

INSIDE THIS ISSUE

PG. 2

Building Safety Bill

PG. 4

Workplace Fatalities
Illegal Gas Work

PG. 5

PPE Regs Changes

PG.6

Work at Height Basics

PG.7

Guilty Fire Risk Assessor

PG.8

Vaccinations

PG.9

HAVS Alternatives

WORK RIGHT TO PROTECT WORKERS' LUNG HEALTH

All workers deserve to Breathe Easy

Living with lung disease has a devastating impact on workers' lives as well as the lives of their families. Each year, it is estimated that 12,000 people die from work-related lung diseases linked to



exposure during their working lives.

HSE is shining a light on work-related lung diseases to ensure employers whose workers are at risk of breathing in certain dusts, gases, fumes and vapours in the workplace have effective control measures in place to protect workers from occupational lung disease.

Employers have a legal responsibility to protect their workers' respiratory health. Check your control measures today to make sure they are in line with expected standards on how to prevent work related lung diseases.

To protect workers from serious, long-term lung damage, it is vital that employers in higher risk sectors assess the risks, plan their work and have effective controls to protect their respiratory health and Work Right. We have a range of guidance and resources available for those undertaking higher risk work, including:

Construction - cutting, drilling and sanding, Welding, Stonework, Cement and concrete manufacture, Woodworking, Baking and milling, Quarry work

HSE targeted inspections

Breathing in welding fume and metalworking fluids can cause serious lung diseases.

HSE inspectors continue to visit businesses across Great Britain as part of our targeted inspections programme. Inspectors are checking that welding and working with metalworking fluids are planned correctly to minimise risk to workers' health.

If your workers use metalworking fluids or undertake welding activities, make sure your business is taking the necessary precautions by visiting our new Work Right website and downloading our top tips and watching our presentation on metalworking fluids.

LEGISLATION UPDATE BUILDING SAFETY BILL



The Building Safety Bill was introduced to the House of Commons on 5 July. The Bill will create a new building safety regulator as well as outline the biggest changes to building safety regulation in a generation. The Bill also gives residents more power to hold builders and developers to account and toughens sanctions against those who threaten their safety.

Under the new legislation,

building owners will be required to manage safety risks, with clear lines of responsibility for safety during design, construction, completion and occupation of high-rise buildings. The law will require a golden thread of information, with safety considered at every stage of a building's lifetime. Building owners must demonstrate they have effective, proportionate measures in place to manage safety risks. Those who don't meet their obligations may face criminal charges.

WHAT IS THE AIM OF THE BILL?

The new law is designed to achieve greater accountability for fire and structural safety issues throughout the complete lifecycle of a building; from design through construction to occupation and beyond.

WHICH BUILDINGS ARE INCLUDED?

The bulk of the Bill addresses the risks posed by 'higher risk' buildings, but some sections have wider application.

Higher risk buildings are high rise; either more than 18m from ground level or at least seven storeys. The Bill then captures different building types. For example:

for the purposes of the design, construction and refurbishment requirements properties with at least two residential units, care homes and hospitals are to be included;

for those parts of the Bill relating to occupation of a building, this covers residential properties only – again with at least two residential units.

WHO ARE THE DUTY HOLDERS?

The new regime will impose responsibility for compliance with building regulations on CDM duty holders including the Principal Designer and Principal Contractor. These duties will be in addition to existing duties under the CDM Regulations relating to construction site safety.

The Bill also introduces new in-occupation roles for higher-risk buildings:

Accountable Person (AP): this will typically be the person or organisation that is responsible for common parts of the building. In multi-occupancy situations, there may be more than one AP, in which case there must be co-ordination and communication between them and a Principal AP must be identified. APs are primarily responsible for the fire and structural safety of higher risk buildings. This includes managing the “golden thread” of information.

Building Safety Manager (BSM): appointed by the AP, the BSM is responsible for the day-to-day management of fire and structural safety.

The Bill provides some shape to these roles, but further regulations are expected to fully detail the legal obligations.

All appointees – whether under the Bill or CDM – must be competent to fulfil their respective roles and work is underway to produce a suite of national competence standards.

WHAT IS THE 'GOLDEN THREAD'?

One of the key changes the Bill introduces is a 'golden thread' of information about a building which is to be created and maintained. This is 'to ensure the right people have the right information at the right time to ensure buildings are safe and...risks are managed throughout the lifecycle' of a property.

