

Supplying new machinery

A short guide to the law and your responsibilities when supplying machinery for use at work

Introduction

This leaflet can help you if you are supplying machinery for use at work. It explains the main health and safety requirements of the law and what you can do in practice to meet them. You may already know about CE marking but there are other legal requirements which are also important.

The information in this leaflet is arranged in four sections:

- The requirements of the law
- What the manufacturer has to do
- What the supplier has to do in practice
- Further information

HSE has provided this information primarily for the benefit of importers, agents or others who supply machinery for use at work which has been manufactured by someone else.

If you are a machinery manufacturer, you should refer to other more detailed sources of information, some of which are given at the end of this leaflet. If you are buying machinery for use at work, you will need to refer to other sources of information, such as HSE's *Buying new machinery*¹ leaflet.

The term 'manufacturer' is used here to describe the machinery manufacturer when they:

- are based in the EU;
- are based outside the EU but claim their machine fully complies with the Machinery Directive and has been CE marked; or
- build or assemble machinery for their own use.

However, the first importer into the EU of machinery which is not claimed to comply with the Machinery Directive and is not CE marked must also take on the duties of the manufacturer. They should therefore read this leaflet as if they were the machinery manufacturer.

The requirements of the law

What is the law on supplying new machinery?

There are several relevant pieces of law, including:

- The Supply of Machinery (Safety) Regulations 2008 (as amended), which implement the European Machinery Directive 2006/42/EC and contain detailed requirements for manufacturing safe **new** machinery.
- The Health and Safety at Work etc Act 1974, which contains general requirements for the manufacture and supply of safe workplace machinery (including second-hand machinery).
- There are also other UK regulations which implement other European Directives, such as those on the supply of electrical equipment or on gas appliances, which are important for many suppliers of machinery.

This leaflet concentrates on the first of these legal requirements.

What do the Supply of Machinery (Safety) Regulations 2008 apply to?

These Regulations apply to all new machinery placed on the UK market or put into service in the UK, wherever it is to be used in Europe. The term 'machinery' is broadly defined in the Regulations and, in addition to what is generally understood by the term, includes products such as:

- safety components (eg guards), independently placed on the market;
- a complex production line made up of individual machines and equipment;
- interchangeable equipment that only works when attached to a tractor or machine, such as a plough or lifting attachment;
- lifting equipment and lifting accessories;
- chains, ropes and webbing for use in or with machinery.

Partly completed machinery is also covered by these Regulations. Partly completed machinery is equipment for a specific function, which cannot operate and be fully protected (eg needing guarding at the fitting interface), until it is combined with other machinery or equipment to form a complete machine.

However, there are some types of machinery which are not covered; see 'Machinery not covered by the Supply of Machinery (Safety) Regulations' on page 9.

In brief, what are the requirements of these Regulations?

The most important requirement of the Regulations is that manufacturers (or their authorised representative in the EU) must ensure that all new machinery they place on the market or put into service is safe. This includes second-hand machinery which is new to the European market (imported from outside the EEA and put into service in Europe for the first time).

The Regulations also require manufacturers/their authorised representative to ensure that:

- Machinery meets all relevant essential health and safety requirements (EHSRs). These are listed in detail in the Regulations and include the provision of sufficient instructions in the language of the end user.
- A technical file for the machinery has been drawn up and, in certain cases, the machinery has been type-examined by a notified/conformity assessment body.
- The machinery is issued with a Declaration of Conformity (or, in the case of partly completed machinery, a Declaration of Incorporation).

- There is CE marking affixed to the machinery (unless it is partly completed and comes with a Declaration of Incorporation).

Further details about the requirements of the Regulations are given in: *Machinery: Guidance Notes on the UK Regulations*.²

Does the same law apply in other European countries?

The Machinery Directive has now been implemented as national law in all countries in the European Economic Area (EEA) – which comprises all EU and EFTA countries – and in Switzerland. This means that the same legal requirements now apply to all new machinery wherever it is supplied within the EEA and in Switzerland.

