

## EMPLOYERS LIABILITY AND COMBINED LIABILITY POLICIES - REPORTING OF RIDDOR INCIDENTS

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) place a legal requirement on companies to report all accidents and ill-health at work to the Health and Safety Executive (HSE). The aim of the regulations is to assist companies in these circumstances, by providing help and advice on reducing injury and ill-health in the workplace for the future.

The regulations place an obligation on employers, those in control of premises and self-employed persons to report the following by the quickest means possible:

- Deaths;
- Major injuries;
- Over 3-day injuries - where an employee or self-employed person is away from work or unable to perform their normal work duties for more than three consecutive days;
- Injuries to members of the public or people not at work where they are taken from the scene of an accident to hospital;
- Some work-related diseases;
- Dangerous occurrences - where something happens that does not result in any injury but could have done;
- CORGI registered gas fitters must also report dangerous gas fittings they find, and gas conveyors/suppliers must report some flammable gas incidents.

RIDDOR applies to all work activities but not all incidents are reportable. If someone has had an accident in a work situation and you are unsure whether it needs to be

reported, call the Incident Contact Centre (ICC) on 0845 300 9923 for assistance. Alternatively, RIDDOR incidents can be reported via the HSE website.

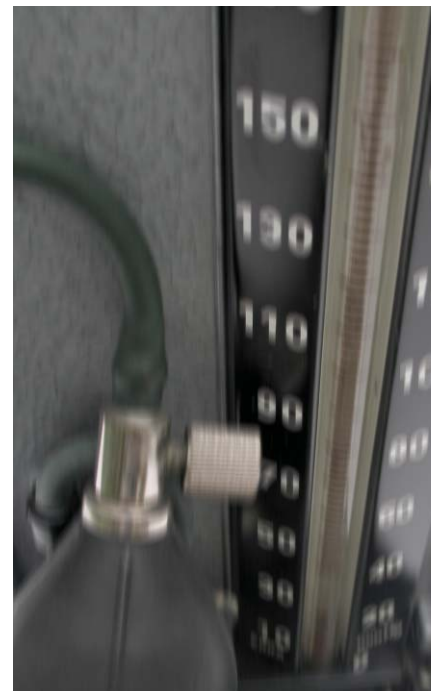
With Insurers becoming ever more vigilant, we would remind you that even where your insurance policy does not make specific provision for the reporting of RIDDOR incidents within a given timescale, such incidents must be reported in accordance with the terms of the Claims Notification Condition as an incident which might give rise to a claim. Since information supplied to the HSE in a RIDDOR report is not passed to your Insurer, we suggest that a copy of any notification to the HSE is passed to your Willis service team as soon as possible.

The danger in omitting to report an incident to the HSE is that settlement of any claim arising may be jeopardised. Additionally, Insurers may view this as non-disclosure of a material fact, resulting in a substantial increase in premium.

Additional information can be found at <http://www.hse.gov.uk/riddor/index.htm> or contact your usual Account Director for assistance.

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# DILAPIDATIONS UPDATE

## IMPORTANT INFORMATION FOR LANDLORDS CONCERNING CARPETS

In terms of dilapidations, the cost of 'repairing carpets' at the end of a lease (which generally means renewing them) can be significant. The question of whether the carpets are owned by the landlord or are tenant's chattels is often disputed.

Many leases do not specify the ownership of carpets and it is often down to how the carpet tiles are fixed. For example, if carpet tiles are physically glued down then they are likely to be considered a fixture and as such the tenant may be responsible for repairing or renewing them at the end of the term. However, if as is more common practice these days, carpet tiles are affixed with tackifier, they will probably be treated as tenant's chattels. Even if they are provided by the

landlord at the outset of the lease, they will not be subject to the lease covenants that only refer to the demise.

A warning then to landlords; even if you provide carpets affixed by tackifier at the start of the lease, they may not be subject to lease provisions that only refer to the demise. Ensure that your lease explains how the landlord's possessions are to be looked after, otherwise you may find your tenant could simply remove them at the end of their lease. Even if the intentions of the parties regarding carpets are noted elsewhere, courts will not always consider information outside of the lease.