To achieve this, the Bill creates three 'Gateways' at which information must be recorded and stored:

Gateway 1: planning authorities will require a Fire Statement to ensure that fire safety considerations have been incorporated into design proposals.

Gateway 2: the Building Safety Regulator (BSR) will require information to show how the development, once built, will comply with Building Regulations. Work cannot commence until the BSR is satisfied. This replaces the current "deposit of full plans" stage.

Gateway 3: this is the equivalent to the current completion or final certificate stage and applies once construction is complete. There must be an assessment to ensure the work has been carried out in compliance with the law and with the previously submitted information. The information is then handed to the AP.

HOW WILL THIS BE REGULATED?

The BSR has already been set up on an interim basis within the HSE. Peter Baker has been appointed as Chief Inspector of Buildings and will lead the new regulator.

The BSR will implement a new, more stringent regulatory regime for higher risk buildings and will oversee their registration and inspection. This includes:-

- decision making during the design, construction, occupation and refurbishment of higher risk buildings;
- regulation of Building Inspectors and Building Control Approvers – the BSR will establish and maintain a register;
- assisting and encouraging competence amongst those working in the built environment; 'the power to issue 'Stop' and "Compliance' Notices where there are breaches; and
- the ability to prosecute businesses and individuals.

WHEN WILL THIS HAPPEN?

The government expects it will be at least nine months – April 2022 – before the Bill becomes law. The new regime will then be introduced over the next 12 to 18 months, meaning that the bulk of the changes will be in place by October 2023.

However, Gateway 1 will be introduced on 1 August 2021. Those involved in planning will therefore need to be ready for that imminent change.

WHAT SHOULD I DO NOW?

It would be easy to be overwhelmed by the scale of the changes proposed. But for safety practitioners, the concepts are familiar and well established.

Key steps to take at this stage include:

Complete an inventory of your estate to ensure you understand which of your buildings are potentially impacted.

Identify which elements of the Bill apply to your organisation and think about how you will comply and how you can positively demonstrate that you do. Will you need additional training? Will you need more resource? Will you need to recruit? Will you need professional advice? Will you need new partnerships with others who can help you comply?

Set out a plan for your organisation's compliance based on the specific risks presented by your property portfolio. This will need to be a living document that can be adapted as we learn more.

Monitor the progress of the Bill and the associated Regulations and guidance. Much of the detail is still to come.

Whilst the Bill is not yet law, the intention from the Government is clear – from the early introduction of Gateway 1 to setting up the interim regulator – these changes are coming. The businesses that prepare early will be best placed to adapt.

IS THERE ANYTHING ELSE I NEED TO KNOW?

Yes! The Bill is enormous in its scope and reach and will need detailed review in affected organisations.

And there'll be more. We are still to see all of the implementing regulations that put the detail into the new roles, we are also expecting statutory guidance around competence and there are related reforms in fire safety legislation too. Monitoring developments is now key in the months ahead.

WORKPLACE FATALITIES

The Health and Safety Executive (HSE) has published statistics on fatal injuries in Great Britain 2021. This is an ongoing data series that is published annually. The HSE has reported a 28% year-on-year increase in the number of work-related fatal accidents in Britain during 2020-21, with the number of workers that lost their lives up from 113 to 142. This is in contrast to the record low of 111 seen in 2019-20.

Protecting people at work and ensuring their health and safety must be properly resourced. Over the last decade, the HSE and local authorities have faced significant and deep spending cuts. British Safety Council believes that a steady funding stream is essential to their ability to provide proactive engagement with industry and to promote and support continual improvement in health, safety and wellbeing standards. It is worrying that 38% of worker fatal injuries were to self-employed workers, who comprise 16% of the workforce.

The largest number of deaths occurred in construction (39) and agriculture (34). Among the most common causes of fatal injuries were falls from height (35), being struck by moving vehicle (25) and being struck by a moving object (19).

The number of workplace deaths in 2020/21 should be seen in the context of the challenges in the labour market caused by the COVID pandemic and the Government response to its impact, including the furloughing of workers and telling employees to work from home where possible.

In addition to workplace fatality figures, the HSE has also reported alarming statistics of deaths related to mesothelioma, asbestos-related cancer, which is still prevalent some 20 years after the use of asbestos was banned in Britain. In 2019, there were 2,369 mesothelioma deaths and it is also estimated that there was a similar number of deaths due to asbestos-related lung cancer.

