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To: Directors of Environmental Health/ Chief Environmental Health Officers of London, Metropolitan, District and Unitary Authorities and Chief Executives of County Councils.

For the attention of: Environmental Services/Trading Standards/Fire Authorities/Other

This circular gives advice to local authority enforcement officers

THE PROVISION AND USE OF WORK EQUIPMENT REGULATIONS 1998(PUWER)

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INTRODUCTION

1 This LAC highlights the key issues for both inspection and enforcement, arising from the implementation of the Provision & Use of Work Equipment Regulations 1998 (PUWER 98) (SI 1998 No 2306), which came into force on 5 December 1998.

2 Practical guidance on the Regulations is given in 'Safe Use of Work Equipment' ACoP and guidance on regulations (L22) which should be read in conjunction with this LAC.

3 In this LAC, enforcement information is provided after the general information on implementation and interpretation. This deals with matters to consider where 'formal' enforcement is proposed (notices and legal proceedings), but should be considered along side HSC's Enforcement Policy.

GENERAL

4 (1) PUWER 98:

(a) remakes the previous regulations from PUWER 92, together with new requirements for inspection (reg 6) and mobile work equipment (regs 25-30) and replacement requirements for power presses (regs 31-35);

(b) covers both 'software' or management requirements (regs 4-10) which apply to all work equipment and 'hardware' requirements (regs 11-30) which apply to some work equipment in certain circumstances depending on when it was supplied;

(c) covers most risks that can result from the use of work equipment and from the use of mobile work equipment; and

(d) covers all work sectors, apart from ship's equipment (see **para 7** below, and paras 70 to 73 of L22).

(2) Work equipment is broadly defined and covers a very wide range of equipment, both power-operated and manually-operated.

(3) The Regulations came into force on 5 December 1998, but (see reg 37) regs 25 to 30 do not apply until 5 December 2002 to mobile work equipment that was in use in the premises or undertaking before 5 December 1998.

(4) The Regulations, together with three ACoPs and guidance (covering respectively work equipment, woodworking machinery and power presses) have replaced the earlier industry or process-specific laws on training including that relating to the use of abrasive wheels.

(5) PUWER 98 should not be considered in isolation. The Management of Health & Safety at Work Regulations 1992 (the Management Regulations), reg 3(1) requires a risk assessment to be carried in order to identify the measures that should be taken to comply with relevant legislation. This should ensure, for example, the selection of suitable work equipment under PUWER 98 reg 4 and the identification of the control measures necessary to prevent access to dangerous parts under reg 11 for older machinery.

(6) No duties are placed on employees by PUWER 98. However, the requirements of the Management Regulations reg 12 that employees should, inter-alia, use all work items provided by their employer correctly is relevant. These requirements are in addition to HSW Act s7.

(7) There is a direct link between PUWER 98 and the essential health and safety requirements (EHSRs) in the product supply Regulations implementing the EC 'single market' product directives eg Supply of Machinery (Safety) Regulations 1992 (as amended) (SM Regulations). Where an essential requirement in any of those 'supply' Regulations apply to new work equipment **ie for SM Regulations that supplied after 1.1.93**, the hardware requirements in PUWER 98 will **not** apply (see also later paras dealing with reg 10).

(8) The links between reg 4 and reg 10 reflect those between Articles 3 and 4 of the Use of work equipment Directive and its Amending Directive (see pages 514 to 525 of Redgrave's Health and Safety, third edition, for the full text), as does the link between reg 5 and reg 10 which reflects those between Article 4.2 and 4.1. Where necessary, both should be interpreted in light of the wording of the Directive.

INTERPRETATION (Reg 2)

5 The definition of 'work equipment' is very wide and it has been changed from that in the 1992 Regulations to bring it closer to the wording in the Use of Work Equipment Directive, by inserting the words 'or installation' and deleting the references to 'any assembly of components'. The phrase 'for use at work' has also been added, but none of these changes should affect the application of the Regulations in practice .

APPLICATION/DUTIES (Reg 3)

6

(1) Regulation 3 places duties on employers, the self-employed and persons in control of work equipment and is designed to reflect HSW Act s 2 & 4 and aspects of s3. The application of PUWER 92 has been extended by PUWER 98 reg 3(3)(b) to cover 'persons in control' of work equipment, but it is limited to the 'extent of their control'. (In effect, it is now similar to that in the Construction (Health, Safety & Welfare) Regulations 1996). PUWER 98 now apply to those **who hire out** work equipment (but limited to the extent of their control). This was not the case under PUWER 92, though the **equipment** which was hired in was covered by virtue of the duties on the users.

