

# Facilities management and the law

As part of everyday working life, facilities managers are responsible for the wellbeing of the employees working in the buildings and facilities, the provision of a safe place of work and safe equipment to work with, as well as the mitigation of risks such as loss of productivity, prosecution, litigation and claims. Facilities managers have ever more regulations and legislation to become familiar with if they are to be competent in the discharge of their duties. In fact, it has been suggested that today they need to be aware of up to 400 legal requirements, found in various Acts of Parliament, Regulations, Approved Codes of Practice and Guidance Notes. So important has the law and regulatory compliance become to the role of facilities management that the profession's representative body, the British Institute of Facilities Management, will incorporate a new competency dedicated solely to legislation in the revision of its professional competencies.

## THE LEGAL SYSTEM

The UK legal system has a long history and although not based on a written constitution, it is based on the separate powers of:

- The legislature or rules made by Parliament
- The executive agencies, departments and public bodies acting on behalf of the Government
- The judiciary, comprising a range of courts and tribunals that check that everyone acts within the law laid down by legislature.

In the UK, there are three types of law:

- Civil – contract law, employment law, tort (civil wrongs)
- Criminal – breaches of regulations, enforcement of notices, punishment for acts (such as assault, burglary, murder), breaches of duty of care (such as waste management, water pollution)
- Public – planning regulations, building regulations.

The legal justice system is based on a hierarchy of courts. With more settlements made 'out of court', most cases are dealt with in the Magistrates Courts, hiding the reality that as a nation we are all becoming more litigious and seeking compensation.

The law is constantly changing to respond to different needs and circumstances. There is a time lag from the drafting of a new Bill to it becoming a Statute or Act of

Parliament and the legislation coming into force. There are about 60 to 70 new Bills each year. Courts interpret the law and as new legislation is enacted, there may be changing emphasis in the interpretation. It is therefore very important to:

- interpret the legislation by reading the Act or legal rule very carefully
- ensure that the legal source is completely up to date, verifying that the particular legislation has not been amended, revised or repealed
- determine where and when the breach of rights or legislation has occurred
- establish the causal links in the chain of events in the act or omission which has led to a failure to comply with legislation
- seek expert help early.

## Civil law

Civil law principles are based on a justice system designed to resolve disputes between two or more parties. It provides redress for damages suffered. The main remedy is compensation or injunctions to either prevent someone from doing something or to force an action to be carried out. In general, the claimant has to initiate proceedings, and to prove on a balance of probabilities (more than 50%) that they have a case.

## Criminal law

Criminal law principles are based on the need to punish the wrongdoers and impose sanctions on those who are in breach of regulations. Fines and imprisonment are typical sanctions imposed. The State will initiate proceedings via a number of public bodies (see Figure 1). All the officers acting for the prosecuting authorities have more powers than the average police constable and must comply with the Police and Criminal Evidence Act codes of practice.

Offences under criminal law are known as strict liability, which means that even though there was no intention to cause harm, the defendant will be guilty. In these cases, the State must prove beyond reasonable doubt (more than 95%) that the criminal act occurred. The defendant may be able to provide evidence in their defence, such as:

- that reasonable precautions were taken – this is sometimes referred to as 'due diligence'
- that a reasonable excuse is afforded
- that actions or activities were undertaken in an emergency to avoid harm to the public
- that the best practical means were used to prevent or counteract the effects of the actions or activity.

Criminal proceedings may result in both sanctions imposed on the organisation and, if the offence was committed with the consent (knowledge and awareness of the risks), connivance (knowing but doing nothing about it) or neglect (unreasonable breach of duty of care), on an individual such as a director, manager or other officer.

## Public law

Public law principles are based on judicial review and control. This is a way of ensuring everyone follows the

law. This is particularly important for facilities managers with property management roles as the main area of public law is the contrnd use.

In most health, safety and environmental legislation, offences attract vicarious liability, when the liability falls on one person as a result of the actions of another. Typically, this is the liability of the employer for the acts and omissions of their employees.

## HEALTH AND SAFETY

The top ten health and safety (H&S) issues affecting facilities managers as identified by the BIFM Health and Safety Special Interest Group in 2004 were:

- contractors
- risk assessment
- Disability Discrimination Act 1995
- asbestos
- fire
- accident/incident investigation
- lone working
- workplace inspections
- enforcement
- competence.

Facilities managers cover such a broad range of responsibilities and so not surprisingly the areas of legislation knowledge are also very broad, and often extend beyond the normal health, safety and environment remit (see box 'Legislation and typical areas of responsibility').

In health and safety legislation, facilities managers have obligations as an employee. As with other employees, they cannot interfere or misuse safety equipment, must observe instructions and co-operate with procedures and take reasonable care for themselves and others by their acts and omissions.

In addition, facilities managers have responsibilities as a duty holder in many of the regulations of health, safety and environmental legislation. This does depend on the exact nature of their role and roles held by other

employees in the organisation, such as a Fire Officer, a Health and Safety Officer, or a Planning Supervisor. Facilities managers working in smaller organisations may find themselves with greater responsibilities than those in larger organisations.