Contributor: APS Chartered Surveyors

# THE CORPORATE MANSLAUGHTER AND HOMICIDE ACT 2007

On April 6, 2008 the above new Act came into effect, replacing the common law offence of gross negligence manslaughter as far as it applied to companies. The Act allows companies and large organisations to be found guilty of corporate manslaughter (known as corporate homicide in Scotland), where there have been serious failings on the part of management in respect of health and safety which result in a fatality. Whilst individuals cannot be prosecuted themselves under the new Act, there is still the possibility that directors and senior managers can be prosecuted under common law. Failure on the part of those responsible to ensure adequate health and safety procedures are in place will leave their organisations open to prosecution for corporate manslaughter should any incident occur.

## WHAT DO COMPANIES AND ORGANISATIONS NEED TO DO TO COMPLY?

Companies and organisations that take their obligations under health and safety law seriously are not likely to be in breach of the new provisions. Nonetheless, companies and organisations should keep their health and safety management systems under review, in particular, the way in which their activities are managed or organised by senior management.

## WILL DIRECTORS, BOARD MEMBERS OR OTHER INDIVIDUALS BE PROSECUTED?

The offence is concerned with corporate liability and does not apply to directors or other individuals who have a senior role in the company or organization. However, existing health and safety offences and gross negligence manslaughter will continue to apply to individuals. Prosecutions against individuals will continue to be taken where there is sufficient evidence and it is in the public interest to do so.

## WHERE DOES HEALTH AND SAFETY LEGISLATION COME IN?

Under the Act, health and safety legislation means "any statutory provision dealing with health and safety matters" so it will include transport (road, rail, river, sea, air) food safety and workplace safety as enforced by HSE and local authorities.

## HOW CAN WILLIS HELP?

We anticipate our clients may have concerns over expenditure that could be incurred in the event of prosecution under the Act: defence costs, costs of appeal or prosecution costs. Many insurers are now extending their Employers Liability policies to include such expenses. Please contact your usual Account Director or any of the Property Investors Division personnel listed overleaf for future assistance on this subject.

# FALLS FROM HEIGHT

According to Health and Safety Executive statistics falls from height are the number one cause of workplace fatalities, and a major contributor to the overall total of significant injuries. Last year alone there were 46 fatal accidents at work and around 3,350 major injuries. Whilst the perception is that these accidents occur more often during work taking place at substantial height, such as scaffolding and roofing work, the evidence is that whilst higher hazard industries do indeed produce more severe falls, the greatest incidence of accidents is in activities traditionally seen as lower risk, with well over half of major injuries occurring after falls from a height of less than two metres, for example falls from items such as ladders, steps and vehicles.

In addition to their duties under the Health and Safety at Work Act and the Management of Health and Safety at Work Regulations, employers now need to be aware of the Work at Height Regulations 2005, as amended by the Work at Height (Amendment) Regulations 2007 that were introduced to consolidate previous legislation on working at height.

The Regulations place duties on employers, the self-employed, and any person that controls the work of others to the extent of their control and requires them to ensure that:

- All work at height is properly planned and organised.
- Those involved in work at height are competent.
- A risk assessment is undertaken and appropriate work equipment selected and used.
- The risks from fragile surfaces are properly controlled.
- Equipment for work at height is properly inspected and maintained.

These Regulations also specify a hierarchy for managing and selecting equipment for work at height, namely:

- Avoiding work at height where possible.
- Using work equipment or other measures to prevent falls where work at height cannot be avoided.
- Using work equipment or other measures to minimise the distance and consequences of a fall should one occur, in cases where the risk of a fall cannot be eliminated.

In practical terms this hierarchy could lead to a number of different strategies, which could include:

## AVOIDANCE OF WORK AT HEIGHT

- Decide whether tasks at height are actually necessary.
- Amend processes so that as much as possible can be done at a safe height.
- Use tools and equipment that allow employees to remain at a safe height whilst completing work at height, for example long handled tools for cleaning plant equipment.

## FALL PREVENTION

- Fit guard rails or other edge protection in areas where work at height takes place.
- Use safer means of access to the area where work at height is to take place e.g., cherry pickers or scaffolds.
- Install non-slip surfaces in areas where work at height takes place.
- Ensure that employees are given appropriate training about working at height.

## MINIMISE CONSEQUENCES OF A FALL

- Consider restraints and personal fall arrest equipment for individual use.
- Look at matting and netting for collective use.
- Have an effective recovery and rescue plan.

The Regulations cover a wide range of industries and activities. However, the HSE has developed some simple messages applicable to all organisations:

- Those currently following good practice for work at height should already be doing enough to comply with these Regulations.
- Follow the risk assessments that have been carried out for work at height activities already, and ensure all work at height is planned, organised and carried out by competent persons.
- Follow the hierarchy for managing risks from work at height – take measures to avoid, prevent or reduce risk.
- Select the right work equipment and select collective measures to prevent falls (such as guardrails and working platforms) before other measures which may only mitigate the distance and consequences of a fall (such as nets or airbags) or which may only provide personal protection from a fall.