(2) Regulation 3 places duties on employers in relation to all work equipment provided for use or used. Therefore, it covers the situation where employers allow employees to provide their own tools.

(3) It is not intended that PUWER 98 should be applied to situations where members of the public operate equipment such as an air-line on a garage forecourt. However, PUWER 98 does apply and should be applied to fairground equipment where the rides are operated by the owner or an employee.

APPLICATION TO SHIP'S EQUIPMENT

7 The application and disapplication of PUWER 98, to ship's work equipment, is contained in regulations 3(6) to 3(10). These requirements ensure that PUWER applies, where appropriate, without duplicating the requirements in merchant shipping legislation.

SUITABILITY OF WORK EQUIPMENT (reg 4)

8

(1) Regulation 4 (previously regulation 5), remains the focal point of the regulations.

(2) Regulation 4(1) covers the integrity of the work equipment in terms of both design and safeguarding and in effect duplicates some of the later requirements.

(3) Regulation 4(2) covers both the situation where:

(a) equipment is unsuitable for the work area, eg unprotected electrical equipment in a wet environment; and

(b) the work equipment itself renders the work area unsafe, eg carbon monoxide from the use of a petrol-engined generator in a confined space.

(4) Regulation 4(3) covers the situation where the work equipment selected is unsuitable for the process to be carried out. Examples of unsuitable work equipment are bandsaws used to cut fresh loins into chops (because fingers are necessarily close to the danger zone), and the use of straight-bladed knives for certain cutting operations where other designs of cutter result in a lower chance of an accident occurring or a reduced severity of injury in the event of an accident.

(5) Regulation 4 overlaps with regulations 11-30. However, there is a transition period for existing mobile work equipment to which regulations 25-30 apply and regulation 4 does **not** override these transitional arrangements.

MAINTENANCE (Reg 5)

9

(1) Regulation 5(1) is framed in very broad terms and deals with the state to be achieved by means of servicing, repair etc. (efficient should be read in relation to health and safety). It includes:

(a) the frequency of maintenance and the appropriateness of maintenance management techniques eg planned preventive, condition-based and breakdown maintenance; and

(b) the maintenance to meet an original specification, e.g. a new machine manufactured in accordance with the requirements of the SM Regulations should be maintained so that it continues to comply with those requirements so far as this relates to protection against risks to health or safety. This extends to the guards, protection devices and parts thereof. This should be interpreted in line with Article 4.2 of the combined UWED/AUWED text (see Redgrave third edition, page 516).

Note: though the equipment may have complied with product supply law when first supplied, in some cases the user will replace or modify the guarding (in some cases upgrading it) to suit the circumstances of use. The equipment should be maintained to that revised specification, so long as it provides an equivalent or higher level of protection.

(2) For work equipment which was provided, before any relevant product safety law applied, the requirements in regulation 22 cover its construction or adaptation to ensure that maintenance operations can be carried out without unnecessary risk. This 'older' equipment should first comply with regulation 22 then be maintained to that level.

(3) Regulation 5(2) does not require a maintenance log to be kept. Only if there is a log, is there a requirement to keep it up to date. This requirement does not apply to work equipment other than machinery.

INSPECTION (Reg 6)

(1) The new requirement to inspect work equipment builds on and acts as an 'audit' of both the operator/user checks, that should be carried out as part of good practice and maintenance (servicing) procedures (user checks could be asked for under reg 4). **The general principle should be that inspection is necessary when equipment or parts of equipment will deteriorate and lead to danger and this will not be picked up through operator checks and normal servicing regimes.**

(2) The requirement should only be applied **where there is a significant risk** (major injury or worse), it should **not** be applied to everyday risks which means that it will **not** universally apply to all machinery, equipment or parts of thereof, but only to equipment or parts subject to rapid and/or serious deterioration.

(3) There are three circumstances for which a user should carry out a risk assessment to determine if a dangerous situation involving a significant risk could arise and hence the need for an inspection. These are:

(a) where the safety of the equipment is **critically** dependent on its being correctly installed or reinstalled and failure to do this would lead to a significant risk;

(b) where safety of the equipment is critically dependent on its condition in use and there is likely to be deterioration which would give rise to significant risk;

(c) where 'exceptional circumstances' are likely to have had such an effect on the equipment that a significant risk could arise.

