



# Foreword

The increasing use of contracted out services in organisations in both the private and public sectors has implications for those managers to whom the responsibility for their management frequently falls – the Facilities Manager (FM).

There is still little ready guidance available to FMs on the management of the health and safety performance of contractors which can leave the FM and the organisation exposed in the event of an accident and any subsequent investigation by an enforcing authority.

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This document sets out to provide clear guidance in a step-by-step approach to the management of the health and safety performance of contractors not covered by the Construction (Design & Management) Regulations 2007.

It covers:

- i.** Case law and emerging cases
- ii.** Business risk management
- iii.** Planning work involving contractors
- iv.** Choosing a contractor from the perspective of health and safety
- v.** Management of contractors working on site
- vi.** Monitoring
- vii.** Reviewing performance

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Further guidance is contained in the appendices on method statements, the use of permits to work, selection checklists, accident reporting and review of performance.

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# > 1. Introduction

This guidance is intended to set out the general principles for the management of contractors so as to eliminate or minimise risks to health and safety from their work activities. It is intended for use by those who manage them. Accidents involving contractors – sometimes fatal – are not uncommon and subsequent investigation has shown that the legal duties of the contractor and the organisation employing them had not been fully understood by both parties, resulting in failures in the system of health and safety management. Outlines of specific cases which have set out the guiding principles for the management of contractors are included below for information. A process flowchart is provided at appendix 1 and reference may be made to it when reading the elements of this document.

**For ease of reference, the term 'CONTRACT MANAGER' is used in this guidance to cover those persons responsible for the management of contractors.**

The importance of managing the health and safety performance of contractors is critical to the sound management of business risk. The use of contractors to deliver services to a client organisation is increasing as it is frequently seen as a way of relieving a business of the need to manage activities which it may consider not to belong to its core activity. Clients must understand that health and safety legislation is criminal law and that duties under it are non-delegable – that is, they cannot be passed from one party to another by means of a contract and each party will have duties which must be discharged. In practice, this means that in the

event of any accident or incident occurring on the dutyholder's premises, it will be for the dutyholder (see appendix 2 for definition) to make the case that the cause was due to an act or omission by another person.

Prosecutions brought under health and safety law in the criminal courts frequently involve failures to adequately manage the health and safety performance of contractors, from which death or serious injury has resulted. Examples are given below, including the leading case which set the precedent for the need to manage the activities of contractors when on site, (**R v Swan Hunter Shipbuilders and Telemeter Installations (1981)**). Convictions can lead to large fines for which it is not possible to buy insurance and the consequences of the loss of reputation for a business can be significant. Claims may also follow in the civil courts after a prosecution and can also be large. Clients also need to be aware of the legislation on corporate manslaughter (the Corporate Manslaughter and Corporate Homicide Act 2007) which sets out penalties for companies and organisations found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of the duty of care and where those serious failures in the management of health and safety have resulted in a fatality. The penalties available to the Courts under this Act are an unlimited fine and remedial and publicity orders and some current cases before the Courts are listed in appendix 3. Individuals within an organisation may still be prosecuted for gross negligence manslaughter/culpable homicide and it is stated by the Ministry of Justice that prosecutions against individuals will continue to be taken where there is sufficient evidence and it is in the public interest to do so.

The test for gross negligence manslaughter is defined in the case R v Adomako 1994 as follows:

**“ The essence of the matter which is supremely a jury question is whether having regard to the risk of death involved, the conduct of the defendant was so bad in all the circumstances as to amount in their judgment to a criminal act or omission. ”**  
**(LORD MACKAY LC)**

It is essential to ensure that contract managers – that is, employees within the business who manage contractors - are competent to carry out their functions when managing contractors and where necessary, suitable training should be provided to them to enable them to fully discharge their responsibilities. All parties will have some responsibilities under health and safety law. For a definition of competence, please see the section 4.0 ‘Choosing a contractor’.

Although covered by contract law as well as health and safety legislation and case law, senior management of the organisation employing contractors may wish to review their conditions of order to ensure that the particular legal duties are clearly set out before contracts are let and so that any other conditions are clearly set out and understood. It could prove necessary to take legal advice when carrying out this review. As stated, health and safety responsibilities cannot be delegated from one party to another by contract.

This guidance deals with contractors not covered by the existing guidance on the Construction (Design & Management) Regulations 2007 (CDM). Except where the project is for a domestic client, the Health and Safety Executive must be notified of projects where construction work is expected to:

- last more than 30 working days; or
- involve more than 500 person days, for example 50 people working for over 10 days

**Further information on the requirements of the Construction (Design and Management) Regulations 2007 is contained in the Approved Code of Practice L144 ‘Managing health and safety in construction. Construction (Design & Management) Regulations 2007’, which may be freely downloaded from the HSE website [www.hse.gov.uk](http://www.hse.gov.uk)**

This document is an overview of the legal duties to manage the health and safety performance of contractors. Where necessary, reference should be made to the Health and Safety at Work etc. Act 1974 and regulations and guidance made under it for the full text and provisions. Should more detailed interpretation be required, further professional advice should be sought. A summary of key requirements is included at appendix 4.

The Health and Safety at Work etc. Act 1974 applies to all work activities. Specifically it requires employers to ensure, so far as is reasonably practicable (see appendix 2 for definition), the health and safety of employees and other persons who are not employees on site – for example:

- contractors
- other persons, such as members of the public who may be affected by work activities

**A definition of a **CONTRACTOR** is ‘anyone brought in by a client who is not an employee of the client to work at the client’s premises’.**

**(HEALTH AND SAFETY EXECUTIVE)**

The following cases demonstrate the importance of the need for clients to have in place adequate procedures for the management of contractors.

**LEADING COURT CASES INVOLVING THE MANAGEMENT OF CONTRACTORS FOLLOW BELOW:**

**R v Swan Hunter Shipbuilders and Telemeter Installations Ltd (1981)**

**FACTS**

An oxygen valve of a welding set had been inadvertently left open in a poorly ventilated part of HMS Glasgow, then under construction. The result was that the space had then become enriched with oxygen, which strongly supports combustion. Swan Hunter was the main contractor but several others were involved. An employee of Telemeter Installations, working alongside Swan Hunter employees was preparing to do some arc welding. He struck the electric arc between welding rod and work piece and because of the oxygen-enriched atmosphere, a very intense fire immediately broke out and eight men were killed.

Swan Hunter knew of the fire risk connected with oxygen-enriched atmospheres. They had prepared a guide for Swan Hunter employees and had provided the information to them. However, they had failed to pass this information to Telemeter and other contractors and/or the employees of those other contractors. Swan Hunter was prosecuted and fined. It appealed.

**THE DECISION**

The conviction was upheld. Swan Hunter had a duty to ensure the health and safety of its own employees by the provision of information. If the ignorance of another company’s employees places its own employees at risk then it is the company’s duty, for the protection of its own employees, to inform the employees of the other company of any special risks within its knowledge.

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## **R v Earl's Court Ltd and Unusual Rigging Ltd (2003)**

### **FACTS**

An experienced self-employed rigger, David Mott had been working for a specialist contractor Unusual Rigging Ltd engaged by Earl's Court Ltd, in the roof void of No. 1 Hall at Earl's Court Exhibition Centre, dismantling mobile platforms during a roof cleaning project. The roof was described by the sentencing judge at the Central Criminal Court as 'one of the most complex in the country'. While doing the work, Mr Mott fell 35 metres from a board over the purlins of the roof through fragile false ceiling tiles, sustaining multiple injuries from which he died. The investigating HSE inspector had told the court that there was nothing to prevent Mr Mott's fall, as although he had been wearing a safety harness, it was not properly attached to anything which could have prevented him from falling. He stated that better protective measures could have been in place to prevent falls other than relying on the worker to clip on his harness.

Six months before the fatality, another worker had been killed in similar circumstances, for which Earl's Court Ltd had been fined £70,000, with £70,000 costs in July 2002.

### **THE DECISION**

Both companies had already pleaded guilty at City of London Magistrates' Court in May 2003 to a charge under section 3(1) of the Health & Safety at Work etc. Act 1974 of failing to ensure the safety at work of those persons who were not its employees. Earl's Court Ltd and the sub-contracted scaffolding firm Unusual Rigging Ltd were fined £80,000 and £20,000 respectively, with costs of £12,174 each.