There are three types of duties in health and safety legislation:

- Absolute – this is something that must be done
- So far as is practicable – this is something that must be done if physically possible and disregarding the costs involved
- So far as is reasonably practicable – this is something that can be done after a cost benefit analysis has been carried out.

## OPERATIONAL ISSUES

Let's consider the issues facing facilities managers on a tactical or daily operational basis. As custodian of the common spaces in most workplaces, facilities managers and their appointed contractors will be the duty holder in regulation 4 of the Workplace Regulations 1992, which states, "...every employer or person who has to any extent control of the premises shall ensure that every workplace, modification, extension or conversion under their control and where any of their employees work complies with these regulations". Many of the other specific regulations of the Workplace Regulations will feature in the daily work of a facilities manager and it is therefore essential to have a good level of understanding of this particular piece of legislation, which might perhaps be better named the 'Facilities Management Regulations'.

Dealing with non-employees and visitors is also an area that often falls to the facilities management team to manage. Responsibilities will therefore include the giving of suitable information regarding health and safety arrangements to visitors, the assessment of risks and the issuing of permits to work. There are many specific areas of legislation which require a risk assessment, so it is important to appreciate this important area of expertise.

By law, employers are required to carry out suitable and sufficient assessments of all the risks to employees and others affected by their work activities. This is not difficult; an ability to know what is wrong now or in the future and what could be done about it will suffice. The aim is to be proactive and deal with the hazards before they cause an accident. A competent person should have knowledge of the workplace and experience of the work being carried out, which will give them the ability and confidence to carry out risk assessments.

Facilities managers need to be able to identify the hazards that have a potential to cause harm. These hazards may be people, equipment or places. As part of the identification process, a number of questions can be asked, such as 'Who?', 'What?', 'How?' and 'Where?'. The likelihood and the severity of the hazard(s) being realised will need quantifying. All risk assessments must be recorded and reviewed on a regular basis, but especially after an incident, change of personnel or equipment or change of process. Control measures to mitigate and reduce the risks need managing and in many cases, this falls to the facilities manager.

The risk control measures that can be applied to

Figure 1: Public bodies and their judicial responsibilities

Public body	Responsibilities
Health and Safety Executive	Health and safety related offences
Environment Agency	Water related, more serious waste and integrated pollution control (IPC) matters
Local Authorities	Less serious waste offences, air pollution, planning control, food and hygiene, noise and general environmental health offences
Crown Prosecution Service	Offences against the state
Director of Public Prosecutions	Serious offences
TV Licensing Authority	Television licenses
Customs and Excise	Revenue fraud, tax evasion

manage risks are known as the hierarchy of control measures. It is important to apply these in order, with personal protective equipment the last resort:

1. Elimination
2. Substitution
3. Avoidance
4. Isolation
5. Segregation
6. Engineering controls
7. Procedures and safe systems of work
8. Personal protective equipment.

H&S management tasks that may be part of the tactical operational role of facilities managers may include:

- physical workplace inspections
- hazard spotting
- safety audits
- discussions with staff and contractors
- job safety analysis and/or task analysis
- study of past accidents, incidents and near-misses
- benchmarking.

**RECORDKEEPING**

As UK society becomes more litigious, with increasing expectations and demands, due diligence must be applied to all activities. Records of all incidents and near-misses must be kept, and those of investigations of breaches of company or statutory rules and regulations must be kept for a number of years. Employees and others may claim some time after an incident, so it is important to keep

the evidence to defend potential claims. How a facilities manager deals with health and safety management will have a direct impact on an organisation's insurance costs and their liabilities.

Looking at the strategic implications of legislation on facilities management activities, we need to consider the longer-term, whole business activities, such as employment contracts, property acquisition and development, service contracts and continuity of business activities. Some organisations will be more risk adverse than others and have a different attitude to the management of uncertainties in their organisation. There needs to be an understanding of the impact of facilities management activities upon the business and how these may support or jeopardise the business activities. Policies and procedures supporting the business goals of an organisation must take into account the relevant legislative duties and responsibilities.

In addition, the long-term implication of inappropriate operational activities that may lead to prosecution, fines, business closure and litigation must be considered. The reputation of the organisation to employees, suppliers and the general public needs to be considered. The time taken to defend cases, as well as the cost of experts and potential hospital charges, are other aspects to consider. ■

