

Redgrave's Health and Safety in Factories

Supplement to
Second Edition



Butterworths
Shaw & Sons

REDGRAVE'S HEALTH AND SAFETY IN FACTORIES

SUPPLEMENT TO SECOND EDITION

HIS HONOUR

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Lately one of Her Majesty's Circuit Judges

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PUBLISHERS' NOTE

This supplement updates *Regrave's Health and Safety in Factories* (2nd edn). It provides, in Part 1, a noter-up indicating changes made by legislation, cases and other materials since the main volume went to press early in 1982, and, in Part 2, the texts of the more important new regulations, relevant certificates of exemption and exception, and one code of practice.

The noter-up takes account, in particular, of the revision of almost all fines in the work by the Criminal Justice Act 1982, substituting references to levels on the standard scale of fines for references to specific sums, and the subsequent doubling of the amounts on those levels by the Criminal Penalties etc. (Increase) Order 1984. It details the many amendments made by metrication regulations which have continued the process of removing references to imperial measurements. It also includes notes of more than twenty new cases.

Part 2 contains the texts of major new regulations, including the Notification of Installations Handling Hazardous Substances Regulations 1982, the Asbestos (Licensing) Regulations 1983 and the Control of Industrial Major Accident Hazards Regulations 1984, as well as fourteen certificates of exemption and exception.

Since the publication of the main volume, the Code of Practice *Work with asbestos insulation and asbestos coating* has been revised twice, in June 1983 and February 1985. It is set out in its revised form, together with its accompanying Guidance Note, at the end of the supplement, 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 etc. 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 are grateful to 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 January 1985.

March 1985

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PART 1 — NOTER-UP

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GENERAL INTRODUCTION

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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 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 Sedgfield 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.

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 (U.K.) 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.

Operations at Unfenced Machinery Regulations 1938

66-69 See *Jayes v IMI (Kynoch) Ltd* (1984) Times, 20 October, 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.)

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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 Corp 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 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 FH 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).

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)”.

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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.

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.

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.

113 **Section 32: General note.** See also Certificates of Exception Nos. 63 and 64, set out in Part 2, post, containing further exceptions to s. 32 (1) (b), (c), (d) and (2).

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, set out in Part 2, post, containing further exceptions to s. 33 (2), (3).

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. 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.

182 **Section 39.** In s. 39 (7) for "five thousand cubic feet" there is substituted "140 cubic 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.

189-192 **Section 63: General note.** See *Brooks v J & P Coates (UK) Ltd* [1984] 1 All ER 702, [1984] ICR 158, QBD. Although the employers did not know that a specific type of fine dust would be injurious to health, they did know that the dust was offensive to the employees, and they were therefore in breach of their statutory duty to take practical measures to prevent their employees inhaling the dust and to remove the dust from the workroom.

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Protection of Eyes Regulations 1974

196 **Regulation 5: Protection of persons employed in the specified processes.** See *Lees v Grahamston Iron Co Ltd* 1984 SLT 184. The requirements of the regulations are satisfied by the supply of eye protectors. There is no need for the employer to tell the employee that the glasses are being provided for a particular specified process.

204-205 **Section 68.** In s. 68 (4) for “seventy two and a half degrees” there is substituted “22.5 degrees Celsius” and for “eighty degrees” there is substituted “26.5 degrees Celsius”; in s. 68 (6) for “sixty degrees” there is substituted “16 degrees Celsius”, for “half a grain per gallon of water” there is substituted “7 milligrams per litre of water”; and in s. 68 (8) for “four degrees” there is substituted “2 degrees Celsius”, by the Factories Act 1961 etc. (Metrication) Regulations 1983, S.I. 1983 No. 978. The amendments to s. 68 (6) do not apply to premises in existence before 12 August 1983. Fahrenheit thermometers may continue to be used for the purposes of s. 68 (4) and (8) in such premises if conversion tables to degrees Celsius are provided.

The table of humidity referred to in s. 68 (3) (b) is revised as noted to the First Schedule to this Act, post, with savings in respect of premises in existence before 12 August 1983.

208-209 **Section 72: Note (a) Employed to move.** *Brown v Allied Ironfounders Ltd*, cited, applied in *Bailey v Rolls Royce (1971) Ltd* [1984] ICR 688, CA. The employer is only liable under s. 72 (1) if the employee is employed to lift the particular load and, in doing so, it is likely that he personally would be injured.

Note (b) Likely to cause injury. “Likely” means “probable” or “more probable than not”: *Bailey v Rolls Royce (1971) Ltd* [1984] ICR 688, CA. In this case, as there was no evidence that in lifting the particular object and positioning it for the purposes of painting it the employee would

208-209 probably be injured, the employers were not in breach of s. 72 (1). Two judges were of the opinion that in deciding the question of likelihood of injury to a particular employee, the court had to make an objective assessment irrespective of an employer's particular knowledge of the particular likelihood of injury to a particular employee.

214 **Section 82.** In s. 82 (2) the maximum fine of £4 is increased to £50 (the current amount at level 1 on the standard scale) by virtue of the Criminal Justice Act 1982, ss. 38, 46.

222 **Section 87.** The effect of s. 87, and the regulations having effect under it, is limited by the definition of "young person" in s. 176 (1). In conjunction with the definition of "child" in s. 176 (1) and "compulsory school age" in the Education Act 1944, s. 35, that definition effectively provides that a "young person" is now, for the general purposes of the Factories Act 1961, a person aged 16 or 17. Section 87 therefore only applies to those who may, exceptionally, be employed and treated as young persons before attaining the age of sixteen by virtue of other legislation.