So, if I am importing a machine from a manufacturer based in another country in the EEA, what do I have to do?

You need to make sure that the machinery is safe before you supply it to others (or put it into service). To do this you will first need to make certain checks (see ‘Checklist for safe supply and use of machinery’ on page 9).

What if I am directly importing machinery manufactured outside the EEA?

You need to make sure that either the manufacturer (or their authorised representative) has met the relevant requirements, or that you meet them yourself. The machinery must still meet the Supply of Machinery (Safety) Regulations 2008 and be safe before it is placed on the market or put into service. You should still make certain checks yourself, even if the machinery is supplied with a manufacturer’s Declaration of Conformity and is CE marked (see the ‘Checklist for safe supply and use of machinery’ on page 9 for more information).

What if I export machinery to countries outside the EEA?

You will need to find out the national requirements of the country to which you are exporting the machinery.

What law applies to the sale of second-hand machinery?

You will need to meet the requirements of section 6 of the Health and Safety at Work etc Act 1974, as this applies to the resale (in Britain) of all second-hand workplace machinery, regardless of its age.

Please note, the Supply of Machinery (Safety) Regulations 2008 (and the previous 1992 Regulations) only apply the first time machinery is placed on the market or put into service in the EEA – and only if this took place after 1 January 1993. These Regulations apply to new and any second-hand equipment which is new to the EEA (ie imported from outside the EEA).

However, the supply of second-hand machinery, first put into use in the EEA before 1993 – which has not been substantially refurbished – does not need to comply with the Supply of Machinery (Safety) Regulations 2008. The resupply of used CE-marked machinery also does not come under these Regulations.

What if the old machinery I am supplying is substantially refurbished?

You will need to comply with the Supply of Machinery (Safety) Regulations 2008 if machinery has been transformed or rebuilt so substantially that it can be considered as new, or a substantial new attribute has been added that was not assessed previously. For example, these Regulations apply when CNC controls are retrofitted to an older manual lathe; or a lifting machine is modified to lift a significantly greater load. However, if old machinery is simply given new guards, has like for like parts replaced or is just repainted, this would not make it 'new', so the Regulations will not apply when it is resold. However, you will still need to meet the requirements in section 6 of the Health and Safety at Work etc Act 1974.

What are the relevant requirements of the Health and Safety at Work etc Act 1974 (HSW Act)?

Section 6 of the HSW Act places a duty on '*...any person who designs, manufactures, imports or supplies any article for use at work...to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health...*'. Adequate information, usually in the form of user instructions, is also required about what uses the article is designed for. Suppliers must meet these requirements for all types of workplace machinery, whether it is new or second-hand.

However, the creation of a technical file, type-examination, issuing of a Declaration of Conformity and CE marking are not required under the HSW Act.

What other laws might be relevant to the supply of machinery?

The Electromagnetic Compatibility Regulations 1992 apply to electrically powered machinery or machinery with electrical control systems. They cover all equipment likely to cause electromagnetic disturbance, or whose performance is likely to be affected by electromagnetic disturbance.

In some cases, other law may apply in addition to the Supply of Machinery (Safety) Regulations 2008, or on their own, such as the:

- Electrical Equipment (Safety) Regulations 1994;
- Pressure Equipment Regulations 1999;
- Simple Pressure Vessels (Safety) Regulations 1991 (as amended);
- Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996 (as amended);
- Lifts Regulations 1997;
- Medical Devices Regulations 1994 (as amended);
- Gas Appliances (Safety) Regulations 1995.

All these Regulations implement European Directives and contain various requirements. By affixing the CE mark, manufacturers are declaring that the product meets **all** of the requirements relevant to the Directives for that product, and this must be shown on the Declaration(s) of Conformity.

What the manufacturer has to do

Manufacturers should design and construct new machinery so it can be used safely. They must meet specific practical issues as well as certain administrative and other requirements, some of which are as follows:

How does the manufacturer make sure that machinery can be used safely?