Mike Robinson, Chief Executive of the British Safety Council, provided the following press comment:

“Fatal injuries are thankfully rare events. Every workplace death is a tragedy for the person and their families, friends and workmates. The latest rise in deaths at work undermines the belief that ‘we have the best safety record in the world’ and raises questions about the cuts in funding of the HSE’s and local authorities’ ability to inspect workplaces. In every aspect of life, you tend to get what you pay for and our government is paying less money and less attention to workplace safety year on year.”

PRISON SENTENCE FOR BUILDER THAT UNDERTOOK ILLEGAL GAS WORK

[A self-employed fitter has been jailed after carrying out gas work at a residential address in the New Forest whilst he was not competent to do so, leaving a gas boiler in an ‘at risk’ condition.](#)

Southampton Crown Court heard how Michael Smithers, who traded under the name of Bournemouth & Verwood Builders, was contracted to carry out the construction of a new build house in the New Forest between 2017 and June 2018, which also included the installation of new gas appliances. Mr Smithers installed a new gas central heating boiler and the homeowner subsequently experienced problems. They contacted the Gas Safe Register and an inspection of the gas installation was carried out, the boiler installation was classed as ‘at risk’ and removed from service.

An investigation by the Health and Safety Executive (HSE) found that Mr Smithers was not competent to complete gas work and was not Gas Safe



registered at the time he carried out this work. Mr Smithers had previously been prosecuted by the HSE and found guilty in April 2014 for unregistered gas work.

Michael Smithers of Nightingale Close, Verwood pleaded guilty to breaching Regulations 3(1) and 3 (3) of the Gas Safety Installation and Use Regulations 1998. He was sentenced to nine months in prison, ordered to pay £2,500 in compensation and £12,529 in costs.

Speaking after the hearing, HSE inspector Nicola Pinckney said: “Mr Smithers conducted gas work while he was not competent to do so and whilst not Gas Safe registered. Given his previous conviction, this defendant should have been fully aware of what the law requires to protect the public.

“To help ensure the highest standards of gas safety are met and to prevent injury and loss of life, all gas work in domestic premises must be done by people who have been properly trained and are registered Gas Safe engineers.

“HSE will not hesitate to take enforcement action against people who break the gas safety rules, which are in place to protect the public. We would encourage anyone who is asking for gas work to be done to make sure they check the engineer has the right skills and is registered with Gas Safe Register. Homeowners can ask to see the engineer’s Gas Safe Register identification card, which contains key information.”

CHANGES TO THE PERSONAL PROTECTIVE EQUIPMENT AT WORK REGULATIONS 1992

HSE is consulting on changes to the PPER 1992. We encourage you to draw the attention of your stakeholders and other interested parties to this consultation launching on Monday 19 July 2021 and running for 4 weeks.

The consultation can be accessed via HSE Consultation Hub from this date. The aim of the consultation is to understand the impact on stakeholders and businesses of extending the scope of the employers’ duties under the PPER to workers and not only employees.

In November 2020, a judgment was handed down in the judicial review action in the High Court brought by the Independent Workers Union of Great Britain (IWGB) against the Secretaries of State for Department for Business, Energy and Industrial Strategy (BEIS) and the Department for Work and Pension (DWP), which decided that the government had failed to properly transpose Article 8(4) and 8(5) of EU Directive 89/391/EEC (“the Framework Directive”) and Article 3 of EU Directive 89/656/EEC of 30 November 1989 (“the Personal Protective Equipment Directive”) into UK law.

The Framework Directive sets out the minimum standards for health and safety through a series of general principles, and the Personal Protective Equipment Directive (“PPE Directive”) sets out the minimum health and safety requirements for the use of personal protective equipment in the workplace for workers.

The UK implemented the PPE Directive through the Personal Protective Equipment at Work Regulations 1992 (“PPER”) which places duties on employers to their ‘employees’ in regard to PPE. The High Court found that the PPE Directive required these duties to be extended to ‘limb (b) workers’ and not only ‘employees’. Therefore, HSE is making amendments to the PPER in order to align with the court’s judgment.

Employers will have a duty to provide limb (b) workers with the same health and safety protections in respect of PPE as they do currently for employees.

Options on how to achieve the extension of the provisions to workers in the legislation will not be presented during the consultation as the key legislative changes are being made to align with the court decision.