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## **R v Mara (1986)**

### **FACTS**

Mr Mara had a contract to clean a store, Monday to Friday every week between 0730 and 0900 hrs. By agreement, electrical cleaning machines left at the store by him could be used by employees of the store at other times.

One Saturday afternoon, an employee of the store used one of those cleaning machines. It had a damaged electrical cable and the employee received an electric shock which killed him. Mr Mara as a director of the company was charged and convicted of failing to discharge an employer's duty under section 3(1) of the Health and Safety at Work etc Act 1974, by consenting to or conniving at a breach by the company as employer to conduct its undertaking in such a way as to ensure that persons not in the company's employment were not thereby exposed to risks to their health and safety.

Mr. Mara appealed against conviction on the ground that the company did not conduct business at the store on Saturdays.

### **THE DECISION**

The Court dismissed the appeal. It held that for the purposes of section 3(1) of the 1974 Act, the conduct of the company's undertaking was not confined to the hours when the company's employees were actually in the building carrying out the cleaning of the store, but also included the manner in which the company left their machines in the store and permitted the store's employees to use them. Accordingly there had been a breach of section 3(1) and Mr Mara had been properly convicted of consenting to or conniving at that breach.

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**R v Chargot Limited (trading as Contract Services) and others (Appellants) (On appeal from the Court of Appeal Criminal Division) 2008. Appeal to the House of Lords**

**FACTS**

On 10th January 2003, Mr Riley, an employee of Chargot Ltd, was working at Heskin Hall Farm near Chorley in Lancashire. Extensive works were being carried out on the farm which was owned by the Ruttle Group of companies. The principal contractor was Ruttle Contracting Ltd, a member of the group. Mr George Ruttle was a director of Chargot Ltd and the managing director of Ruttle Contracting Ltd.

The works on the farm included the construction of a car park, which required the excavation from the site of a quantity of topsoil. A dumper truck was then used to move the soil over a distance of about 500 yards to a depression in a field, beside which a ramp had been created to provide the dumper truck with a means of access. During the previous day and for part of the morning of the 10th January 2003, the dumper truck was driven by another employee. He had left the farm after receiving a telephone call to tell him that his mother had been injured in a road accident. Mr Riley had been asked by the foreman to take over the driving of the dumper truck. He had made two trips carrying soil from the car park to the depression without incident. In the course of a further trip that afternoon, he met with an accident. The dumper truck tipped over on its side and he was buried by the load of soil which he was transporting. It was some time before he could be pulled out and attempts to revive him were unsuccessful. He died the following day in hospital.

**THE DECISION**

On 10th November 2006, Chargot Ltd was found guilty of a breach of section 2 (1) of the Health & Safety at Work etc. Act 1974 for failing to ensure, so far as is reasonably practicable, the health and safety at work of its employees. Ruttle Contracting Ltd was found guilty of a breach of section 3 (1) of the same Act for failing to ensure, so far as is reasonably practicable, that persons not in its employment were not exposed to risks to their health and safety. Mr Ruttle was found guilty of section 37 of the same Act in respect that through his connivance, consent or neglect, he had caused Ruttle Contracting Ltd to commit a breach of section 3 (1) for failing to ensure, so far as is reasonably practicable, that persons not in its employment were not exposed to risks to their health and safety.

The appellants appealed to the Court of Appeal and those appeals were dismissed. The appellants then appealed to the House of Lords, arguing amongst other matters that it was insufficient for the prosecution to assert that a state of affairs existed giving rise to a risk to health and safety. The prosecution had to identify and prove particular acts or omissions consisting of a failure to comply with the duties set out in Sections 2 and 3 of the Act.

The House of Lords rejected the appeal and upheld the principle of the reverse burden of proof set out in section 40 of the Act, which states that the defendant must establish that all reasonably practicable steps were taken to comply with the requirements of Sections 2 & 3 of the Act to avoid a breach.

It was not for the prosecution to itemise how it was reasonably practicable to avoid the risk of injury. Lord Hope stated:-

**“ What the prosecution must prove is that the result that those provisions describe was not achieved or prevented. Once that is done, a prima facie case of breach is established. The onus then passes to the defendant to make good the defence which section 40 provides on grounds of reasonable practicability. ”**  
**(LORD HOPE)**

Therefore, all the prosecution needs to prove to establish a breach is that the duties imposed under Sections 2 & 3 of the Act were not discharged – in many cases, this could simply mean the fact of the accident having taken place.

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## > 2. Business risk management

The management of health and safety is part of the process of orderly business risk management (see appendix 2 for definition). By adopting this process, and developing a suitable policy, a business will seek to minimize the risk of loss to itself and people who either work for it or who may be affected by its activities through exposure to adverse events – for example, accidents, prosecutions in the criminal courts, claims in the civil courts, adverse publicity and loss of business reputation. By doing so, it will help to protect its future and the livelihood of those who work in it. Uncontrolled activities involving contractors can lead to business loss as demonstrated in the previous cases.

The need for sound business risk management - including health and safety – is set out in guidance documents produced both by industry and statutory organisations. Guidance from the latter is given in the Health and Safety Executive publication 'Managing for health & safety' (publication no. HSG 65) and further publications are listed at appendix 5. The common elements of the management cycle – 'plan, do, check, act' underpin health and safety management and they are set out below. Reference should also be made to the joint publication by the Institute of Directors and the Health and Safety Executive 'Leading Health and Safety at Work' (see appendix 5 for further details).

This cycle is developed in terms of health and safety management in the Health and Safety Executive guidance on the Management of Health and Safety at Work Regulations 1999 (as amended). The elements covered are:

- planning, organisation, control, monitoring and review of health and safety measures
- risk assessments
- recruitment and employment of competent persons
- information, instruction and training (see appendix 2 for definition) for staff
- consultation with staff (see appendix 2 for definition)
- emergency procedures

The following sections of this document will give some guidance to businesses on the management of contractors in the workplace and the application of each of the elements listed above.

- 
- > **PLAN** – develop a policy, decide on levels of performance required and resources needed
  - > **DO** – organise the identification and assessment of risks (see appendix 4), develop control measures (see appendix 2 for definition) and competence
  - > **CHECK** – monitor the work activities, manage the control measures and carry out checks and investigations
  - > **ACT** – review performance against standards and take corrective action
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## > 3. Planning work involving contractors

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The contract manager will need to:

- > define the work to be carried out and agree the scope
  - > review both their own and the contractor's risk assessments for their work activities in the light of the proposed work activity to be undertaken by a contractor
  - > review the method statement (see appendix 2 for definition) for the work to be carried out
- 

The risk assessments produced by the contract manager and the contractor have to take into account the risks to all persons arising from work activity and must be suitable and sufficient (see appendix 2 for definition). This means that the assessment should:

- identify hazards – in particular, health and safety issues known to the contract manager
- identify and evaluate significant risks to persons arising from the work. It is unnecessary and unhelpful to include trivial risks and the assessment should focus on significant risks only.
- involve the contractor for specialist work activities in order to make a meaningful (a suitable and sufficient) risk assessment
- identify and prioritise measures needed to control risk and comply with legislation
- be appropriate to the type of work and allow the person completing the assessment to ensure that it remains valid for a reasonable period of time

Following the risk assessment, preventative and protective measures (see appendix 2 for definition) will need to be put in place to control risks.

**Guidance on the requirement for and completion of risk assessments is given in the:**

- > **Management of Health and Safety at Work Regulations 1999**
- > **HSE leaflet INDG163(rev3) 'Five steps to risk assessment'**
- > **HSE leaflet INDG449 'Health & safety made simple – the basics for business'**
- > **HSE website [www.hse.gov.uk](http://www.hse.gov.uk) in the section 'Risk management'**
- > **HSE website [www.hse.gov.uk](http://www.hse.gov.uk) in the section 'Health & safety toolbox: How to control risks at work'**

Guidance produced by industry and trade and professional associations may also be of help – for example, the Federation of Small Businesses, and the Institution of Occupational Safety and Health.

The completed risk assessment should then be discussed with the contractor, once they have been selected. As the work activity may change during the period of the contract, it may become necessary to revise the assessment accordingly and regular meetings will need to be held in order to review it at each phase.