Manufacturers should:

- Carry out a detailed risk assessment by:
 - identifying the health and safety hazards (trapping, crushing, electrical shock, dust or fumes, noise, vibration, etc) that are likely to be present when the machinery is used. The essential health and safety requirements listed in the Regulations should be used by manufacturers as a guide to ensure all possible hazards have been considered, and that they have identified those relevant to the machine;
 - assessing the likely level of risks involved;
- eliminate significant risks or, if that is not possible;
- provide safeguards (eg guarding dangerous parts of the machinery, providing noise enclosures, etc) or, if that is not possible;
- provide information about any residual risks and place signs on the machinery to warn of risks that cannot be reduced in other ways (eg 'noisy machine' signs).

Manufacturers may wish to refer to standards – eg national (BS), European (EN) and international (ISO) – or other specifications when designing machinery.

Does new machinery have to be made to any particular standards?

No. Machinery must satisfy the essential health and safety requirements (EHSRs) of the UK's Supply of Machinery (Safety) Regulations 2008 (Note: the EHSRs in the UK Regulations are identical to the EHSRs of Annex I of the Machinery Directive). However, there are an increasing number of harmonised European standards that will help manufacturers do this because they carry a legal presumption of conformity to the Directive – and hence to the UK Regulations.

A harmonised European standard is identified by an EN before the number (eg EN 474-1) and will be published as a British standard (eg BS EN 474-1:1995). Some are also international standards, referred to as BS EN ISO (eg BS EN ISO 13857:2008). The full presumption of conformity to the Directive is only valid if the standard is listed without qualification in the *Official Journal* of the EU. Manufacturers should also check Annex Z of any European standard to be sure which parts of the EHSRs of the Directive are covered. The use of these standards is voluntary, and manufacturers can design and manufacture their machinery in accordance with other national or international standards if they wish. However, the EHSRs must still be met, with information on how this was done explained in detail in the technical file.

What the supplier has to do in practice

What do I need to do as a supplier before providing machinery to others?

If machinery is manufactured in the EEA, you should do all you can to ensure it is safe. This can be done through several practical checks (see the 'Checklist for the safe supply and use of machinery' on page 9 for more information).

If you are importing machinery from outside the EEA and it is CE marked with a Declaration of Conformity, you still need to follow the same checks as for

machinery built inside the EEA. If it is not CE-marked with a Declaration of Conformity, you will need to make sure the machinery meets the requirements of the law in full as if you were the manufacturer. This means ensuring the machinery:

- meets the essential health and safety requirements;
- has (in certain cases) undergone conformity assessment by a notified body;
- has a technical file and Declaration of Conformity; and
- is CE marked.

If you are importing partly completed machinery, you should ensure it is supplied with instructions for its final incorporation with other machinery/equipment and a Declaration of Incorporation. Partly completed machinery should not be CE marked. The manufacturer of partly completed machinery should hold technical documentation in one of the European Community languages, and must be able to produce it upon request to any relevant enforcing authority.

There may be information available about machinery safety from your trade association, HSE or other sources, which will help you decide whether the machinery you are supplying is safe. You may also find relevant British or other standards helpful.

Can I regard CE marking as a guarantee of safety?

The CE mark is not a quality mark and is only one of several requirements that the manufacturer (or their authorised representative) has to meet. By affixing the CE mark, the manufacturer/their authorised representative is claiming that all relevant legal requirements have been met, but you must still take reasonable steps to make sure the machinery is safe. For more information, see the 'Checklist for the safe supply and use of machinery' on page 9.

What if the machinery is manufactured by someone else, either in the UK or elsewhere in the EEA, and I – as a supplier – consider the safeguards or other protective devices are inadequate?

This could happen for several reasons. For example, the harmonised European standard for that machinery may not yet have been agreed – so different interpretations of the level of protection required may exist in different countries.