(4) A limited number of examples of equipment, for which inspection will be necessary, is given in the guidance and these are deliberately restricted to particular examples of equipment known to create significant risks.

(5) This means that many classes of mobile work equipment whose use is confined to the workplace such as dumper trucks, fork-lift trucks, will need to be inspected, particularly if they would be subject to MOT tests if the Road Traffic requirements applied. Note that for fork-lift trucks, as a result of reg 6(5), the inspection will be confined to the non-lifting parts. It is likely that some organizations will seek to gain business by implying that inspections are necessary for a much wider range of equipment.

(5) The depth and level of the inspection should be in proportion to the risk. For high risk machines or other work equipment, it can involve dismantling, as well as functional tests and will usually go beyond that which is carried out in an operator / user check.

(6) The competent person, who determines whether an inspection is necessary and what it should include, will usually be an in-house employee, as will the competent person who actually carries out the inspection. Again it is likely that some organizations will seek to gain business by implying that inspections need to be carried out by 'independent' competent persons. This will not be necessary in most cases.

(7) This regulation does **not** apply to: -a power press or its guard or protection device (there is a separate legal requirement for this in Regulation 33); - lifting equipment; - equipment covered by reg 29 of CHSWR 1996 (work platform etc.); and -mine winding apparatus.

(8) The requirement to inspect lifting equipment, where appropriate for the purpose, is in Regulation 9(3)(b) of LOLER 98.

(9) Existing, more particular, requirements for 'examination' of equipment under the Control of Substances Hazardous to Health Regulations, the Control of Lead at Work Regulations and the Control of Asbestos at Work Regulations etc remain in force.

SPECIFIC RISKS (Reg 7)

11

(1) Regulation 7 deals with the use of work equipment in circumstances where risks can only be controlled to a limited extent by the use of hardware measures. Consequently, there is greater reliance on management or software measures to control the remaining risk - these include safe systems of work, etc.

INFORMATION, INSTRUCTIONS & TRAINING (Regs 8 & 9)

12

(1) Employers should provide information, instructions and training not only to those who actually use work equipment, but also to employees supervising or managing its use.

(2) There is new ACoP text, to reg 9, covering the competence of chain-saw operators which reflects the desire of industry and HSE to carry forward the original voluntary scheme.

CONFORMITY WITH COMMUNITY REQUIREMENTS (Reg 10)

13

(1) An important aspect of reg 10 of PUWER 98, as it was for PUWER 92, is the link with the product supply regulations. Both those who supply work equipment, and those who provide it for use, have a part to play to ensure that it is safe when taken into use.

(2) The wording of reg 10 of PUWER 98 has changed from the corresponding provision in PUWER 92. This is particularly important in relation to reg 10 (2) see **para 13(5)** below.

(3) Under reg 10(1), the employer who obtains new work equipment must, in effect, make sure that the equipment is safe. Though the regulation says that the employer should ensure that an item of work equipment has been designed and constructed in accordance with any (relevant) essential requirements of the 'Supply' legislation, this does not normally mean the user going through them in detail. This is because the product supply legislation covers the situation where the user can treat the equipment as complying, if the equipment is accompanied by an EC declaration of Conformity (where this is appropriate), and has CE marking, unless there are reasonable grounds for suspecting that it does not comply. The leaflet '*Buying New Machinery*', INDG271, gives further guidance.

(4) Where an employer buys second-hand work equipment to which, when it was first supplied, relevant product supply regulations applied (and it should have been CE marked) the employer should ensure that it still complies. If the second-hand work equipment was originally supplied before relevant product supply regulations applied, reg10 (1) will **not** apply and the hardware requirements of PUWER 98 will apply (unless it has been imported from outside the EEA see **para 13(6)**).

(5) Reg 10(2), which has different wording to that in PUWER 92, now refers to an essential requirement which **applied** when the equipment was supplied and **not** to **compliance** with an enactment (essential requirement). The effect of the new wording of regulation 10 is that, even if new equipment fails to comply with that essential requirement,

regulations 11 to 19 and 22 to 29 of PUWER 98 **will never apply** to it [unless there was no essential requirement covering that risk]. The last sentence of paragraph 208 of the guidance is incorrect in this respect.

(6) Where UK users themselves import work equipment directly from a manufacturer or supplier based elsewhere **within the EEA**, relevant product supply regulations do **not** apply. In such case the hardware requirements of PUWER 98 (regs 11 to 19 and 22 to 29) **will** apply. However, where UK users import work equipment directly from a manufacturer based **outside the EEA**, they have duties under the relevant product supply regulations, such as the SM Regulations, and the hardware requirements of PUWER 98 (regs 11 to 19 and 22 to 29) will **not** apply.

