Redgrave's Health and Safety in Factories

Second Cumulative Supplement to Second Edition

Butterworths
Shaw & Sons

REDGRAVE'S HEALTH AND SAFETY IN FACTORIES

SECOND CUMULATIVE SUPPLEMENT
TO SECOND EDITION

HIS HONOUR
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Lately one of Her Majesty's Circuit Judges

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LONDON
BUTTERWORTHS
SHAW & SONS
1988

United Kingdom Butterworth & Co (Publishers) Ltd, 88 Kingsway, LONDON, WC2B 6AB and 61A North Castle Street, EDINBURGH EH2 3LJ

Australia Butterworths Pty Ltd, SYDNEY, MELBOURNE, BRISBANE, ADELAIDE, PERTH, CANBERRA and HOBART

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New Zealand Butterworths of New Zealand Ltd, WELLINGTON and AUCKLAND

Singapore Butterworth & Co (Asia) Pte Ltd, SINGAPORE

South Africa Butterworth Publishers (Pty) Ltd, DURBAN and PRETORIA

USA Butterworths Legal Publishers, ST PAUL, Minnesota, SEATTLE, Washington, BOSTON, Massachusetts, AUSTIN, Texas and D & S Publishers, CLEARWATER, Florida

ISBN 0 406 353093

This supplement supersedes the previous supplement which should now be discarded.

Typesetting by Lin-Art, Ashford, Kent
Printed in Great Britain by Billing & Sons Ltd, Worcester.

PUBLISHERS' NOTE

This is the second, cumulative supplement to *Redgrave's Health and Safety in Factories* (2nd edn). In Part 1, a noter-up indicates changes in law and practice made since the publication of the main volume, while Part 2 contains the texts of the more important new Acts, regulations, relevant certificates of exemption and exception, and codes of practice. The previous supplement is superseded.

Since the publication of that supplement early in 1985 there have been a number of major developments which are taken into account here. The Truck Acts 1831 to 1940 and all the other legislation on the payment of wages set out in Part 6 of the main volume have ceased to have effect, and are replaced (except as to Northern Ireland) by the Wages Act 1986. It creates new restrictions on deductions from wages and establishes a right of access to industrial tribunals in case of dispute. Relevant provisions of the 1986 Act are set out in Part 2, post.

The Fire Safety and Safety of Places of Sport Act 1987 will, when fully in force, extensively revise the Fire Precautions Act 1971, enabling fire authorities to identify and exempt from the requirement to have a fire certificate designated premises which have been assessed as constituting a low fire risk. The authorities will have power to carry out re-inspections of premises and, if necessary, withdraw their exemption. Occupiers are to be subject to a statutory duty to have adequate means of escape and fire fighting equipment, for which a code of guidance is to be issued by the Secretary of State. Part I of the 1987 Act is printed in Part 2 of the supplement, post. Some provisions come into force on 1 January 1988, but no date had been appointed for the remainder when the supplement went to press.

The general duty in s.6 of the Health and Safety at Work Act 1974 is amended, as from 1 March 1988, by the Consumer Protection Act 1987, s.36 and Sch. 3 (printed in Part 2) so as to ensure that manufacturers, designers, importers and suppliers exercise reasonable foresight in product design and construction.

The duty is extended to a wider range of activities, to all substances and to fairground equipment. Other amendments include a power to prohibit immediately the supply of products likely to cause serious personal injury.

Many restrictions on the working hours and conditions of women have been removed by the Sex Discrimination Act 1986, amending the Hours of Employment (Conventions) Act 1936 and the Factories Act 1961, and repealing the Baking Industry (Hours of Work) Act 1954. Numerous consequential amendments have been made to other legislation by the Factories Act (Hours of Employment Orders and Regulations) Revocation and Amendment Order 1986.

Three important new sets of regulations are added in Part 2 of the supplement. Controls on the importation and use of asbestos are extended by the Asbestos (Prohibitions) Regulations 1985. The Ionising Radiations Regulations 1985, replacing earlier regulations, are supplemented by a new Code of Practice *The protection of persons against ionising radiation arising from any work activity*, also reproduced in Part 2. And the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1985 have revoked and replaced the Notification of Accidents and Dangerous Occurrences Regulations 1980.

