



***Legal registers
explained***

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Legal registers explained

If an organisation is operating in areas in which compliance with a wide range of rules and regulations is necessary, it is difficult to see how it can meet its obligations without a legal register in place, says Paul Clarke.





What is a legal register?

If your company handles a number of dangerous substances then it would of course be possible to go online each time a problem arises with, say, explosives or lead or asbestos and find the relevant legislation (both UK and EU, remember) to clarify your obligations. Possible, but time-consuming and it runs the risk of missing new or recently updated items.

A legal register addresses this problem by bringing into one collection all the legislation that impacts on dangerous substances (or air pollution or waste or whatever subjects apply to a particular company). Properly maintained and kept up to date, the register thus becomes a vital source of reference that will quickly and easily answer the queries that arise. Have the rules on protection against ionising radiations changed lately?

For example, have the rules on protection against ionising radiations changed lately?

The answer is yes. Has Directive 2004/35/EC on environmental liability been implemented in England? Yes, currently by way of the Environmental Damage (Prevention and Remediation) (England) Regulations 2015.

Meeting the standard

Reinforcing the point mentioned above, a well-maintained and organised legal register will help an organisation to meet all of the compliance requirements within current environmental management systems standards, including ISO 14001 and ISO 50001. With regard to health and safety, OHSAS 18001 (see Note, below) requires organisations to establish, implement and maintain a procedure for identifying and accessing the legal and other requirements that are applicable to it. Keeping this information up-to-date, an organisation must ensure that these applicable legal requirements are taken into account in establishing, implementing and maintaining its occupational health and safety management system.

This last point is particularly important as it implies that the operational risks within that particular organisation are considered in the light of the legal requirements identified within the register. In other words, the register cannot be a "dead" list of titles and dates; each item must be examined, summarised and considered in terms of the specific risk areas identified.

To take one example, the subject of the Control of Mercury (Enforcement) Regulations 2017 is fairly obvious and the legislation would easily be found in any search for that particular dangerous substance. It is not however immediately apparent that the Housing and Planning Act 2016 (Permission in Principle, etc) (Miscellaneous Amendments) (England) Regulations 2017 include a provision that, in dealing with an application for hazardous substances consent, the hazardous substances authority must have regard to any permission in principle that has been granted in relation to land in the vicinity.

Note: organisations already certified to OHSAS 18001 have three years from March 2018 to comply with the first global occupational health and safety management system standard ISO 45001. As this also requires compliance with current legislation, there will be the same need for a "living" legal register.





Compiling and maintaining a register

New legislation is published almost daily by the UK Government on www.legislation.gov.uk. But it is no easy feat interpreting what is relevant to your activities. The legislation is divided into four jurisdictions: UK, Scotland, Wales and Northern Ireland. There is no category for Great Britain, nor, for that matter, England, which explains why the Environmental Damage (Prevention and Remediation) (England) (Amendment) Regulations 2017 are listed under the UK. The UK jurisdiction tag can definitely be confusing. It contains, for example, the Ionising Radiations Regulations 2017, which actually apply to Great Britain rather than to the UK (but, as mentioned, there is no category for Great Britain).

Once this question of jurisdiction is addressed, there remains the problem that the lists are simply presented in reference number order. A piece of legislation on the environment will be followed by one on taxation, another on bridge tolls and one whose scope is not immediately apparent (the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2018, for example, which actually help to transpose Directive 2013/59/Euratom on protection against the dangers arising from exposure to ionising radiation).

Still, the fact remains that the only way to build up a coherent and consistent legal register in complex areas such as health, safety and/or environment is to examine these daily lists in detail and to abstract and summarise those which fall within the relevant subjects, even if some do so only tangentially.

The European question

Following agreement to a transition period (or, in the Government's terminology, an "implementation period), the UK will continue to abide by the rules of the single market and customs union until December 2020. Indeed, if rumours coming out of the Cabinet are to be believed, there is a strong possibility that this transition period will be extended further in order to allow the customs authorities more time to prepare for the re-introduction of border controls. If the close and wide-ranging relationship that the UK has stated as its aim then comes into play, it is possible that at least some EU legislation will continue to be of relevance in the UK well into the 2020s.

It is true that any European legislation enacted through directives will eventually be implemented in the UK by way of domestic statutory instruments which may then themselves be subject to further amendment. The Waste Electrical and Electronic Equipment (Amendment) Regulations 2018, for example, amend the Waste Electrical and Electronic Equipment Regulations 2013, which implemented the EU's WEEE Directive (2012/19/EU on waste electrical and electronic equipment). However, the EU has in recent years made increasing use of its own regulations, which differ from directives in having direct effect in the Member States from a stated date. One obvious example is the REACH Regulation (1907/2006) which applies detailed rules on the registration, evaluation, authorisation and restriction of chemicals (REACH).

Together with its numerous amendments (with the latest, Regulation 2018/589, concerning the use of dangerous chemicals in windscreen washing fluids), this provides an important body of law with which UK companies in the sector must comply. Regulations 2017/852 on mercury, 689/2008 concerning the export and import of dangerous chemicals and 1272/2008 on classification, labelling and packaging of substances and mixtures are other important items of EU law which are not implemented through UK statutory instruments.

Accordingly, the task of checking the EU's Official Journal must be added to the above task of reviewing the UK's daily legislative output. That said, however, do not fall into the trap of thinking that there will be no relevant UK legislation when the EU introduces new rules by way of a regulation. Take the EU Ship Recycling Regulation (1257/2013), for example, which clearly has direct effect but which needs an effective enforcement regime at Member State level. In the UK, the Government plans to achieve this requirement by way of the Ship Recycling (Requirements in relation to Hazardous Materials on Ships) Regulations which are expected to be laid before Parliament in September 2018 in advance of their entry into force on 31 December 2018.





Conclusion

Access to a basic register which categorises the key legislation by themes — health and safety management, hazardous substances, waste, pollution, etc — and which allows you to add relevant entries as well as including access to readable summaries of each item of legislation will save considerable amounts of time in-house. It should also ensure that newly published items of legislation are not overlooked and that regulations with implications for more than one subject area — possibly for both environment and health and safety — are flagged up accordingly. The Control of Mercury (Enforcement) Regulations 2017, mentioned above, are a good example.

Health, safety and environment management standards including OHSAS 18001, ISO 45001 and ISO 14001 do not specifically require organisations to maintain legal registers but doing so is one of the most efficient and cost-effective ways of meeting their demands that participating organisations are able to identify, access and keep up-to-date with the legal and other requirements that are applicable to their sector. A register can also be a valuable tool when it comes to preparing for a compliance audit, to organising training courses and to setting out an emergency plan.

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About the author

Paul was a Visiting Fellow at the European Business Centre at Anglia Ruskin University, has authored and contributed to several books on European topics and held the post of Chairman of the European Information Association for several years.

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Karen Barnard,
UK Health and Safety Manager at Lucy Electric

Publisher

Croner-i, 240 Blackfriars Road, London, SE1 8NW, United Kingdom.

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