PARTS II and III (Regs 11 to 30)

14 The requirements in Parts II and III of PUWER 98, ie regs 11 to 19 and 22 to 29, only apply to equipment supplied **before** any regulations implementing relevant 100A product safety Directives (such as the SM Regulations) came into force, unless there was a transition period and the equipment was supplied in compliance with the previous product safety law (eg HSWA s6.) during that time. However a requirement in regs 11 to 19 and 22 to 29 will apply where there is no EHSR, in the product safety regulations, which covers the matter.

DANGEROUS PARTS OF MACHINERY (Reg 11)

15

(1) The requirements extend to machinery used in all sectors of work and cover risks both during normal operation of a machine and those during other 'use' such as maintenance including adjustment.

(2) Regulation 11 applies to machinery or rotating stockbars. It does not apply to other work equipment. The reference to 'rotating' stockbars had to be carried over from pre-1992 legal requirements.

(3) The use of the word 'practicable' in reg 11(2)(a), (b) & (c) qualifies the provision of guards, protection devices and protection appliances and not the prevention of access.

(4) Regulation 11(2) gives the measures that an employer should take to fulfill the duty under reg 11(1), they have in the past been used pragmatically. A combination of measures may be necessary to satisfy reg 11.

(5) When deciding on the appropriate level of safeguarding, risk assessment criteria ie likelihood of injury, potential severity of injury, numbers at risk, need to be considered both in relation to the normal operation of the machinery and also other operations such as maintenance, repair, setting, tuning, adjustment etc. Further information is given in machine-specific and sector-specific guidance.

(6) Regulation 11(2)(d) is particularly important where guards, protection devices and jigs are not effective in preventing access and a significant residual risk of injury remains. However, apart from supervision, there is duplication with the requirements in regs 8 and 9.

(7) Regulation 11(3)(c) applies to the maintenance of guards and protection devices and will include those which are not attached to the machine itself, eg perimeter fences. However, reg 5, which also covers maintenance, is particularly relevant to CE marked

equipment.

PROTECTION AGAINST SPECIFIED HAZARDS (Reg 12)

16

(1) Regs 12(1) and 12(2) contain between them a hierarchy of measures reflecting best practice.

(2) The requirements of reg 12(3)(d) do not prohibit the discharge or ejection of material where it is an intentional or unavoidable part of the process (eg metal spraying or paint spraying), but measures must be taken to prevent unnecessary risk arising. Similarly, reg 12(3)(e) does not prohibit the use of equipment designed to make use of explosive forces in a controlled manner (eg an internal combustion engine).

(3) Much of reg12 is concerned with risk to safety. Particular health risks arising from emissions or discharges are covered by other requirements, such as COSHH, etc. Therefore, reg12 does not apply where and to the extent that those other regulations do.

HIGH OR VERY LOW TEMPERATURE (Reg 13)

17 Measures to comply with reg 13 depend upon the nature of the process of work activity and how the work equipment is used. There are some instances where measures will not be appropriate eg heated rolls on a calendar. In others, where the risks are obvious, eg lack of insulation of steam pipework in the vicinity of a work area, passageway etc, remedial action will be required.

CONTROLS & CONTROL SYSTEMS (Regs 14-18)

18

(1) Each requirement in regs 14-17 is qualified by the phrase 'where appropriate'. Regulation 18 (control systems) is qualified by 'so far as is reasonably practicable'. There have been minor changes to the wording of regulation 18, but these have no practical effect.

(2) There is an overlap between the requirements in regulation 17 and those in regulation 28(e) driver direct field of vision (see **para 27(2)**). For self-propelled mobile work equipment, the same measures, for example additional mirrors or CCTV, can however be used to meet the requirements of both regulations (see also **para. 23 (1)**).

ISOLATION FROM SOURCES OF ENERGY (Reg 19)

19 Many small items of powered work equipment eg portable electric drill, will have a plug that can easily be removed from a socket -this will satisfy the requirement for isolation.

STABILITY (Reg 20)

20 The term 'clamping or otherwise' permits a broad range of measures, other than clamping, eg bolting or fastening, to be used to ensure stability.