The Code of Practice *Control of Lead at Work*, set out in the main volume, was revised and replaced in January 1986. It is printed in its revised form towards the end of the supplement and is reproduced, together with the other Codes of Practice, by permission of the Controller of Her Majesty's Stationery Office. Other codes of practice approved under s. 16 of the Health and Safety at Work Act 1974 include a number of British Standards published by the British Standards Institution. They are listed under that section in the noter-up, but it has not been possible to present them in full in the supplement.

We would again like to thank the staff of the Health and Safety Executive for their invaluable co-operation in the preparation of this supplement.

The law is generally stated as at 1 September 1987, though some later developments have been noted where possible.

November 1987

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PART 1 — NOTER-UP

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GENERAL INTRODUCTION

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7 **Paragraph 3:** *Causation. Stapley v Gypsum Mines Ltd* [1953] AC 663, [1953] 2 All ER 478, HL, was considered in *McGovern v British Steel Corpn* [1986] ICR 608, [1986] IRLR 411, CA. Where there was a breach of statutory duty and injury resulted after some human intervention, it was necessary to examine whether the intervention was a natural and probable consequence of the breach and whether the chain of causation had been broken (whiplash injury to back caused by attempt to move displaced scaffolding toe-board).

12 **Paragraph 7: Delegation of statutory duty.** *Ginty v Belmont Building Supplies Ltd* [1959] 1 All ER 414, followed in *Lanigan v Derek Crouch Construction Ltd* 1985 SLT 346n: Construction (Working Places) Regulations 1966, reg. 32 (unlashed ladder slipped, causing injury).

15-16 **Paragraph 10(b): Reasonably practicable.** Evidence of a universal practice bears directly on the question of whether any other method is reasonably practicable. However, evidence of a universal practice does not discharge the onus on an employer of proving that it is not reasonably practicable to use another, safer method: *Martin v Boulton and Paul (Steel Construction) Ltd* [1982] ICR 366, QBD (steel erection work).

The obligation imposed on an employer by the Factories

15-16 Act 1961, s. 28 (1), so far as is reasonably practicable to keep factory floors free from any substance likely to cause persons to slip, is not discharged merely by keeping the floor clean. It must also be shown that precautions have been taken to prevent substances such as oil from getting on to the floor. In defending an alleged breach of statutory duty under s. 28 (1), it is necessary to plead specifically that, so far as is reasonably practicable, all possible precautionary measures have been taken: *Johnston v Caddies Wainwright Ltd* [1983] ICR 407, CA (oil on a factory floor), considering *Bowes v Sedgefield District Council,* cited.

FACTORIES ACT 1961

36 **Section 1: Note (b) Clean state.** See *Brooks v J & P Coates (UK) Ltd* [1984] ICR 158 at 173, QBD, per Boreham J: "what is a clean state must be a variable for it must, in my judgment, depend on the process carried on in the factory."

39-40 **Section 2.** In s. 2 (2) for "four hundred cubic feet" there is substituted "11 cubic metres", and in s. 2 (5) for "fourteen feet" there is substituted "4.2 metres" by the Factories Act 1961 etc. (Metrication) Regulations 1983, S.I. 1983 No. 978. The amendments do not apply to premises or plant in existence before 12 August 1983.

41 **Section 3.** In s. 3 (2) for "sixty degrees" there is substituted "16 degrees Celsius" by the Factories Act 1961 etc. (Metrication) Regulations 1983, S.I. 1983 No. 978. Fahrenheit thermometers may continue to be used in workrooms in existence before 12 August 1983 if conversion tables to degrees Celsius are provided.