Alternatively, it may be that the machinery does not meet agreed levels of protection and the law is clearly not being met. If you are not satisfied with the levels of protection for the machinery you are supplying, discuss the matter with the manufacturer/their authorised representative or your UK trade association. If you cannot resolve the matter, you should consider temporarily ceasing supply and contacting HSE.

What is contained in technical files? Should their contents be made available to suppliers and users?

Manufacturers are required to draw up technical files for the machinery they make. These must include:

- drawings of the machinery and its control circuits;
- the specifications and standards used in the design; and
- information about relevant test results and other data.

Technical reports and certificates from other organisations may also be included as well as the Declaration of Conformity or Declaration of Incorporation (for the individual items of machinery that make up an assembly). Technical

files demonstrate how machinery meets relevant essential health and safety requirements and, as such, are useful for both manufacturers and national enforcing authorities.

However, manufacturers are not obliged to make the contents of technical files available to other suppliers or the eventual users of the machinery; they are only required to make them available to any EEA market surveillance authority, as required by the relevant Directive. Such authorities have a legal duty to keep any commercially-sensitive information secure.

When is machinery issued with a Declaration of Conformity?

This is made available when the machinery is finished and ready for installation and use. The Declaration of Conformity must then accompany the machine through the supply chain to the end user.

What should a Declaration of Conformity have on it?

A Declaration of Conformity must:

- state the name and address of the manufacturer and, where appropriate, the name and address of their authorised representative;
- contain a description of the machinery, its make, type and serial number;
- indicate all European laws (Directives) with which the machinery complies;
- state details of any notified body that has been involved;
- specify which standards have been used in the manufacture (if any);
- state the place and date of the Declaration, and;
- be signed by a person with authority to do so.

For machinery supplied in the UK, the Declaration must be in English or accompanied by a translation into English. For machinery exported to other countries in the EEA, the Declaration and instructions must be in either the recognised language of the country where it is to be used, or have a translation into that language.

When is a Declaration of Incorporation appropriate rather than a Declaration of Conformity?

A Declaration of Conformity is issued for complete machinery, whereas a Declaration of Incorporation is issued by manufacturers where machinery is only partly completed. A drive system or an assembly which is almost machinery but cannot in itself perform a specific application – and is only intended to be incorporated or assembled with other equipment to form machinery – would therefore require a Declaration of Incorporation.

The Declaration of Incorporation should contain similar information to that contained in the Declaration of Conformity. However, one important difference is that it must state that the machinery should not be used until the machinery, equipment or assembly into which it will be added has been declared to conform fully with legal requirements.

In practice, this means that such partly completed machinery should not be used until the final, completed product has been manufactured – with all relevant essential health and safety requirements met and a Declaration of Conformity issued for the full assembly. This should be issued by the final installer or assembler.

The **machinery should not be CE marked** if it has a Declaration of Incorporation. CE marking should only take place at the end of incorporation or assembly, when the Declaration of Conformity is also issued.