246 **Section 94.** In s. 94 (3) the words "in burghs" are repealed and the word "district" is substituted for "town" by the Local Government (Scotland) Act 1973.

253 **Section 98.** In s. 98 (2) a reference to level 1 on the standard scale (currently £50) is substituted for the reference to £25 by virtue of the Criminal Justice Act 1982, s. 46.

321-322 **Section 132: Note (a) Rules.** The Rule of 24 December 1926, S.R.&O. 1926 No. 1621, was revoked by the Control of Lead at Work Regulations 1980, S.I. 1980 No. 1248.

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- 323** **Section 133.** In s. 133 (5) the maximum fine of £20 is increased to £50 (the current amount at level 1 on the standard scale) by virtue of the Criminal Justice Act 1982, ss. 38,46.
- 329** **Section 135.** In s. 135 (4) the maximum fine of £100 is increased to £400 (the current amount at level 3 on the standard scale) by virtue of the Criminal Justice Act 1982, ss. 38,46.
- 331-332** **Section 135A.** In s. 135A (1), a reference to the Treasury is substituted for the reference to the Minister for the Civil Service by the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, S.I. 1981 No. 1670, arts. 2(2), 3(5).
- In s. 135A (5) the maximum fine of £100 is increased to £400 (the current amount at level 3 on the standard scale), and in s. 135A (6) the maximum fine of £20 is increased to £50 (the current amount at level 1 on the standard scale) by virtue of the Criminal Justice Act 1982, ss. 38,46.
- 334** **Section 138.** In s. 138 (4) the maximum fine of £10 is increased to £50 (the current amount at level 1 on the standard scale) by virtue of the Criminal Justice Act 1982, ss. 38,46.
- 334-335** **Note (b) Prescribed.** The Abstract of Factories Act Order 1973, S.I. 1973 No. 7, is further amended by the Health and Safety (First Aid) Regulations 1981, S.I. 1981 No. 917, and the Factories Act 1961 etc. (Metrication) Regulations 1983, S.I. 1983 No. 978.
- 335** **Section 139: Note (c) Prescribed abstract.** Abstracts of regulations are prescribed for the purposes of s. 139 by: the

- 335** Abstract of Special Regulations (Aerated Water) Order 1963, S.I. 1963 No. 2058, as amended by S.I. 1981 No. 686; the Abstract of Special Regulations (Pottery – Health and Welfare) Order 1973, S.I. 1973 No. 37, as amended by S.I. 1982 No. 877; and the Abstract of Special Regulations (Highly Flammable Liquids and Liquefied Petroleum Gases) Order 1974, S.I. 1974 No. 1587.
- 336** **Section 140: Note (b) Register.** The Factories Act General Register Order 1973, S.I. 1973 No. 8, is further amended by the Health and Safety (First Aid) Regulations 1981, S.I. 1981 No. 917.
- 338** **Section 153.** The reference to the medical officer of health in s. 153 (1) is to be construed in England and Wales as a reference to the “proper officer” appointed for the purpose by virtue of the Local Government Act 1972, s. 270 (3), (4), Sch. 29, para. 4, and in Scotland as a reference to the “sanitary inspector” by virtue of the National Health Service (Scotland) Act 1972, Sch. 6, para. 121(a).
- 343** **Section 158.** The maximum fine of £10 is increased to £50 (the current amount at level 1 on the standard scale) by virtue of the Criminal Justice Act 1982, ss. 38,46.
- 351** **Section 165.** Repealed by the Factories Act 1961 etc. (Repeals) Regulations 1976, S.I. 1976 No. 2004.
- 352** **Section 167.** The reference to the Education (Scotland) Act 1918 should now be read as a reference to the Education (Scotland) Act 1962.
- 360** **Section 175.** In s. 175 (2)(n) for “five thousand cubic feet” there is substituted “140 cubic 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.

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373 **Note (q) Cinematograph films.** During an action for personal injuries sustained at work the question arose as to whether a film studio owned by the BBC was a factory within the meaning of the Factories Act 1961, s. 175 (1)(a). It was held that as films were made at the studio it was clearly a factory within the meaning of that provision: *Dunsby v BBC* (1983) Times, 25 July, QBD.

378 **Section 176.** In s. 176 (1) the words “ ‘degrees’ means degrees Fahrenheit” are repealed by the Factories Act 1961 etc. (Metrication) Regulations 1983, S.I. 1983 No. 978.

In the definition of “child” for the reference to the Education (Scotland) Act 1946 there is substituted a reference to the Education (Scotland) Act 1980 by virtue of Sch. 4, para. 3.

In the definition of “district council” the words “an islands or a district council” are substituted for “the council of a county or the town council of a burgh” by the Local Government (Scotland) Act 1973, s. 155 (1).

Engineering Construction (Extension of Definition) Regulations 1960

386-387 **Note.** The words “steel or reinforced concrete structure” do not include a ship: *Shepherd v Pearson Engineering Services (Dundee) Ltd* 1981 SLT 197.

387 **Section 178.** The fee referred to in s. 178 (1) is now £1.50 in England and Wales by virtue of the Registration of Births, Deaths and Marriages (Fees) Order 1983, S.I. 1983 No. 1778; and the reference to the Registration of Births, Deaths and Marriages (Scotland) Acts 1854 to 1938 should be read as a reference to the Registration of Births, Deaths and Marriages (Scotland) Act 1965.

390 **Section 181.** Sub-s.(3) was repealed by the Local Government (Scotland) Act 1959, Sch. 29.