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42-44 **Section 4: General note.** Section 4 (1) "relates to the securing of effective ventilation by the circulation of fresh air. It does not . . . enjoin the fitting of exhaust appliances to extract dust at source": per Boreham J in *Brooks v J & P Coates (UK) Ltd* [1984] ICR 158 at 173, QBD, following Devlin J in *Graham v Co-operative Wholesale Society Ltd,* cited. In *Brooks v J & P Coates (UK) Ltd,* the employers knew that cotton dust generated by their manufacturing process could be injurious to health, and they were held to be in breach of their statutory duty under s. 4 for failing to install adequate ventilation.

44-45 **Section 5. General Note.** *Thornton v Fisher and Ludlow Ltd* [1968] 2 All ER 241, [1968] 1 WLR 655, CA, was applied in *Davies v Massey Ferguson Perkins Ltd* [1986] ICR 580, QBD. There was an absolute duty on employers to secure and maintain sufficient and suitable lighting on factory premises. That duty would be breached even if a light bulb failed shortly before an accident occurred and even if there was a reasonably efficient system in operation for effecting repairs: per Evans J at 588 A-C.

(a) Suitable and sufficient lighting. See General note, above.

51 **Introductory note to sections 12-16: 1. Machinery.** *Irwin v White, Tomkins and Courage Ltd* and *Parvin v Morton Machine Co Ltd* were considered in *TBA Industrial Products Ltd v Laine* [1987] ICR 75, 150 JP 556, QBD. See s.14, note (a), below.

53 **2. The part required to be fenced (foreseeability of danger).** The test applied to the safety of a machine, as expressed in the dicta of du Parcq J in *Walker v Bletchley Flettons Ltd* and Lord Reid in *John Summers & Sons Ltd v Frost,* was applied to the safety of a place of work in *Allen v Avon Rubber Co Ltd* [1986] ICR 695, [1987] IRLR 22, CA (barrier around a loading bay).

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54 *Millard v Serck Tubes Ltd* [1969] 1 All ER 598, [1969] 1 WLR 211, CA, was considered in *McGovern v British Steel Corpn* [1986] ICR 608, [1986] IRLR 411, CA. Where there was a breach of statutory duty and injury resulted after some human intervention, it was necessary to examine whether the intervention was a natural and probable consequence of the breach and whether the chain of causation had been broken (whiplash injury to back caused by attempt to move displaced scaffolding toe-board).

58 **4. The dangers against which fencing is required.** See *Walker v Dick Engineering Co (Coatbridge) Ltd* 1985 SLT 465: Statutory obligation to fence does not cover articles which are not part of the machinery, for example, material being worked on (injury caused by contact with cuttings, not with machine).

61,70 **Sections 13(1) and 16.** There is no statutory duty to devise and maintain a system whereby the gearing and drive chain of a machine can be checked without removing the guards. Liability under ss. 13(1) and 16 is absolute, but where the injured party is an experienced fitter, contributory negligence will be assessed accordingly: *Boyes v Carnation Foods Ltd* 1986 SLT 145 (Maintenance fitter was carrying out a monthly inspection of a bottle capping machine. For purposes of inspection and repair, the guard was removed while the machine was in motion. Injury to the fitter's finger resulted).

63 **Section 14(1): General note.** See *Walker v Dick Engineering Co (Coatbridge) Ltd* 1985 SLT 465: Statutory obligation to fence does not cover articles which are not part of the machinery, for example, material being worked on (injury casued by contact with cuttings, not with machine).

63 **Section 14: Note (a) Dangerous part of any machinery.** See *TBA Industrial Products Ltd v Laine* [1987] ICR 75, 150 JP

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556, QBD. "Machinery" includes a machine installed on the main workfloor of a factory for purposes of modification and development where, if the development was successful, that machine would be used in the company's main manufacturing process. Per Watkins LJ: "if the machine, whilst being experimented with, had been in a separate building upon the defendant's premises or even set apart from the place where production was going on in the same building, it may be that s. 14(1) could not be said to apply to it."

Operations at Unfenced Machinery Regulations 1938

66-69 See *Jayes v IMI (Kynoch) Ltd* [1985] ICR 155, CA, applying dicta of Sellers and Pearson LJJ in *Mitchell v WS Westin Ltd* [1965] 1 WLR 297 at 305, 308-309, CA: there is no legal principle to the effect that, where there is a breach of statutory duty, an award of 100 per cent contributory negligence could not be made, even if the statute protected people against, inter alia, acts of folly. (Injury to the finger of an experienced machine operator who was using a rag to wipe oil off an unfenced, moving belt.)