For any enquiries, please contact ppeconsultation2021@hse.gov.uk



BACK TO BASICS: WORK AT HEIGHT

1. DEFINE IT

Drawing on the GB Health and Safety Executive's definition, IOSH defines work at height as follows: *Working in any place where a person could fall a distance liable to cause personal injury. This can be above or below ground level. Work at height also covers places where objects could be dropped onto and injure a person (or persons) below.*

2. IDENTIFY PHYSICAL HAZARDS

The main hazards in working at height are either workers or objects falling from height. Identifying these hazards is key to correctly assessing the risks of working at height. There are many causes of these hazards.

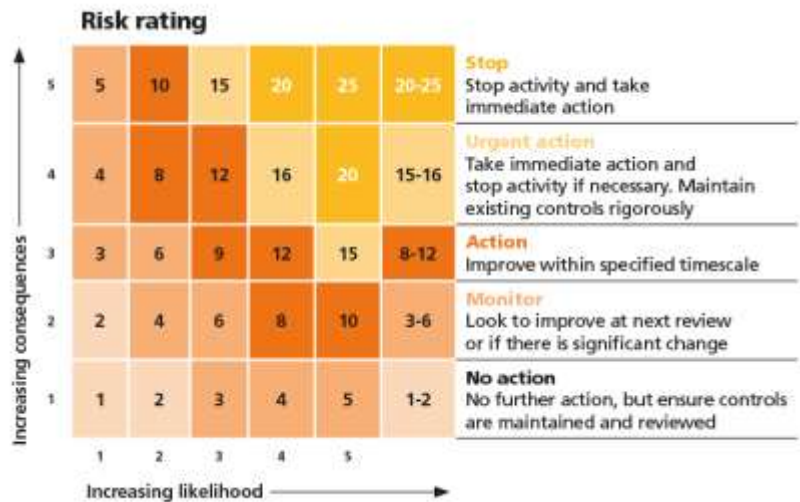
3. IDENTIFY PERSONAL HAZARDS

These include:

Workers' attitudes and behaviours, Medical conditions and disabilities, Young workers, Lone workers, Workers with insufficient or inadequate information, training, instruction or supervision.

4. CONDUCT RISK ASSESSMENT

As with any risk assessment, those for working at height are usually undertaken using this five-step process:



Hazards can be identified by workplace inspections or by methods such as 'what if' or task analysis.

Any existing control measures should be considered. Risk assessments can be either qualitative (an educated opinion) or quantitative (using measurement and calculations).

A risk assessment can be used to estimate the impact of the risk, based on its likelihood and consequence (risk = likelihood × consequence). An example is shown below.

5. IMPLEMENT CONTROLS



Once work-at-height hazards are identified and assessed, they need to be eliminated or controlled. Good practice within OSH is to use a hierarchy of control (HOC) to choose the appropriate control measures for each hazard.

HOC is a method of prioritising controls to reduce risks – from most effective to least (this might be a result of a risk-cost analysis).

SUSPENDED SENTENCE FOR GUILTY FIRE RISK ASSESSOR



A fire risk assessor who provided an inadequate assessment for a residential block in Southampton has been fined and given a suspended prison sentence, following a prosecution brought by Hampshire and Isle of Wight Fire and Rescue Service.

At a hearing at Southampton Crown Court last month, Charles Morgan – a director of UK Fire Consulting Ltd – pleaded guilty to

providing a fire risk assessment that was not suitable or sufficient for Cranleigh House, a fully-occupied block of flats.

Morgan was fined £2,750, ordered to pay costs of £19,952 and given a three-month prison sentence suspended for 18 months. UK Fire Consulting Ltd was fined £20,000 and also ordered to pay costs of £19,952 for the same offence.

Prosecuting on behalf of the fire authority, Klentiana Mahmataj said that Morgan had not lifted ceiling tiles or even opened riser cupboard doors to check for fire safety risks at the three-storey building.

During a visit to Cranleigh House, a Hampshire and Isle of Wight Fire and Rescue Service fire safety inspector also discovered electrical wiring penetrating the compartment walls. Compartmentation is critical in a residential property with a 'stay put' policy and at Cranleigh House there was no apparent fire stopping added to holes in the walls, meaning that smoke or fire could travel into the communal escape routes to other parts of the building.

His Honour, Judge Burrell QC said: 'The job of a fire risk assessor is a highly responsible one. Lives are in their hands and their judgement is crucial. It is not a job to be taken lightly. It is important to hold risk assessors to account and these are serious breaches. I find it odd that there exists no regulatory framework in regard to fire risk assessors.'