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LEGISLATION AND TYPICAL AREAS OF RESPONSIBILITY COVERED BY FACILITIES MANAGERS		
Type	Issues covered	Laws, Regulations and Codes of Practice
Employment	Equal opportunities; discrimination; recruitment; pay; TUPE; part time and fixed term employees; termination of service; paternity and maternity rights; flexible working; disciplinary and grievance procedures	<ul style="list-style-type: none"> <li>• Disability Discrimination Act 1995 (amended in 2003)</li> <li>• Employment Rights Act 1996</li> <li>• Public Interest Disclosure Act 1998</li> <li>• Employment Act 2002</li> <li>• Working Time Regulations 1998 (amended in 2002)</li> <li>• Transfer of Undertakings (Protection of Employment) Regulations 1981</li> <li>• Acquired Rights Directive 2001 (2001/23/EC)</li> <li>• Race Relations Act 1976</li> <li>• Employment Equality (Religion or Belief) Regulations 2003</li> <li>• Employment Equality (Sexual Orientation) Regulations 2003</li> <li>• National Minimum Wage Act 1998</li> <li>• Sex Discrimination Act 1975 (amended in 2003)</li> </ul>
Health and Safety	Providing a safe place, safe people, safe process and equipment	<ul style="list-style-type: none"> <li>• Health and Safety at Work Act 1974</li> <li>• Control of Asbestos Regulations 1987</li> <li>• Noise at Work Regulations 1989</li> <li>• The Six Pack Regulations 1992</li> <li>• Health and Safety (Safety Signs and Signals) Regulations 1996</li> <li>• Electricity at Work Regulations 1989</li> <li>• Lift Operations and Lifting Equipment Regulations 1998 (LOLER)</li> <li>• Gas Safety (Installation and Use) Regulations 1998</li> <li>• Provisions for Use of Work Equipment Regulations 1999 (PUWER)</li> <li>• Health and Safety (Miscellaneous Amendments) Regulations 2002</li> <li>• Control of Substances Hazardous to Health Regulations 2002</li> <li>• Chemicals (Hazard Information and Packaging for Supply) (Amendment Regulations 2002; Confined Spaces Regulations 1997</li> <li>• Working at Height Regulations 2005</li> </ul>

Type	Issues covered	Laws, Regulations and Codes of Practice
Environment	Waste management, environment protection, use of resources	<ul style="list-style-type: none"> <li>• Environment Protection Act 1990</li> <li>• Environmental Protection (Duty of Care) Regulations 1991</li> <li>• Waste Management Regulations 1996</li> <li>• Control of Pollution (Amendments) Act 1989</li> <li>• Controlled Waste Regulations 1992 (amended 1993)</li> <li>• Special Waste Regulations 1996</li> <li>• Landfill (England and Wales) Regulations 2002</li> <li>• Waste Electrical and Electronic Equipment Directive (WEEE)</li> </ul>
Human Rights	Privacy, information on people, monitoring employees	<ul style="list-style-type: none"> <li>• Human Rights Act 1998</li> <li>• Regulatory Investigative Powers Act 2000</li> <li>• Data Protection Act 1998</li> <li>• Freedom of Information Act 2000</li> <li>• Copyright, Design and Patents Act 1988</li> </ul>
Construction	New buildings, maintenance and refurbishment activities	<ul style="list-style-type: none"> <li>• Construction, Design and Management Regulations 1994 (amended in 2000)</li> <li>• Construction (Health, Safety and Welfare) Regulations 1996</li> <li>• Construction (Head Protection) Regulations 1989</li> </ul>
Property	Planning permission, ownership of property	<ul style="list-style-type: none"> <li>• Town and Country Planning Act 1990</li> <li>• Building Act 1984</li> <li>• Building Regulations 2002</li> <li>• Landlords and Tenants Act 1954, 1985, 1988</li> <li>• Occupiers Liability Acts 1957, 1984</li> <li>• Defective Premises Act 1972</li> </ul>
Fire Safety	Fire risk assessment, equipment provision, training and maintenance	<ul style="list-style-type: none"> <li>• Fire Precautions Act 1971</li> <li>• Fire Precautions (Workplace) Regulations 1997 (amended in 1999)</li> <li>• Regulatory Reform (Fire Safety) Order 2004</li> </ul>
Welfare	First aid, accident reporting	<ul style="list-style-type: none"> <li>• Health and Safety (First Aid) Regulations 1981</li> <li>• Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)</li> <li>• Control of Major Accidents Hazards Regulations 1999</li> </ul>
Food	Catering, vending and hospitality services	<ul style="list-style-type: none"> <li>• Food Safety Act 1990</li> <li>• Food Safety (General Food Hygiene) Regulations 1995</li> <li>• Food Safety (Temperature Control) Regulations 1995</li> <li>• Food Premises (Registration) Regulations 1991</li> <li>• Food Labelling Regulations 1996 (amended in 1999 and 2003)</li> </ul>
Security	Door supervision, wheel clamping, guards, key holding, consultants and investigators	<ul style="list-style-type: none"> <li>• Private Security Industry Act 2001</li> </ul>
Purchasing	Buying of goods, contracts with suppliers, sale of goods and services	<ul style="list-style-type: none"> <li>• Arbitration Act 1996</li> <li>• Housing Grants, Construction and Regeneration Act 1996</li> <li>• Sale of Goods Act 1979</li> <li>• Supply of Goods and Services Act 1982</li> <li>• Unfair Contract Terms Act 1977</li> </ul>
Directors and Senior Management	Accountability and financial management	<ul style="list-style-type: none"> <li>• Companies Act 1985, 1989</li> <li>• Insolvency Act</li> <li>• Value Added Tax Act 1994</li> </ul>
Handheld radio devices	Radio licensing	<ul style="list-style-type: none"> <li>• The Radio Equipment and Telecommunications Terminal Equipment Regulations 2000</li> <li>• Communications Act 2003</li> </ul>