The cost of falls from height can be significant, both on an individual and at a business level. If management has all reasonable and appropriate controls in place then claims made in the event of a fall are defensible. By following the Regulations laid down employers can help to minimise their exposure.

For further statistical information please visit [www.hse.gov.uk](http://www.hse.gov.uk)

# SITE WASTE MANAGEMENT PLAN REGULATIONS 2008

In April 2008 the government introduced new regulations aimed at reducing the millions of tonnage of unused building materials generated by construction works, that are disposed of each year into landfill sites. The regulations are now a legal requirement for all works with an estimated cost exceeding £300,000 in value (excluding VAT) and below we look at the action required in order to comply.

## WHAT SHOULD CLIENTS AND CONTRACTORS DO?

1. Before works commence, construction clients must prepare a Site Waste Management Plan. This must identify what waste will be generated by the works, the estimated quantities of each different waste to be produced and how this will be dealt with.
2. The plan must describe the works proposed, including the location of the site and the approximate contract value. It may be prudent for clients to include obligations in construction contracts, to ensure contractors produce the necessary plans prior to starting work on site.
3. The plan must also include a declaration that the client and principal contractor will take all reasonable steps to deal with waste in accordance with their duty of care, to ensure that materials are handled efficiently and waste is managed appropriately.
4. The regulations contain a broad definition of construction works, so for example tenants' or landlords' works under an agreement for lease or licence for works or any reinstatement of premises at the end of a lease term will need to comply with its requirements if the £300,000 threshold is met.
5. Once works commence, the principal contractor will be responsible for implementing and updating the plan, which must be kept in the site office or at the site itself and readily available to all contractors. The plan must be updated each time waste is removed from site, clearly stating how this is disposed of. On completion, the principal contractor must retain the plan for a two year period.
6. The regulations contain offences in the event of a failure to keep, implement, make available or update a Plan, with fines of up to £50,000 possible in the event of a conviction.

Additional guidance notes can be found at  
<http://www.defra.gov.uk/environment/waste/topics/construction>

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## PROPERTY INVESTORS DIVISION CONTACTS

**John Dilley – Managing Director**

+44 (0)20 3124 6233 – [dilleyj@willis.com](mailto:dilleyj@willis.com)

**Paul Turnbull – Director of Sales**

+44 (0)20 3124 6253 – [turnbullp@willis.com](mailto:turnbullp@willis.com)

**Jonathan Hackett – New Business Executive**

+44 (0)20 3124 6980 – [jonathan.hackett@willis.com](mailto:jonathan.hackett@willis.com)

**Gavin Oram – New Business Executive**

+44 (0)20 3124 6201 – [gavin.oram@willis.com](mailto:gavin.oram@willis.com)

**Mike Carolan – Construction Director**

+44 (0)20 3124 6229 – [carolanm@willis.com](mailto:carolanm@willis.com)

**Michael Alderton – Account Director**

+44 (0)20 3124 6218 – [aldertonmw@willis.com](mailto:aldertonmw@willis.com)

**Dean Gallagher – Account Director**

+44 (0)20 3124 6235 – [gallagherdpj@willis.com](mailto:gallagherdpj@willis.com)

**Adrian Hastie – Account Director**

+44 (0)20 3124 6237 – [hastiead@willis.com](mailto:hastiead@willis.com)

**Mark McGee – Account Director**

+44 (0)20 3124 6202 – [mcgeem@willis.com](mailto:mcgeem@willis.com)

**Kirsty Staff – Account Director**

+44 (0)20 3124 6247 – [staffka@willis.com](mailto:staffka@willis.com)

**Should you require further copies of this newsletter, wish to receive future editions by email or notify us of any changes to your address please contact Kirstie Blyth on +44 (0)20 3124 6656 or by email: [blythk@willis.com](mailto:blythk@willis.com)**

Property Investors Division  
Willis Limited  
Level 12  
51 Lime Street  
London, EC3M 7DQ

Willis Limited, Registered number: 181116 England and Wales.  
Registered address: 51 Lime Street, London EC3M 7DQ  
Tel +44 (0)20 3124 6000. [www.willis.com](http://www.willis.com)  
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