Denfords Property Management, the managing agent for the premises, had pleaded guilty at an earlier hearing to failing to comply with an enforcement notice to provide a suitable fire risk assessment. It was fined £10,000 with £6,000 costs. The individual manager specifically responsible for the premises was given a conditional discharge and ordered to pay £1,800 costs.

The Fire Safety Order places the onus on the responsible person to comply with the legislation. However, in this case, Denfords Property Management had put its trust in UKFC Ltd to complete the fire risk assessment to a satisfactory standard.

Speaking after the case, deputy chief fire officer Steve Apter said: 'Fire risk assessments underpin the whole process of building fire safety. Mr Morgan failed to inspect and identify fire safety deficiencies within the building and failed to note a compromised alarm and evacuation strategy for the residents.'

'This shortfall meant that those responsible for implementing fire safety measures were unable to fulfil their legal obligations and placed occupants at risk of death or serious injury had a fire occurred.'

VACCINATIONS AND THE WORKPLACE



There has been much in the press recently about the refusal by some people to be vaccinated against Covid-19. This has even resulted in the Government looking at creating new legislation to make vaccination compulsory in healthcare settings.

Presently, a right to refuse vaccination is enshrined in UK legislation. Vaccination is an invasive procedure. Human rights recognise the sanctity of a person's own body: people have a legal right to refuse medical intervention. While it may be true that vaccination may also be refused on medical grounds, this relates to a very small number of individuals. Most refusers cannot legitimately claim this justification. Employers may wish to seek evidence from a medical practitioner regarding any employee claims on these grounds, but it is not that simple.

Under health and safety legislation there is a duty to assess risk to both employees and third parties: anyone who may be affected by the organisation's undertaking. This is the heart of the compulsory vaccination debate in healthcare. Which is more important? A fundamental human right of an employee, or knowingly allowing a higher level of risk to other employees and third parties if they are allowed to refuse vaccinations? This is a moral dilemma.

It is not always possible to redeploy care workers and nurses to other duties to mitigate the risk of them transmitting disease to others. Certainly, hospital patients and care home residents are often at higher risk of contracting Covid-19 due to age and the presence of other medical conditions. While most may be vaccinated now, it may not stop them contracting the disease and emerging evidence suggests it may still be potentially fatal in a small number of cases.

When hiring new staff, it is possible for organisations to place a contractual requirement on them to be vaccinated. If they refuse that aspect of the contract, they simply will not be hired.

The dilemma lies with existing staff. People refuse for different reasons. Finding ways to coerce people to have the vaccination may be counterproductive and develop entrenched positions. It is estimated that only 2% of refusers are opposed to all vaccination. For most, the reason for refusal may come from receiving false information on social media or in social discussions. They may be misled, confused or uncertain.

Taking steps to educate and reassure people has a real chance of changing mindsets, providing opportunity to make informed decisions and thereby achieving higher levels of compliance.

Be open, transparent and find every opportunity to inform and give space to consider the options and consequences of not taking these vaccines. Look for allies. Often unions and work colleagues are also good sources of persuasion.

Vaccination is nothing new. For years police officers have been vaccinated against Hepatitis B, teachers against influenza, and business travellers against yellow fever. Coronavirus is just one more to add to the list. Let us ensure we educate our employees about why vaccination is important and necessary and win their compliance by appealing to their sense of responsible citizenship.

ALTERNATIVE PROCESSES TO AVOID/REDUCE USE OF VIBRATING EQUIPMENT

Construction Table 1: Established alternative processes to avoid/reduce use of vibrating equipment