75 **Section 18.** For "three feet" wherever it occurs in s. 18 (1), (2) (b), (3) there is substituted "920 millimetres", and for "eighteen inches" in s. 18 (2) (a), (3) there is substituted "460 millimetres" by the Factories Act 1961 etc. (Metrication) Regulations 1983, S.I. 1983 No. 978. The amendments do not apply to premises or plant in existence before 12 August 1983.

76 **Section 19.** In s. 19 (1) for "twelve inches" there is substituted "310 millimetres" and for "eighteen inches" there is substituted "500 millimetres" by the Factories Act 1961 etc. (Metrication) Regulations 1983, S.I. 1983 No. 978. The amendments do not apply to premises or plant in existence before 12 August 1983.

Hoists Exemption Order 1962

84-91 This order is amended by the Hoists and Lifts (Metrication) Regulations 1983, S.I. 1983 No. 1579, making the following substitutions of metric for imperial measurements in the Schedule: in para. 2, 2 metres for six feet six inches, 920 millimetres for three feet; in para. 3, 2 metres for six feet six inches, 2.2 metres for seven feet; in para. 4, 2 metres for six feet six inches, in para. 6, 840 millimetres for two feet nine inches; in para. 11, 13 millimetres for half-an-inch, 26 millimetres for one inch; in para. 13, 840 millimetres for two feet nine inches, 1.5 metres for five feet, 300 millimetres for twelve inches, 0.12 metres per second for twenty-five feet per minute; and in para. 14, 65 millimetres for two and a half inches. The amendments do not apply to premises or plant in existence before 23 November 1983.

92-93 **Section 26.** In s. 26 (1) (f) for "half-inch" there is substituted "13 millimetres" by the Factories Act 1961 etc. (Metrication) Regulations 1983, S.I. 1983 No. 978. The amendment does not apply to premises or plant in existence before 12 August 1983.

95-96 **Section 27.** In s. 27 (7) for "twenty feet" there is substituted "6 metres" by the Factories Act 1961 etc. (Metrication) Regulations 1983, S.I. 1983 No. 978. The amendment does not apply to premises or plant in existence before 12 August 1983.

96 **Note (a) Lifting machine.** *McKendrick v Mitchell Swire Ltd* 1976 SLT (Notes) 65 was approved by Lord Stewart in the Outer House in *McDowell v British Leyland Motor Corpn Ltd* 1982 SLT 71n. A fork lift truck, being a machine designed to lift and carry, is both a transporter and also a lifting machine. However, the Lord President (Emslie), Lords Cameron and Stott concurring, overruled *McKendrick* and *McDowell* in the First Division, deciding in *Walker v Andrew Mitchell & Co* 1982 SLT 266 that a fork

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96 lift truck is not a "lifting machine" within the meaning of s. 27 (1).

99 **Section 28: Note (a) Floors, steps . . . etc.** An "opening in a floor" was to be construed according to its ordinary meaning for the purposes of s. 28 (4): *Sanders v F H Lloyd & Co Ltd* [1982] ICR 360, QBD (shallow, uncovered cleaning pits in a factory floor were within the terms of s. 28 (4) and should have been 'securely fenced' by means of a cover).

Bath v British Transport Commission, dictum of Somervell LJ, considered in *Allen v Avon Rubber Co Ltd* [1986] ICR 695, [1987] IRLR 22, CA (loading bay was not an opening in a factory floor within meaning of s.28(4)).

100 **Note (d) Reasonably practicable.** *Johnston v Caddies Wainwright Ltd* [1983] ICR 407, CA (see note to pages 15-16, ante).