The contractor will need to produce a risk assessment. The contractor should also be asked to produce a method statement, detailing how the work should be done and how the risks from their work activity are to be controlled. The contractor will also need to be asked if sub-contractors are to be used and if so, they will need to address risks from the use of any sub-contractors in the risk assessment. Clients should also ensure that a contractor has effective procedures for assessing the competence of any sub-contractors which they may employ. As part of the planning process, a risk assessment for the work to be carried out by the contractor should be requested by the contract manager. There is a need to integrate these assessments to achieve effective and timely introduction of effective control measures. Reference should be made to the process flowchart at appendix 1.

There is a need to reach agreement on a suitable overall risk assessment and method statement well before any work is started. This process will usually involve site visits, meetings and an evaluation of documents provided by the contractor by a competent person employed by the client.

Site-specific risk assessments (see appendix 2 for definition) will be needed for the work. Generic assessments (see appendix 2 for definition) which are produced as a template for use across a business will need to be modified accordingly. The contract manager will therefore need to ensure that they receive a site-specific risk assessment from the contractor. If they receive a generic risk assessment in response to their request for a site-specific risk assessment, it is recommended that they return it to the contractor for revision.

A simple example is the use of a contractor to change the lamps in an office. The contractor may have produced a generic risk assessment for the activity in an office-based environment, but may have not taken into account the need for a specific risk assessment for changing lamps above a stairwell, which may alter the risk associated with the activity and which may need additional control measures – for example, specialised access equipment because of considerations of work at height.

Further guidance on the evaluation of the competence of contractors in the management of health and safety is given at appendix 6.

## > 4. Choosing a contractor – health and safety

Before engaging a contractor, the contract manager will need to be satisfied both about the competence of the contractor to carry out the work safely and their own competence - that is, knowledge and experience - to reach a sound judgement about the competence of a contractor. Arrangements will need to be put in place with a main contractor for the assessment and management of any sub-contractors and the principles set out in this guidance may be used.

## > Competence

**COMPETENCE** may be defined as the possession of sufficient knowledge of, training in and experience of the type of work being planned.

Information to help prove competence includes:

- Health and safety policy statement (for businesses with 5 or more employees). In the case of businesses with fewer than 5 employees, there is a need for contact with the contract manager at an early stage to ensure proper engagement. Businesses with less than 5 employees are still required to carry out a risk assessment but are not required to record the significant findings. However, it is considered best practice (see Appendix 12 for definition) to record the significant findings of an assessment to enable recall and substantiate action taken and controls which have been put in place. If this is not the case, it will be necessary to interview them to establish the significant findings and the risk controls under consideration. The findings of an employer's risk assessment which identifies risks to persons other than their own employees and control measures must be shared with other employers and self-employed persons working in the host business. The provision of relevant information by the host employer to people carrying out work on their premises is required under the Management of Health and Safety at Work Regulations 1999 (as amended) and a summary of their requirements is given at appendix 4.
- The information should be sufficient to allow the employer of persons carrying out work on the host employer's premises to comply with their statutory duties.
- Suitable and sufficient risk assessments – that is, the significant hazards and risks have been identified and evaluated and suitable control measures put in place (see above).
- Membership of any trade associations or professional bodies
- Method statements for any previous similar work
- Successful experience in similar work
- Trained members of staff and evidence of training, including for new members of staff
- Provision of suitable equipment
- Sufficient numbers of staff to carry out the work safely
- How the work will be supervised and how activities and risks will be reviewed
- How subcontractors, if any, will be selected and supervised
- Past health and safety performance – for example, by references from past clients, the accident record and to the Health and Safety Executive database for prosecutions and enforcement notices under the heading 'Enforcing health & safety'
- Independent assessment of competence – for example, by professional bodies as part of membership or as part of a statutory permissioning regime for work with asbestos

## > Procedures

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Health and safety procedures associated with the work to be carried out should be identified and included in the contractor's specification. These may arise from the following, for example:

- > work in confined spaces (see appendix 2 for definition)
- > electrical and gas safety
- > use of hazardous substances
- > work at height (see appendix 2 for definition)
- > work with asbestos
- > solitary working and 'out of hours' working
- > noise at work
- > use of work equipment
- > manual handling
- > emergencies – fire, explosion and flood, etc.

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The contract manager will need to refer to the company hazard and risk register and will need to provide relevant information to the contractor by means of the general risk assessments prepared by the contract manager, which will identify the types of work involved and the hazards and risks arising from them.

For work of a specialised nature – for example, work in confined spaces or work with asbestos, the contract manager will need to be satisfied that they have the competence to ensure that they can make a qualitative judgement about any risk assessments produced and that the risk assessments produced by the contractor are both suitable and sufficient and have considered the requirements of current legislation, approved codes of practice and guidance. If in doubt, the

contract manager should seek further specialist advice from the appropriate professional body, trade association, the Health and Safety Executive or the local Environmental Health department. In the case of work with asbestos, the contractor is licensed by the Health and Safety Executive Asbestos Licensing Unit and will normally hold a 3 year licence. Work with asbestos is subject to a permissioning system operated by the Health and Safety Executive and local authorities.

**Further information on licensed contractors is held on the HSE website at:**

**<http://webcommunities.hse.gov.uk/connect.ti/asbestos.licensing/grouphome?>**

Where a risk assessment has shown that work is of a potentially high risk nature, for example:

- work at height
- work in a confined space
- access to a roof area which may have an unprotected open edge or where there is a risk of falls from height
- 'hot' work (work involving the use of a flame or process which generates heat and sparks, giving rise to the ignition of materials)

A permit to work system may need to be operated by the person in control of the work and particular attention paid to specialist control measures (see appendix 7)

The contract manager should arrange to send copies of:

- the company health and safety policy
- risk assessments related to the planned work, or any details of the planned work environment
- relevant company health and safety procedures
- emergency procedures

to contractors tendering for the work. From these, the contractor will then be able to:

- 
- > identify the hazards associated with the work from the risk assessments, any method statements and discussions
  - > assess the risks
  - > identify the appropriate control measures and draw up a method statement (see appendix 8), plan of work (see appendix 2 for definition) or a safe system of work. It is essential to consider arranging a site meeting to discuss any matters arising from the tender. The contract manager should also establish if the company maintains a list of approved contractors which have satisfied pre-tender requirements for particular types of work and where appropriate, reference should be made to it.
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**In addition to written evidence, it may be helpful to prepare a list of questions for the contractor on their health and safety performance. An example is included at appendix 6. Reference should also be made to the Health and Safety Executive's website on enforcement action (see appendix 2 for definition) which may be found at [www.hse.gov.uk/notices](http://www.hse.gov.uk/notices) and subsequent links.**

The contract manager should ensure that health and safety information is exchanged between contractors who may be working on site at the same time. This may be done at, for example, pre-contract meetings, site meetings and briefings at the principal office.

In the case of contractors who are self-employed or who may only have one member of staff and of individuals who work on a contract for the company for the majority of their time, it is recommended that the contract manager in charge of the work activity include them in the company's organisation and arrangements (see appendix 2 for definition) for the management of health and safety as if they were their own employees.

For contractors who employ less than 5 employees and where there is no legal requirement to have a written health and safety policy (see appendix 2 for definition) or to prepare written risk assessments, it is particularly important for the contract manager to ensure that they follow the checklist for the selection of contractors and satisfy themselves of their competence before making an appointment. Although these contractors have no duty to have written policies or risk assessments, they are required to have in place suitable arrangements and the contract manager has the option to interview them as part of the selection process.

## > 5. Management of contractors working on site – procedures

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A site contact for the contractor should be agreed. Before work begins, the contract manager should ensure that the contractor has in place the following:

- > **MEETINGS** – agreed frequency of regular meetings with the site contact to review the efficacy of the control measures, to monitor implementation and to review the need for change. The frequency of these meetings will depend on the nature and size of the contract work and the risks involved. In the event that the control measure is found to be insufficient, then the activity should cease until a review has taken place and effective revised arrangements have been put in place.
- > **HEALTH AND SAFETY INFORMATION** – exchanged health and safety information with any other contractors on site and has agreed frequency of meetings. This should have been carried out at an earlier stage to enable the production of a suitable risk assessment and method statement.
- > **COMPANY RULES** – received a copy of any rules produced by the company for contractors.
- > **PERMIT TO WORK** – agreed to follow the permit to work system for a work activity which has been shown by risk assessment to carry a potentially high risk to the health and safety of persons (further information on the content of permits to work is contained in appendix 7). The client will need to consider how the permit to work system is managed, who has control of it, how they are trained and how its efficacy will be monitored. Where the contract manager does not have the necessary competence, they will need to be satisfied by the specialist contractor that the criteria have been met to adequately manage risk from the work activities and they may wish to take independent advice (see section 4.0 ‘Choosing a contractor’).

