination with the HSE ACOP to determine measures to be taken to reduce or eliminate the risks.

Duties under COSHH



Regulation 3 of the COSHH states that where any duty is imposed on an employer in respect of their employees by virtue of the Regulations, then so far as is reasonably practical the employer will be under a like duty in respect of any other person, whether at work or not, who may be affected by the work carried on by the employer. The only exception to this in the Regulations is the Health Surveillance provision in Regulations 11 and Regulations 10 and 12(1) and (2) which relate to monitoring information, and training. A duty is only imposed on an employer in respect of non-employees under these Regulations if those persons are on the premises where the work is being carried out.

COSHH - Suitable and sufficient assessment of the risks

As with point 23 of the ACOP, the COSHH Regulation 6, imposes a duty on employers to make suitable and sufficient assessment of the risks created by work or systems which are liable to expose any employees to any substance including legionella which is hazardous to health. The assessment of the risk must be reviewed regularly and if:

- There is reason to suspect that the assessment is no longer valid; or
- There has been a significant change in the work to which the assessment relates.

COSHH – Prevention and Control of the Risks

Regulation 7 sets out how the risk to employees should be prevented or controlled. For example PPE to be used, total enclosure of the process and handling systems where appropriate amongst other measures.

Appendix 2 of the Approved Code of Practice recommends the action that should be taken in the event of an outbreak. An outbreak is defined by the public health service as 2 or more confirmed cases of legionellosis occurring in the same locality within a 6 month period. Location is defined in terms of the geographical proximity of the cases and requires a degree of judgement. It is the responsibility of the Proper officer for the declaration of the outbreak. The proper officer is appointed by the local authority under public health legislation and is usually a Consultant in Communicable Disease Control.

COSHH – Monitoring and Control and Record Keeping

Regulation 8 states that where an employer adopts a control measure, reasonable steps to ensure it is properly used or applied as the case may be should be taken. The employer should also monitor any defect in the control measures adopted. This mirrors points 41 and 42 of the Approved Code of Practice and it may be worthwhile appointing an independent consultant to monitor such measures.

Regulations 9 obligates an employer to ensure the control measures are maintained and any protective equipment remains in a clean and working condition. The employer is obligated to carry out a regular examination of the equipment and to maintain records of the examinations undertaken with such records being retained for a period of five years from the date they were created. It may be worthwhile appointing an independent consultant to monitor such measures

Regulation 10 requires the employer to monitor exposure of employees to the hazardous substances and to maintain a record of such monitoring measures. This mirrors point 66 of the Approved Code of Practice. The Regulations states that:

- Where the record is representative for the personal exposure of identifiable employees, the record should be retained for at least forty years;
- In any other case for at least five years.
- It may be worthwhile appointing an independent consultant to monitor such measures



COSHH and Health Surveillance

Regulation 11 states that where appropriate for the protection of the health of employees who are likely to be exposed to a substance hazardous to health, the employer shall ensure that those persons are under suitable surveillance.

If a medical adviser certifies that an employee should not be engaged in work which exposes them to a dangerous substance or that specific measures should be implemented, the employer should adhere to those recommendations. Employees are to have access to such records on request.

COSHH and information to employees

Regulation 12 obligates an employer to provide his employee with information, instruction and training on the risks to health by their exposure to hazardous substances including legionella and the precautions to be taken. This is also provided for under the Safety Representative and Safety Committee Regulations, and the Health and Safety (Consultation with Employees) Regulations.

The only Defence for non compliance.

Regulation 16 provides that it is a defence for an offence consisting of a contravention of the COSHH Regulations for any person to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of that offence. The records maintained will be crucial to the strength of the defence an employer is able to put forward.

Corporate Manslaughter

At present following a work related death, a company and its directors, officers and senior managers are capable of committing two types of offence:-

- Under the Health and Safety at Work Act and or
- Corporate Manslaughter

Health and Safety at Work Act Offences

The Act imposes duties on employers (including companies and other undertakings) to ensure so far as reasonably practicable, the health and safety of their employees and other who may be affected by their operations.

In order to prove that an offence has been committed, the Health and Safety Executive must show that the employer failed to comply with those duties. These include, for example, failing to comply with the specific obligations to provide a safe place and safe system of work, suitable plant and equipment and appropriate training and supervision.

Since the duties are worded to require an employer to ensure safety, simply exposing employees and others to danger is all that is needed for a successful prosecution. There is no requirement for actual harm to be caused.

For personal liability, the health and Safety Executive must prove that the corporate offence was committed with the consent or connivance of, or attributable to any neglect on the part of a director or senior manager. The test is subjective, requiring the director/officer deliberately to run safety risks or turn a blind eye.



Corporate manslaughter

Currently to secure a corporate manslaughter conviction, the Crown Prosecution Services must prove that:-

- The director or senior manager is personally guilty of manslaughter; and
- The convicted person is identified as the company's directing mind and will be known as (the identification principle)

The test for manslaughter due to gross negligence is:-

- That the individual owed a duty of care to the person who died;
- A breach of this duty was one of the causes of death; and
- The breach was so grossly negligent that the individual should be seen as a criminal and deserving of criminal sanctions.

This requires a jury to decide whether the individual is criminally negligent.

The circumstances in which prosecutions can presently be brought are convoluted and tend to discriminate against small companies. This is because it is easier to identify a guilty directing mind in a small company where senior managers are involved in the day to day running of the business.

In larger companies, complex management structures separate the top level decision makers from the work force and day to day practices.

Incidence and Risk

The detection of Legionella bacteria in engineered water systems is not uncommon. It is important to highlight that the presence of the bacteria itself does not constitute an outbreak and nor is the identification of legionella a reportable incident.

Compliance with the legislative guidelines, combined with a programme of regular audit and monitoring can ensure that legionella bacteria are kept absent from systems or below levels which are considered to present significant risk. It is important to highlight that the risk from legionella can be controlled. The level of risk varies from system to system and therefore risk assessments are to be site or system specific.

If you need help with managing the risk of legionella in your workplace or would like support in ensuring your systems are being suitably managed please contact Aqua Legion UK Ltd now.

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