Activity or process	Example vibration magnitude (m/s ²)	Corresponding time to reach:		Alternative methods	Further information (links on HSE website)
		EAV	ELV		
Tunnelling by hand with clay spade or jigger pick.	16 (typical)	10 m	45 m	Mechanised tunnelling methods, to eliminate hand digging. This is expected for all but the smallest tunnelling jobs.	British Tunnelling Society code of practice on hand-arm vibration Tunnelling and Pipejacking: Guidance for Designers
Breaking concrete, asphalt, etc. with hand-operated breakers in ground work, road maintenance, etc.	5 (lowest) 12 (typical) 20 (highest)	2 h 20 m 10 m	8 h 90 min 30 min	Plan construction work (e.g. casting-in ducts, detail box-outs) to minimise breaking through new concrete/masonry. Use alternative method/equipment as appropriate:	Construction Industry Council guidance Example: mounted breaker
Demolition of concrete/masonry using hand-held hammers/breakers	8 (lowest) 15 (typical) 25 (highest)	45 m 15 m 5 m	3 h 1 h 20 m	<ul style="list-style-type: none"> • machine-mounted hydraulic breakers • floor saws • directional drilling/pipe jacking to avoid trenching • hydraulic crushers • hydraulic bursters • diamond core drilling • diamond wire cutting • hydro-demolition (UHP water jetting) 	Example: directional drilling Example: crushing concrete Example: Bursting concrete Example: diamond wire cutting Example: water jetting Codes of Practice from the Waterjetting Association
Pile cropping using hand-held hammers/breakers	8 (lowest) 15 (typical) 25 (highest)	45 m 15 m 5 m	3 h 1 h 20 m	<p>Pile cap removal using hand-operated breakers is not acceptable. Use alternative method as appropriate:</p> <ul style="list-style-type: none"> • Elliott method • Recipieux method • suspended hydraulic pile cropper • the above alternatives to hand-operated breakers, especially machine-mounted breakers • design pile spacing and pile re-bar for mechanised cropping <p>Note: some dressing using hand-operated tools may still be required.</p>	Pile cropping. A review of current practice (HSE Inspector information leaflet, Aug 02) Information from Loughborough University

Activity or process	Example vibration magnitude (m/s ²)	Corresponding time to reach:		Alternative methods	Further information (links on HSE website)
		EAV	ELV		
Scabbling using: needle scalers	5 (lowest) 18 (highest)	2 h 10 m	8 h 40 m	Scabbling purely for architectural aesthetic effect is not acceptable . Specify finishes that do not require scabbling. (Some finishes can be designed into shuttering using special moulds or chemical retardants and water jetting.)	
hammer type scabblers	40 (highest)	2 m	8 m	Surface preparation to ensure a good concrete bond. Use alternative methods where technically appropriate:	Example: grit blasting Example: paint-on retarder Example: special formwork Codes of Practice from the Waterjetting Association
pole type scabblers	10 (lowest) 40 (highest)	30 m 2 m	2 h 8 m		
Wall chasing using hand-held breakers	8 (lowest) 15 (typical) 25 (highest)	45 m 15 m 5 m	3 h 1 h 20 m	<ul style="list-style-type: none"> • in new buildings, specify built-in ducting • in existing buildings, consider overcoating existing plaster and building in the ducts 	Construction Industry Council guidance
Drilling masonry/concrete using: electric hammer drills or "combihammers"	6 (lowest) 9 (typical) 25 (highest)	1½ h 40 m 5 m	5½ h 2½ h 20 m	Design and plan to avoid unnecessary drilling. Use, where appropriate:	

Note 1: The vibration magnitudes, and associated trigger times to exceed EAV/ELV, are indicative only and will vary depending on equipment type and conditions of use.
Note 2: changes of process to eliminate or reduce vibration may introduce other hazards to health (e.g. noise, dust) or safety which must be addressed and managed (e.g. hazards associated with lifting operations in some mechanised methods for pile cap removal).

AGA E-LEARNING COURSES

Whether you are looking to improve your own knowledge or provide training to employees, our E-Learning courses will guide you through the regulations, your legal duties, identifying hazards in your workplace and suitable control measures. Each course is followed by a short test to clarify your understanding regarding that topic, upon which after completion, you will be issued a certificate.

Each course costs £15+vat unless otherwise stated. The courses we currently offer training in are:

- Asbestos Awareness *Course cost is £20+vat*
- Abrasive Wheels
- Basic First Aid
- COSHH
- Display Screen Equipment (DSE)
- Falls Prevention – Working at height
- Fire Safety
- Fire Warden *Course cost is £20+vat*
- Health and Safety Level 2 *Course cost is £20+vat*
- Legionella Awareness
- Local Exhaust Ventilation (LEV)
- Lone and Remote Workers (Personal Security)
- Manual Handling
- Office Safety
- Risk Assessment
- Slips and Trips
- The Construction (Design and Management) Regulations (Overview)



For more information or to book our courses visit www.aga-ltd.co.uk/e-learning-courses.

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Do you need help understanding the CDM Regulations 2015? Not sure if you are complying with your duties correctly?

We offer a free CPD consultation to keep you up to date. One of our experienced CDM Consultants will host a virtual session and provide up to the minute, competent advice. We cover everything from Duty Holders to Design Risk Management and welcome any questions or scenarios you need help with.

Please get in touch if this would be of interest to you.

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