Note (f) Substance likely to cause persons to slip. See *Bailey v Rolls Royce (1971) Ltd* [1984] ICR 688 at 702B, CA, per Stephenson LJ: "it is dangerous . . . to line up s. 28 (1) with s. 14, as is suggested in note (f) to s. 28 (1) on p. 100 of *Redgrave's Health and Safety in Factories*, 2nd ed. (1982)".

Notes (k), (l) and (m). See *Allen v Avon Rubber Co Ltd*, note (a), above. Also, if the opening in *Allen v Avon Rubber Co Ltd* had been an opening covered by s.28(4), the nature of the work for which it was designed would have made fencing impracticable.

101 **Section 29.** In s. 29 (2) for "six feet six inches" there is substituted "two metres" by the Factories Act 1961 etc. (Metrication) Regulations 1983, S.I. 1983 No. 978. The amendment does not apply to premises in existence before 12 August 1983.

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101-103 **General note.** Where an employee uses a means of access other than the one provided by the employer, the alternative means of access is not deemed to be provided by the employer within the meaning of s. 29 (1) unless the employer has in some way permitted the means of access to be used as such: *Smith v British Aerospace* [1982] ICR 98, CA, distinguishing *Cottrell v Viander SS Co Ltd* and considering *Lowe v Scruttons Ltd,* both cited in the main volume at p. 103.

In s.29(2), "means" includes coloured warning tape round a hole in the floor, where the erection of a safety fence was not practicable: *Rigg v Central Electricity Generating Board* (1985) Times, 23 February, QBD.

On p. 104 of the main volume, the fifth line should continue: "independent contractor's duty is broken the occupier will usually be granted contribution or an indemnity from him (see, for example, *Hosking v De Havilland Aircraft Co Ltd* [1949] 1 All ER 540)."

104-105 **Note (a) Reasonably practicable.** See *Darby v GKN Screws and Fasteners Ltd* [1986] ICR 1, QBD, per Peter Pain J: "The duty to provide safe access to his place of work is merely so far as is reasonably practicable, and I think the defendants have discharged the burden of showing that they took such steps as were reasonably practicable in the system that has been described" (no requirement to have men standing by to grit access paths before day shift arrived, following a fall of snow during the night).

See also *Allen v Avon Rubber Co Ltd* [1986] ICR 695, [1987] IRLR 22, CA (barrier around a loading bay).

106 **Section 30.** In s. 30 (2) for "eighteen inches" in both places where it occurs there is substituted "460 millimetres", for "sixteen inches" wherever it occurs there is substituted "410 millimetres", and for "fourteen inches" there is substituted "360 millimetres" by the Factories Act 1961 etc. (Metrication) Regulations 1983, S.I. 1983 No. 978. The amendments do not apply to premises or plant in existence before 12 August 1983.

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113 **Section 32: General note.** See also Certificates of Exception Nos. 63 and 64, and No. SPA/FA/1984/4 (General), set out in Part 2, post, containing further exceptions to this section.

125-136 Certificate of Exception No. 62 (F2499) is revoked by Certificate of Exception No. 63 (F2517), set out in Part 2, post.

138 **Section 33: General note.** See also Certificates of Exception Nos. 63 and 64 and No. SPA/FA/1984/4 (General), set out in Part 2, post, containing further exceptions to this section.

167 **Section 35: General note.** See also Certificates of Exception Nos. 63 and 64, set out in Part 2, post, containing further exceptions to s. 35 (5).

172 Certificate of Exception No. 54 (F2349) is revoked by Certificate of Exception No. 63 (F2517), set out in Part 2, post.

177 **Section 36: General note.** See the following additional Certificates of Exception set out in Part 2, post: SPA/FA/1982/6; SPA/FA/1983/2; No. 65, F2519; SPA/FA/1984/1; SPA/FA/1982/2; SPA/FA/1984/5; FA/1985/5. See also Certificates of Exception Nos. 63 and 64, which contain exceptions for certain air receivers associated with steam boilers.

179-180 Certificate of Exception No. 53 (F2348) is revoked by Certificate of Exception No. 63 (F2517), set out in Part 2, post.

180 Certificate of Exception No. 59 is revoked by Certificate of Exception FA/1985/5, set out in Part 2, post.