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The contract manager should make reference to the reporting procedures for accidents and dangerous occurrences set out in appendix 9 and will need to ensure that these reporting procedures are in place. Reporting procedures will need to be addressed at the induction briefing before contractors start work on site. Work activity should cease for the duration of any investigation of an accident or incident.

The contract manager should monitor changes in work activities which are not included in original risk assessments – for example, unforeseen work, unexpected departures from plans and unexpected hazards and risks. Additional risk assessments reflecting the changes may be necessary and will need to be discussed with the contractor so that the method statement may be amended. The contract manager will also need to ensure that the contractor’s employees are aware of the agreed risk assessments control measures and method statements, including any amendments.

## > 6. Monitoring of contractors' performance

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The contractor has a duty to monitor their health and safety performance and the client also has a duty to do so (see section 2.0 'Policy'). The health and safety performance of contractors may be monitored in the following ways:

- > **METHOD STATEMENT AND WORK** – against the method statement or plan of work produced by the contractor, the contract manager can ensure that the systems of work specified by the contractor are being followed – for example, the use of personal protective equipment.
- > **WORKING PRACTICES** – by ensuring that the contractor is carrying out safe working practices – for example, using suitable equipment when working at height, by using personal protective equipment where specified, by maintaining good housekeeping standards and by informing the contract manager of issues which may arise and involve the contract manager or their staff.
- > **INSPECTIONS** – a system of inspection should be agreed with the contractor for them to carry out and monitor their performance. Their frequency and depth may depend on the nature of the contract and the hazards and risks arising from the work activity and should cover the entire work period. Types of inspection include formal observation, unannounced spot checks and the use of prepared checklists. For higher risk work activity, the contract manager may need to obtain advice from the relevant professional body, trade association, the Health and Safety Executive or the local Environmental Health department. The Health and Safety (Enforcing Authority) Regulations 1998 allocate the enforcement of health and safety legislation at different premises between local authorities and the Health and Safety Executive. A summary of their scope is given at Appendix 10.
- > **PERFORMANCE** – by comparison of the contractor's performance against existing company standards agreed before the start of work. The contract manager may also make use of the contractor's own internal monitoring systems - if they are present and effective - in order to check how the contractor monitors its own activities.
- > **ACCIDENTS** – by the monitoring of accidents involving contractors and others. Joint investigation of accidents will often yield useful information and has the benefit of combining the knowledge and experience of the contract manager and the contractor. There may also be a statutory investigation by the relevant enforcing authority.

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The contract manager may also take into account reports from members of staff or members of the public who may notice unsafe working practices by contractors – for example, unsafe practices when working at height on a roof area with an open unprotected edge.

The contract manager should take up any problem identified with the contractors' supervisor or manager in order to resolve it. A record (site safety log) of health and safety related problems should be raised and kept by the contract manager. A record of monitoring activity should also be raised and kept, with part of the agenda for joint meetings to be given over to monitoring.

When monitoring health and safety performance, **the contract manager should avoid taking responsibility for the supervision of the contract work from the contractor.** The contract manager could become accountable in law if they assume responsibility for the supervision or direction of contract work. The responsibility of the contract manager extends to the selection and appointment of a competent person to carry out the planned work. It is not for the contract manager to stipulate how work by the competent person should be done – for example, by specifying a particular way that the competent person should carry out a task - once the project has been handed over and begun. It is the responsibility of the competent person to ensure that the work is carried out safely following a risk assessment and according to their plan of work which should incorporate safe systems of work.

The contract manager will need to bring to the attention of the competent person any obviously unsafe working practice – for example, a member of the competent person’s staff working on a window ledge at height without any obvious means of minimising the risk of falling and subsequent injury or death. In the case of specialist contractors engaged in higher risk work activity, both the contractor and the contract manager may need to seek further advice on acceptable and safe working practices from the relevant professional body, trade association, the Health and Safety Executive or the local Environmental Health department.

Should it prove not to be possible to resolve problems of health and safety performance in a satisfactory manner or if there is a gross breach of health and safety performance standards by the contractor, the contract manager has the option of asking the contractor to:

- 
- 1) Stop work and to take up the matter with the senior management of the contractor and the organisation employing them to resolve it.
  - 2) Ask them to leave the site pending further investigation
-

## > 7. Reviewing health and safety performance of contractors

The contract manager should undertake a review of the effectiveness of the process for the management of health and safety throughout the contract at suitable intervals and at its end. Evaluation of the process will allow improvements in the management of health and safety to be made and will help the contract manager to decide if the contractor may continue to work or may be used again. It may be appropriate to review their performance on a regular basis – for example, weekly, monthly, quarterly or annually, depending on the length of the contract and the risk profile of the work involved and their perceived performance.

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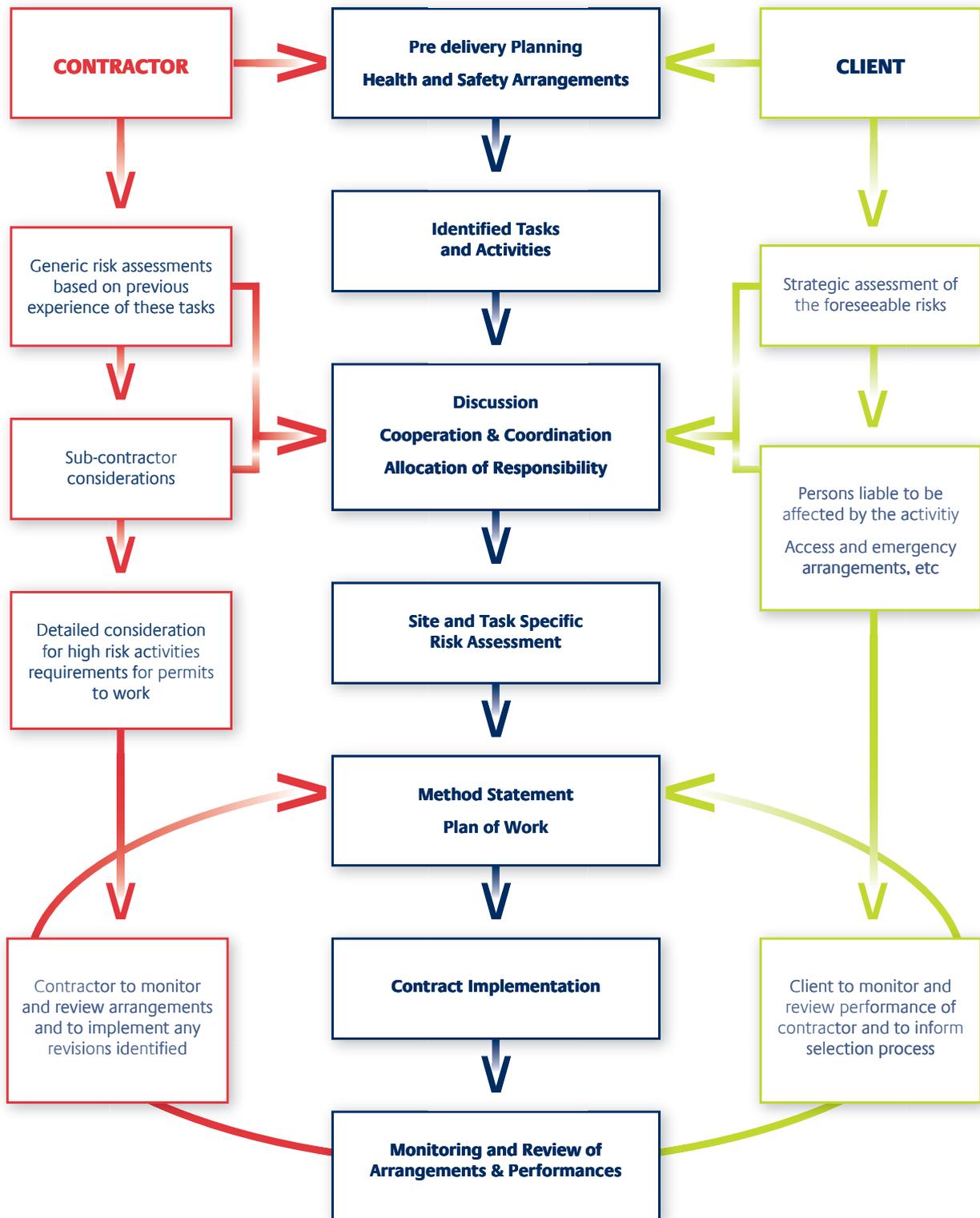
It is essential that the contract manager acts decisively if they detect poor performance. The following stages should be considered:

- > contract planning
- > selection of the contractor
- > the contract work itself
- > management of the contract by the contract staff, including sub-contractors
- > the effectiveness of the liaison arrangements

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Records of reviews and their findings should be raised and kept. Matters for consideration are set out in appendix 11.