Further information

Machinery not covered by the Supply of Machinery (Safety) Regulations 2008

- Machinery intended for use outside the EEA.
- Second-hand machinery – except when imported from outside the EEA (and so new to the EEA) or when refurbished/modified to such an extent as to be considered ‘new’ and therefore coming within scope of the Regulations.
- Machinery whose only power source is directly applied manual effort, unless it is a machine used for lifting or lowering loads.
- Electrical and electronic products where covered by Directive 2006/95/EC (Low Voltage Directive) in the following areas: household appliances intended for domestic use, audio, video and information technology equipment, ordinary office machinery, low-voltage switch and control gear, electric motors, high-voltage switch and control gear, and transformers.
- Safety components intended to be used as spare parts to replace identical components, supplied by the manufacturer of the original equipment.
- Machinery for medical use.
- Special equipment for use in fairgrounds and/or amusement parks.
- Steam boilers, tanks and pressure vessels.
- Machinery specially designed or put into service for nuclear purposes which, in the event of failure, may result in an emission of radioactivity.
- Radioactive sources forming part of a machine.
- Weapons, including firearms.
- Storage tanks and pipelines for petrol, diesel fuel, flammable liquids and dangerous substances.
- Passenger transport vehicles and their trailers (air, road, rail or water). However, vehicles used in the mineral extraction industry are not excluded.
- Sea-going vessels and mobile offshore units, together with equipment on board such vessels or units.
- Cableways, including funicular railways, for the public or private transportation of people.
- Agriculture and forestry tractors, in respect of risks covered by Directive 2003/37/EC (risks not covered by that Directive are subject to these Regulations).
- Machines specially designed and constructed for military or police purposes.
- Certain goods and passenger lifts.
- Means of transport of people using rack and pinion rail-mounted vehicles.
- Mine winding gear.
- Machinery intended to move performers during artistic performances.
- Motor vehicles exclusively intended for competition.

Checklist for safe supply and use of machinery

You don't have to check the whole design of a machine against the essential health and safety requirements of the Regulations before supplying it. However, you are required to carry out some basic checks if you are installing it or having it built up ready to supply. The key checks are:

- Look for obvious defects, such as missing or damaged guards/other safety devices or inadequately protected electric wiring.
- Check that known risks (including risks from fumes or dust, noise or vibration) from the machinery appear to be properly controlled or that there is information on how they can be controlled.
- Make sure the manufacturer has provided instructions for safe installation, use, adjustment and maintenance. These must be in English if the machinery is for use in the UK. In some cases, the maintenance instructions may be in another language, where the manufacturer's own staff are to carry out specialised maintenance themselves.
- Check that data about noise and vibration emissions has been provided, where appropriate.
- Make sure that any warning signs are visible and easy to understand. If in writing, these must be in English.
- If a complete machine, check it is accompanied by a properly completed Declaration of Conformity. For partly completed machinery (which does not itself form a working machine), you must be provided with a Declaration of Incorporation and instructions for its safe incorporation.
- Check for CE marking (not required for partly completed machinery).
- If you have concerns about any of the above, contact the manufacturer.

If the machine is packaged and you intend to pass it on in the same packaging, you are not expected to open it up to check the machine. However, you should check from the package and any supplied information that the item is CE marked, has an appropriate Declaration of Conformity and instructions in English (if being supplied to the UK).

Remember: Never assume that machinery ready to be used is safe just because it has a CE marking. Always check for obvious defects and damage.

References

1 *Buying new machinery: A short guide to the law and your responsibilities when buying new machinery for use at work* Leaflet INDG271 HSE Books 2011
www.hse.gov.uk/pubns/indg271.pdf

2 *The Machinery Directive 2006/42/EC and the Guide to the application of the Directive 2006/42/EC* are available from the European Commission.
See: <http://eur-lex.europa.eu/en/index.htm> and http://europa.eu/index_en.htm respectively.

Further reading

Using work equipment safely Leaflet INDG229(rev1) HSE Books 2002 (priced packs of 10 ISBN 978 0 7176 2389 1) www.hse.gov.uk/pubns/indg229.pdf

Legislation

For full details of *The Health and Safety at Work etc Act 1974* and *The Supply of Machinery (Safety) Regulations 2008 (as amended 2011)*, visit:
www.legislation.gov.uk

Machinery: Guidance Notes on the UK Regulations and general guidance on the Machinery Directive is available from the Department for Business, Innovation and Skills (BIS). See: www.bis.gov.uk

Further information

For information about health and safety, or to report inconsistencies or inaccuracies in this guidance, visit www.hse.gov.uk/. You can view HSE guidance online and order priced publications from the website. HSE priced publications are also available from bookshops.

This document contains notes on good practice which are not compulsory but which you may find helpful in considering what you need to do.

This document is available at: www.hse.gov.uk/pubns/indg270.pdf.

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