> Appendix 1  
**PROCESS FLOWCHART**





**BEST PRACTICE**

This is a standard of health and safety management which may exceed the minimum legal requirement. It may be produced in a written form by, professional bodies or industry associations for the guidance of their members and others.

**BUSINESS RISK MANAGEMENT**

The identification, analysis, assessment, control and avoidance, minimisation or elimination of unacceptable risks.

**CONFINED SPACES**

A confined space is defined by the HSE as 'any space of an enclosed nature where there is a risk of death or serious injury from hazardous substances or dangerous conditions'. In addition, entry to and exit from a confined space may be difficult. Work in confined spaces is controlled by the Confined Spaces Regulations 1997 and Approved Code of Practice.

**CONSULTANTS**

These are specialists who may advise on a wide range of health and safety matters, working generally for a fee. They should be competent to carry out the work for which they have been contracted and a check should be made on the Occupational Health & Safety Consultants' Register hosted by the Institution of Occupational Safety & Health before they are engaged.

**CONSULTATION WITH STAFF**

This is a requirement under section 2 of the Health & Safety at Work etc. Act 1974, which the employer must do to enable effective co-operation with their employees to promote and develop measures to ensure their health & safety at work and to check the effectiveness of those measures. The Health & Safety (Consultation with Employees) Regulations 1996 reinforce this requirement and guidance in support has been produced by the HSE.

**CONTROL MEASURES**

Actions taken to reduce the potential of exposure to a hazard or to reduce the likelihood of the risk of exposure to that hazard being realised with associated injury.

**DUTY HOLDER OR DUTYHOLDER**

A person who is, to any extent, in control of a workplace – for example, an employer, a landlord or a tenant. This is defined in Regulation 4 of the Workplace (Health, Safety & Welfare) Regulations 1992.

> Appendix 2  
**GLOSSARY OF COMMON TERMS (CONTINUED)**

**ENFORCEMENT ACTION**

This is action taken by an enforcing authority – for example, a local authority or the HSE – to ensure compliance with health and safety legislation. It is staged and comprises:

- a letter with requirements
- a verbal instruction
- an improvement notice
- a formal caution
- a prosecution

The taking of enforcement action is governed by the Regulators' Compliance Code to ensure that action taken is both reasonable and proportionate.

**GENERIC RISK ASSESSMENTS**

These identify common hazards which may have the potential to cause harm and control measures (see Control Measures definition on Page 21) associated with general locations or activities. They may be based on a sample which may be applied to all similar situations, although they are not a substitute for a site-specific risk assessment (see Site Specific Risk definition on Page 24).

**HEALTH AND SAFETY POLICY**

A requirement of section 2 of the Health & Safety at Work etc. Act 1974, it requires employers with 5 or more employees to produce a written policy describing how they will manage health and safety in their business. It should say who does what, when and how.

**INDUSTRY STANDARDS**

See Best Practice definition on page 21.

**INFORMATION, INSTRUCTION AND TRAINING**

A requirement of section 2 of the Health & Safety at Work etc. Act 1974, employers must provide information, instruction and training to their employees.

**MONITORING**

The process of checking aspects of health and safety performance against plans, performance standards and specifications.

**ORGANISATION AND ARRANGEMENT**

Set out in section 2 of the Health & Safety at Work etc. Act 1974 which requires the employer to describe their organisation and arrangements for carrying out the policy with respect to the health and safety at work of their employees. The elements are set out in greater detail in Regulation 5 of the Management of Health & Safety at Work Regulations 1999 (as amended), which are:

- I. Planning
- II. Organisation
- III. Control
- IV. Monitoring
- V. Review.

> Appendix 2  
**GLOSSARY OF COMMON TERMS (CONTINUED)**

**'PASSPORT' AND CARD SCHEMES**

This may be operated by, for example, the Construction Skills Card Scheme and may be used to show competence and the ability to work safely on a construction site. It may be required to allow the holder to access a site. The CCNSG (Client Contractor National Safety Group) safety passport is specifically for those who work in the engineering construction industry. The award of both cards follows a written test. A similar scheme is operated by Gas Safe Register, whereby registered technicians carry an identity card complete with photograph and registration number which can be verified. It will allow a check of their competence to work with gas equipment.

**PERMIT TO ACCESS**

A permit to access may be used by a person in control of a premises or site to monitor and control access to that premises or site. The permit may set out 'house rules', such as those on smoking, the use of staff facilities, action to be taken in the event of fire, etc.

**PERMIT TO WORK – PTW**

See Appendix 7 on page 32 'Permits to Work'.

**PLAN OF WORK**

A suitable and sufficient plan of work has the following elements:

- it describes a safe working method for site staff to follow
- it shows that significant risks from the work activity at a specific location have been considered and that a specific job instruction has been produced to address them. It will therefore link with a site and task-specific risk assessment.

**PREVENTATIVE AND PROTECTIVE MEASURES**

These are defined in the Management of Health & Safety at Work Regulations 1999 (as amended) as measures which have been identified by the employer as a result of a risk assessment. They are the control measures needed to eliminate or reduce risks.

> Appendix 2  
**GLOSSARY OF COMMON TERMS (CONTINUED)**

**REVIEW**

The process of making judgements about the adequacy of health and safety performance and the taking of decisions about the nature and timing of the necessary actions.

**SERIOUS AND IMMINENT DANGER**

Under section 22 of the Health & Safety at Work etc. Act 1974, an appointed inspector may, if they are of the opinion that activities undertaken or about to be undertaken under the control of any person will involve a risk of serious personal injury, may serve on that person a prohibition notice. The notice may take immediate effect if the inspector is of the opinion that the risk of personal injury is, or will be, imminent.

**SITE-SPECIFIC RISK ASSESSMENTS**

These identify hazards and risks associated with a specific location and work activities and will need to be produced by a contractor proposing to do work at that location.

**SO FAR AS IS REASONABLY PRACTICABLE**

The principle which underpins UK health and safety law, it may be defined as the weighing of a risk against the trouble, time and money needed to control it.

**SUITABLE AND SUFFICIENT**

In order to be suitable and sufficient, the risk assessment must:

- Identify and be appropriate to the risks involved in a work activity. It must also be appropriate to the complexity of the work activity
- Enable the employer to identify and prioritise the control measures which need to be taken.

**WORK AT HEIGHT**

Work at height is defined by the Work at Height Regulations 2005 as 'work in any place, including a place at or below ground level' and 'obtaining access to, or egress from, such a place while at work, except by a staircase in a permanent workplace where.....a person could fall a distance liable to cause personal injury'.

## > Appendix 3 CORPORATE MANSLAUGHTER CASES

Cases which had been decided at the time of writing:

- i. R v Cotswold Geotechnical Holdings Ltd. Alexander Wright, a junior geologist, was killed when a 3.5m deep trench in which he had been working alone collapsed. Despite the efforts of the plot-owner to save him, Mr Wright was asphyxiated. The managing director of the company, Peter Eaton, had left for the day leaving Mr Wright to finish up. The jury in the case found that the company's system of work for digging trial pits was wholly and unnecessarily dangerous. The police officer investigating the case with the HSE is reported to have described Geotechnical Holdings' approach to health and safety as 'cavalier'. The company was fined £385,000.
- ii. R v Lion Steel Equipment Ltd. Stephen Berry died when he fell through a fragile rooflight when he had gone to check the source of a leak. The company was fined £480,000 and was ordered to pay £84,000 towards the costs of the Crown Prosecution Service.
- iii. R v Prince's Sporting Club Ltd. A young girl died from severe injuries after she fell off an inflatable banana boat into a lake. She came into contact with the propeller of the ski boat which was towing the inflatable. The company was found guilty although at the time of sentencing, it was reported that it was no longer in operation and was worth very little. The judge's comments at the time of sentencing are reported to be as follows:

**“ I propose to fine this defendant company every penny that it has. I have no power to do anything other than impose a fine and I can impose**

**no more than all of its assets. I should say that if matters had been otherwise (the company had been trading or otherwise), that this is certainly a case where I would have given a fine which would have put it out of business. I say this that because although an offence of this kind under the Corporate Manslaughter Act is very serious, I consider this case itself to be very serious. ”**

The judge decided that a publicity order should also be imposed.

- iv. R v Mobile Sweepers (Reading) Ltd. An employee died from crush injuries after working on a repair underneath a road sweeping vehicle. He had inadvertently removed a hydraulic hose, which had caused the back of the vehicle to fall on him. The sole director is also to be charged with gross negligence manslaughter. The company pleaded guilty to a charge under section 1 of the Corporate Manslaughter and Corporate Homicide Act 2007 and the company director admitted to failure to discharge duties under the Health & Safety at Work etc Act 1974. The director was fined £183,000 and the company was fined £8,000 and ordered to pay £4,000. It has been reported that payment is to be made within 12 months. If it is not, a 3 year custodial sentence will be imposed. The director has also been disqualified from being a company director for 5 years. The judge also imposed a publicity order, which gave effect to the posting of notices worded by the judge to be posted in the local press.



## Appendix 4

# MANAGEMENT OF HEALTH AND SAFETY AT WORK REGULATIONS 1999 (AS AMENDED) – KEY PROVISIONS

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### **REGULATION 3. Risk assessment**

Requires an employer and the self-employed to:

- > Make a suitable and sufficient assessment of the risks to the health and safety of employees and themselves whilst at work
- > Make a suitable and sufficient assessment of the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking
- > Review the risk assessment if there is reason to suspect that it is no longer valid, or there has been a significant change in the matters to which it relates and to make changes to the risk assessment as required
- > To not employ a young person until the risks to health and safety to that person have been assessed and that factors set out in Regulation 3 (5) have been addressed in the risk assessment

### **REGULATION 5. Health and safety arrangements**

Requires an employer to:

- > Make and give effect to appropriate arrangements for the effective planning, organisation, control, monitoring and review of preventive and protective measures, taking into account the nature of the activities and the size of the undertaking
- > Where the employer employs 5 or more employees, record the arrangements for the above addressed in the risk assessment

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### **REGULATION 4. Principles of prevention**

Requires an employer to:

- > Implement any preventive or protective measures in accordance with Schedule 1 of the Regulations (hierarchy of control measures)

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### **REGULATION 7. Health and safety assistance**

Requires an employer to:

- > Appoint one or more competent persons to help him in undertaking the measures needed to comply with any requirements or prohibitions imposed
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> Appendix 4

**MANAGEMENT OF HEALTH AND SAFETY AT WORK  
REGULATIONS 1999 (AS AMENDED) – KEY PROVISIONS**

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**REGULATION 8. Procedures for serious and imminent danger and for danger areas**

Requires an employer to:

- > set up and give effect to procedures to be followed in the event of serious and imminent danger to persons at work in their undertaking
- > nominate a sufficient number of competent persons to implement the procedures insofar as they relate to evacuation from those premises
- > ensure that none of their employees has access to an area which has been restricted for reasons of health and safety unless they have received adequate health and safety instruction
- > in relation to the procedures, inform persons at work exposed to serious and imminent danger (see Appendix 12 for definition) to be informed of the nature of the hazard and of the steps taken to protect them
- > enable persons concerned to stop work and go to a place of safety if they are exposed to serious, imminent and unavoidable danger
- > require those persons to be prevented from resuming work in any situation where there is still a serious and imminent danger

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**REGULATION 12. Persons working in host employers' or self-employed persons' undertakings**

- > Employers and self-employed people need to ensure that comprehensive information on risks identified by risk assessments required by Regulation 3 and the measures taken to control them is given to other employers and self-employed people.
  - > Host employers and self-employed people must ensure that people carrying out work on their premises receive relevant information.
  - > The information should be sufficient to allow the employer of the visiting employee to comply with their statutory duties and should include the identity of people nominated by the host employer to help with an emergency evacuation
  - > Where the visiting employees are specialists brought in to do specialist tasks, the host employer's instructions need to be concerned with those risks which are peculiar to the activity and premises.
  - > The visiting employee may also introduce risks to the permanent workforce (e.g. from equipment or substances they may bring with them). Their employers have a general duty under section 3 of the Health and Safety at Work etc. Act 1974 to inform the host employer of such risks and to co-operate and co-ordinate with the host employer to the extent needed to control those risks. This requirement has equal and prominent status with section 2 of the same Act, which requires the employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees.
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> Appendix 4  
**MANAGEMENT OF HEALTH AND SAFETY AT WORK  
REGULATIONS 1999 (AS AMENDED) – KEY PROVISIONS**

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**REGULATION 13. Capabilities and training**

Every employer is required to:

- > take into account the health and safety capabilities of his employees when allocating work to them

Ensure that his employees are provided with adequate health and safety training:

- > on their recruitment
- > on being exposed to new or increased risks because of:
  - transfer or new responsibilities
  - introduction of new work equipment
  - introduction of new technology
  - a new system of work or a change to an existing system of work
- > repeat the training as often as necessary
- > adapt it to take account of changes to the risk profile
- > give it during working hours

This is a summary of some of the requirements for information only. Reference should be made to the Regulations for the full text and requirements and where necessary, professional advice sought on their interpretation.

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## Appendix 5 **REFERENCES**

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- 1) Health and Safety at Work etc. Act 1974
  - 2) Management of Health and Safety at Work Regulations 1999 (as amended) SI 1999/3242
  - 3) 'Managing for health & safety' – revised HSE publication HSG 65
  - 4) 'Five steps to risk assessment' – HSE leaflet INDG 163 (rev3)
  - 5) 'Permit to work systems' – HSE leaflet INDG 98 (rev3)
  - 6) 'Leading Health and Safety at Work' – joint HSE/Institute of Directors publication INDG 417
  - 7) 'Investigating accidents and incidents: A workbook for employers, unions, safety representatives and safety professionals' – HSE publication HSG 245.
  - 8) 'Business risk management' – Institution of Occupational Safety & Health guidance document 09.4
  - 9) 'Consulting workers on health & safety' – HSE publication L146 (2nd edition)
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## > Appendix 6 **CHECKLIST OF QUESTIONS FOR SELECTION OF CONTRACTORS**

Please note that this is not an exhaustive list.

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### **1) Experience**

- > What experience do you have of our type of business?
- > How familiar are you with the hazards in our business?
- > Have you done this job before? What are the main issues you have identified in the past or which you foresee with this contract?
- > Can you provide existing risk assessments used to devise method statements for another similar job? If not, can you provide evidence that you are competent to carry out such assessments?
- > Can you supply references?

### **2) Health and Safety Policy and Practice**

- > Do you have a health and safety policy?
  - > Is it up to date and signed by a senior manager?
  - > Have you ever had enforcement action (for example, the service of an Improvement or Prohibition Notice, a formal caution or a prosecution) taken against you?
  - > What are your health and safety arrangements?
  - > Do you plan to use any hazardous substances? What are they? How do you use them safely and how will you supervise their use?
  - > What safety checks do you make on equipment and materials? Can you provide documentation/records?
  - > Who will carry out safety inspections and how often?
  - > What will they inspect and will a record of their inspections be raised and kept?
  - > What is the name and job title of the individual within your company responsible for co-ordinating health and safety matters and reporting on these to your senior management?
-

**CHECKLIST OF QUESTIONS FOR SELECTION OF CONTRACTORS**

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**3) Training and Competence**

- > Are you a member of a trade association or professional body?
- > Do you have any independent assessment of your competence?
- > How do you ensure that your subcontractors are competent?
- > How do you prepare them for working safely on site?
- > What health and safety training do you provide to staff?
- > Can you show us your training programme and records?
- > Have you or your members of staff got evidence of participation in health and safety training, for example a 'passport'? (see Appendix 12 for definition).
- > Do you work to recognised industry standards? (see Appendix 12 for definition).
- > How is information about health and safety passed on to staff and subcontractors and to the contract manager?
- > Please give the name and qualifications for your professional Health and Safety Advisor or Consultant, including their address, telephone, fax number and e-mail address and qualifications.

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**4) Supervision**

- > How will you supervise this job?
- > How will changes which arise during this job be dealt with? (e.g. additional risk assessments)
- > How will you liaise and co-operate with us?
- > If you identify a problem, what action will you take concerning us as the client regarding your staff or subcontractors?
- > Are you prepared to follow our health and safety rules and guidelines?
- > Can you provide us with the names and qualifications of your health and safety advisers or consultants (see Appendix 12 for definition) who will be advising you on this project?

**Other Matters**

- > Can you provide us with copies of your public/third party liability and employer's liability insurance certificates?
  - > Can you give details of your accident reporting procedures for this contract?
  - > Can you provide us with a copy of your emergency procedures?
  - > Can you provide us with details of your accident statistics and any formal enforcement action for the last 5 years?
-



## Appendix 7 **PERMITS TO WORK**

The Health and Safety Executive defines the **PURPOSE OF A PERMIT TO WORK SYSTEM** as follows:

Where proposed work is identified as having a high risk which cannot be managed sufficiently well by normal control measures – for example, work at height, ‘hot’ work, work in confined spaces, work on electrical systems - strict controls are required. The work must be carried out against previously agreed safety procedures, a ‘permit-to-work’ system. The permit-to-work is a documented procedure that authorises certain people to carry out specific work within a specified time frame. It sets out the precautions required to complete the work safely, based on a risk assessment. It describes what work will be done and how it will be done; the latter can be detailed in a ‘method statement’. The permit to work requires declarations from the people authorising the work and carrying out the work that they are satisfied that all necessary precautions are in place. Where necessary, it requires a declaration from those involved in shift handover procedures or extensions to the work and the use of shift handover logs should be considered. Finally, before equipment or machinery is put back into service, it will require a declaration from the permit originator that it is ready for normal use. A template produced by the Health and Safety Executive is set out in leaflet INDG 163 (rev 2).

## > Appendix 7 PERMITS TO WORK

A permit to work should include the following elements:

- permit title
- permit number – this may make reference to other relevant permits or isolation certificates
- job location
- Identification of plant/equipment/area
- description of work to be done and its limitations
- hazard identification – to include residual hazards and hazards introduced by work
- precautions necessary – the person carrying out the precautions, for example isolations, should sign that the precautions have been taken
- risk assessment – confirm existence of risk assessment
- protective equipment
- authorisation – the signature confirming that precautions have been taken, except where these can only be taken during work. The date and duration of the permit should be entered
- Acceptance – the signature confirming understanding of the work to be done, hazards involved and precautions required. It also confirms that necessary information has been explained to all workers involved
- Extension/handover procedures – signatures confirming checks made that plant/equipment/area remains safe to be worked on and new workers have been made fully aware of hazards and precautions. A new time expiry is to be given
- Hand back – form signed by person(s) carrying out work to certify that work is complete. It is also signed by the person issuing the form – for example, the contract manager to certify that work is complete and the plant/equipment/area is ready for testing where necessary and to be put back into use.

- Cancellation – to certify that the work is satisfactory and where necessary, tests have been carried out and the plant/equipment/area returned to use

If there are a number of permits, the contract manager should ensure that they are displayed at an appropriate location, in a systematic arrangement that enables staff and contractors to check which equipment is e.g. isolated or undergoing maintenance. Where there are multiple responsibilities for the issue of permits to work on the same site such as, by a landlord, by a tenant, by a contractor – the contract manager should co-ordinate and monitor procedures. They should also consider making one team responsible for the issue of permits to work.

The contract manager should make links between related permits and consider simultaneous tasks and interdependent activities.

The contract manager should ensure that other people are aware of what contractors are doing and vice versa.

The contract manager should ensure that permits to work are not confused with permits to access (see appendix 2 for definition) and when in doubt, should refer to the definition of a permit to work system above.

In addition, consideration will need to be given to the competence of the person(s) authorising permits to work.



## Appendix 8 **METHOD STATEMENT**

A method statement produced by a contractor should be site-specific and should typically identify the following areas for consideration:

- the work to be carried out
- location of the work
- timetable for the work
- safe system of work to be adopted, including permits to work (see section 5.0 'Contractors working on site' and appendix 7)
- safe access and egress – control over site or work area
- mechanical plant, access equipment and lifting plant (if any)
- details of how the plant will be used and where it will be sited
- person(s) supervising work
- contact names of responsible person(s) in company
- health and safety risks arising from work
- measures to be taken to remove or control these risks
- effects of work on the contract manager's business and how these risks will be minimised
- any disruption of services from work and how they will be minimised
- action to be taken in emergencies
- emergency contacts
- Details of any specialist tasks required including any use of subcontractors and their supervision.

## > Appendix 9 ACCIDENT REPORTING

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All accidents, however minor, involving contractors will need to be reported to the contract manager and recorded in the company accident book. Accidents and dangerous occurrences should be investigated to determine the immediate and root cause and to prevent a recurrence. Guidance is produced by the Health and Safety Executive on the investigation of adverse events including accidents and dangerous occurrences in its publication HSG 245 'Investigating accidents and incidents: A workbook for employers, unions, safety representatives and safety professionals'.

Responsibility for the reporting of accidents and dangerous occurrences which must be notified under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) – notification to the enforcing authority are set down below.

> Where the contractor is not a self-employed person, it is responsible for reporting notifiable accidents and dangerous occurrences involving its own staff and subcontractors to the enforcing authority, for notifying the contract manager and for investigating the accident or dangerous occurrence.

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> Where the contractor is a self-employed person or the accident involves a visitor to site, or a member of the public is affected by work on the site, the contract manager should ensure that the client follows their own procedures for the reporting and investigation of accidents and dangerous occurrences.

The contractor's reporting procedures should be in place and arrangements for notification to the contract manager should be agreed between the contract manager and the contractor before work begins. The contract manager should co-ordinate procedures for joint investigation of accidents where appropriate. Timescales for notification of accidents and dangerous occurrences to the contract manager both verbally and in writing should be agreed.

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## Appendix 10

# SUMMARY OF JURISDICTION OVER ENFORCEMENT

### LOCAL AUTHORITIES

In England and Wales, local authorities enforce the 1974 Act in respect of certain non-domestic premises, including:

- shops and retailing, including market stalls, coin-operated laundrettes and mobile vendors
- most office-based activities
- some wholesale and retail warehouses
- hotels, guest houses, hostels, caravan and camping sites, restaurants, public houses and other licensed premises;
- leisure and entertainment, including night clubs, cinemas, social clubs, circuses, sports facilities, health clubs, gyms, riding schools, racecourses, pleasure boat hire, motor-racing circuits, museums, theatres, art galleries and exhibition centres
- places of worship and undertakers
- animal care, including zoos, livery stables and kennels
- therapeutic and beauty services, including massage, saunas, solariums, tattooing, skin and body piercing, and hairdressing
- residential care homes
- privately run pre-school child care, for example, nurseries.
- construction
- mines, quarries and landfill sites
- farms, agriculture and forestry
- hospitals, including nursing homes
- local government, including their offices and facilities run by them
- schools, colleges and universities
- domestic gas installation, maintenance or repair
- utilities, including power generation, water, and waste
- fairgrounds (travelling or fixed)
- airports (except terminal buildings, car parks and office buildings)
- police and fire authorities
- Crown bodies, including the Ministry of Defence
- prisons
- docks
- nuclear installations
- offshore gas and oil installations, emerging energy technologies and associated activities, including pipe-laying barges, and diving support vessels
- onshore major hazards, including pipelines, gas transmission and distribution
- transport of dangerous goods by road
- manufacture, transport, handling and security of explosives
- common parts of domestic premises

### THE HEALTH AND SAFETY EXECUTIVE (HSE)

HSE is responsible for enforcing work-related health and safety legislation in:

- factories and other manufacturing premises, including some motor vehicle repair
- chemical plants and refineries



## Appendix 11

### REVIEW OF CONTRACTORS' HEALTH AND SAFETY PERFORMANCE

Please note that this is not an exhaustive list and outlines some key areas for consideration.

- Initial planning – were suitable and sufficient risk assessments carried out?
- Was the method statement suitable and sufficient?
- Were the means for selecting the contractor effective?
- Were there any health and safety-related problems with the contractor?
- Were any health and safety-related problems created for company staff or other persons?
- Was any additional work needed in the contract (for example, risk assessments) which should have been identified earlier?
- Were there any problems with the contractor which needed action?
- Was the standard of management shown by the contractor acceptable?
- Were the contractor's arrangements for the management of any sub-contractors effective?
- Were scheduled health and safety inspections carried out by the contractor?
- Were records of inspections available?
- Were problems and defects remedied promptly?
- Was any testing which was needed carried out and recorded?
- Were any permits to work signed off?
- Was any necessary health and safety information supplied by the contractor at the end of the work?
- Is any follow up action needed by the contract manager or the contractor?
- Would this contractor be employed again?
- Has a record of this review been raised and kept?



## Appendix 12

### **PERSONS WORKING IN HOST EMPLOYERS' OR SELF-EMPLOYED PERSONS' UNDERTAKINGS**

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Employers and self-employed people need to ensure that comprehensive information on risks identified by risk assessments required by Regulation 3 and the measures taken to control them is given to other employers and self-employed people.

- > Host employers and self-employed people must ensure that people carrying out work on their premises receive relevant information.
- > The information should be sufficient to allow the employer of the visiting employee to comply with their statutory duties and should include the identity of people nominated by the host employer to help with an emergency evacuation

> Where the visiting employees are specialists brought in to do specialist tasks, the host employer's instructions need to be concerned with those risks which are peculiar to the activity and premises.

> The visiting employee may also introduce risks to the permanent workforce (e.g. from equipment or substances they may bring with them). Their employers have a general duty under section 3 of the Health and Safety at Work etc. Act 1974 to inform the host employer of such risks and to co-operate and co-ordinate with the host employer to the extent needed to control those risks. This requirement has equal and prominent status with section 2 of the same Act, which requires the employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees.

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## > Appendix 13 FREQUENTLY ASKED QUESTIONS

1)

**Q Who should be responsible for ensuring contract managers have access to suitable training to enable them to fully discharge their responsibilities?**

**A** The person responsible for ensuring that the contract manager has access to suitable training is the person in overall control of the organisation – for example, the chief executive. Authority may be delegated to another person within the organisation – for example, to the head of HR who may have the task of carrying out a training needs analysis and providing suitable training – but the overall responsibility rests with the chief executive or the nominated board director for health and safety. Further guidance is provided in a joint Institute of Directors/HSE publication, ‘Leading health & safety at work – leadership actions for directors and board members’ (INDG 417). Whilst authority may be delegated, responsibility is generally seen to be non-delegable.

2)

**Q What is meant specifically by ‘discharging their responsibilities’?**

**A** This means complying with health and safety legislation which applies to the organisation in question. This will include general duties under the Health & Safety at Work etc. Act 1974 as well as more specific subordinate legislation

3)

**Q Is there a standard risk assessment template which contract managers should use for proposed work activity to be undertaken by a contractor?**

**A** The most straightforward format for risk assessment is that issued by the Health and Safety Executive (HSE) in their leaflet ‘5 steps to risk assessment’. It will suffice for most organisations, with the exception of high risk industries such as nuclear power generation and extractive processes or those processes and industries regulated by the Control of Major Accident Hazards Regulations 1999 (as amended), which may need quantitative analysis based on mathematical principles.

**For most, a qualitative approach will suffice. The leaflet is freely available on the HSE website [www.hse.gov.uk](http://www.hse.gov.uk) under the heading ‘Sensible risk management’.**

4)

**Q Are there any recommended examples of risk assessments to look at for guidance?**

**A** There are examples available for reference on the HSE website under the heading ‘Sensible risk management’, which give an idea of the general approach. It should be noted that these are generic and cannot be simply transposed and adopted as a risk assessment for a business without further thought and consideration with regard to the specific operation of the business and its risk profile.

5)

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**Q What relevant professional bodies or trade associations (apart from the Health and Safety Executive and local Environmental Health departments) can help with providing further advice to contractors involved in higher risk work and contract managers?**

**A** Other organisations which could provide advice include, for example, BIFM, the Institution of Occupational Safety & Health (IOSH) which have both priced and free general guidance, the Institute of Engineering and Technology (IET) for matters related to electricity, Gas Safe in relation to matters of gas safety, The Royal Institution of Chartered Surveyors or the Chartered Institute of Building for building related matters, the British Occupational Hygiene Society (BOHS) for matters relating to hazardous substances and the Water Management Society and the Legionella Control Association for the management of legionella in water systems. It should be noted that some professional organisations may charge a fee for advice to non-members or may not, because of financial constraints, offer a helpline-type service. They may instead refer the enquirer to a professionally qualified member who may charge a fee for their services.

6)

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**Q Are there any areas of the Health and Safety Executive website/documentation which a contractor and/or contract manager should make themselves familiar with before embarking on work together**

**A** Yes! The primary documents are now the Management of Health & Safety at Work Regulations 1999 (as amended) and the revised HSE publication 'Managing for Health & Safety' (HSG65) Another useful document is the HSE leaflet 'Using contractors – a brief guide' (INDG 368), which outlines the steps to be taken. There is also HSE guidance on the management of contractors in the chemical industry ('Managing contractors – a guide for employers' (HSG 159)) but although it contains useful general guidance, it tends to be industry specific.

7)

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**Q What Health and Safety regulations do local authorities in Scotland follow? Are they different to the 1974 Act followed by England and Wales?**

**A** Information on regional variations will be found on the HSE website although the 1974 Act covers the UK in its entirety, along with the EU-inspired regulations. The Republic of Ireland bases its legislation quite closely on UK law, although it is said that it now follows more closely other legislative systems in Europe for health and safety as it has moved towards absolute duties which may be leniently interpreted by enforcing authorities rather than 'reasonable practicability', which underpins UK health and safety legislation.

> Appendix 13  
**FREQUENTLY ASKED QUESTIONS**

8)

**Q Where can I find further information on cases involving the activities of contractors (including corporate manslaughter, gross negligence manslaughter and culpable homicide)?**

A

The Ministry of Justice website at [www.justice.gov.uk](http://www.justice.gov.uk) hosts information on corporate and gross negligence manslaughter.

Decided cases are frequently reported in trade and professional journals and on their websites and the BIFM and HSE websites may report on them as they emerge. Frequently, larger law firms who may specialise in such matters will send out newsletters with articles on developments to clients or other interested parties for information and as part of their marketing strategy. It is possible to ask to be placed on their mailing lists.

9)

**Q Who should I contact for advice as a contractor/contract manager if I am concerned about these issues?**

A

The BIFM may be contacted as between them all, its members will have many years' experience of managing contractors. In particular, the Health and Safety Special Interest Group (H&S SIG) may be able to provide help and advice. The key to preventing exposure to corporate manslaughter and other criminal charges is to have in place sound systems for the management of health and safety by, such as, following the system for the management of health and safety as set out in the HSE publication 'Successful health & safety management' (HSG65). The taking of competent advice when needed is also recommended (and is indeed required by the Management of Health & Safety at Work Regulations 1999 (as amended)) and professional bodies such as IOSH maintain a register of competent persons to which businesses may refer.

10)

**Q Where can I find further information on health and safety matters which may affect contractors and contract managers, including Facilities Managers?**

A

See question 6 on page 40. The BIFM H & S SIG will be able to provide further advice on information relating to the management of contractors and the key documents which have the greatest relevance are listed above.

## **About BIFM**

The British Institute of Facilities Management (BIFM) is the professional body for Facilities Management (FM). Founded in 1993, we promote excellence in facilities management for the benefit of practitioners, the economy and society. Supporting and representing over 14,000 members around the world, both individual FM professionals and organisations, and thousands more through qualifications and training. We promote and embed professional standards in facilities management. Committed to advancing the facilities management profession we provide a suite of membership, qualifications, training and networking services designed to support facilities management practitioners in performing to the best of their ability.

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