LIGHTING (Reg 21)

21 This regulation is in addition to the general requirement for sufficient and suitable workplace lighting in the Workplace (Health, Safety & Welfare) Regulations 1992, reg 8. Regulation 21 of PUWER 98 should be used where lighting is required at the workstation or work area specifically to enable the safe operation of work equipment.

MAINTENANCE (Reg 22)

22 Regulation 22 requires work equipment to be **constructed or modified** so as to allow maintenance operations to be carried out safely. It is **not** a requirement to carry the work out safely which is covered by other provisions including HSW Act s.2 and the Confined Spaces Regulations 1997.

MOBILE WORK EQUIPMENT (Regs 25 - 30)

(Note: the transitional period for Part III coming into force.)

23

(1) The requirements in Part III deal, for the most part, with the risks due to its mobility which arise when mobile work equipment is travelling. Vehicles designed primarily for use on the public roads will normally comply with Part III, if they comply with the Road Vehicles (Construction & Use) Regulations 1986, where these contain similar provisions. (This is particularly so in relation to braking systems etc.) The implications of other requirements, such as reg 28(e) on 'driver's direct field of vision', are still being considered for certain work equipment and further guidance will be issued.

(2) The actual risks during use need to be considered when determining the precautions necessary for mobile work equipment.

(3) The regulations in part III for the most part refer to 'employees'. Where members of the public are at similar risk, HSW Act can be applied.

(3) Regulation 25 contains general requirements which underpin Part III. The more particular requirements in regs 26 (rolling over), 27 (over-turning), 28 (self-propelled), and 29 (remote controlled), build on these generalities.

SUITABILITY (Reg 25)

24 Regulation 25(a) is an explicit and absolute requirement to ensure that employees are not carried on mobile work equipment unless it is suitable for carrying persons. Any measures to reduce other risks to employees when equipment is travelling are covered by reg25(b).

ROLLING OVER (Reg 26)

25

(1) Measures should always be taken to reduce the risk of mobile work equipment rolling over, but where such risks cannot be eliminated, Regulation 26 requires risks **from** the equipment rolling over to be minimised. (Note: stabilising the equipment, in fact, reduces the risk of rolling over.)

(2) There are certain **classes** of mobile work equipment which, experience shows, are particularly likely to roll over, (though this does not mean that they will be at risk in all circumstances of use). These include tractors and certain compact dumpers. There are also situations in which individual items of mobile work equipment are at risk of rolling over, because of where and how they are being used eg grass cutting machines used on steep slopes.

(3) In practice, the most likely measure to take to reduce the risks, will be provision of a

roll-over protective structure (ROPS). For tractors this will normally take the form of a cab, but for some small or very old tractors, the only structure available will be a roll bar.

(4) Where a ROPS cage or roll bar is used, rather than a cab, there is usually a risk of anyone using the mobile equipment being crushed in event of its rolling over. Regulation 26(2) requires a restraining system in addition to a ROPS, or other device, and this will most often be a seat belt.

OVERTURNING (FORK LIFT TRUCK) (Reg 7)

26 Regulation 27 requires restraining systems to be fitted to certain fork lift trucks if there are risks (particularly crushing between the truck and the ground), should the truck overturn. This would apply for example to seated, centre-control, counterbalanced fork lift-trucks. There is duplication with the requirements in reg 26(2) for other types of truck. Where such a counterbalanced truck is to be used in a high risk situation but, because of the age and design of the truck, there are technical difficulties in fitting attachment points for a restraining system, the selection of suitable alternative equipment may be the only solution. This may be a particular problem with battery powered fork lift trucks. Further guidance on fork lift trucks is proposed.

SELF-PROPELLED WORK EQUIPMENT (Reg 28)

27

(1) Regulation 28 deals with a variety of additional measures on self-propelled work equipment (eg equipment that has its own engine or motor). However, little, if any, action may be needed for vehicles used primarily for travel on public roads where they comply with similar provisions in the Road Vehicles (Construction & Use) Regulations 1986. The extent of any such overlap (and also the gaps) is being looked into and the action necessary is under consideration.

(2) For self-propelled mobile work equipment, the requirement for devices to improve vision in reg 28(e) cuts across aspects of the requirements in reg 17 relating to control systems. The same measures can be used to comply with both requirements. For earth moving equipment, used in the quarries sector, the use of visibility aids is normal practice. The implications for other self-propelled mobile equipment, particularly vehicles designed for use primarily on the public highway, is being considered and further guidance will be issued.

(3) The requirement for appropriate fire-fighting appliances should only be applied where escape from self-propelled work equipment cannot be achieved easily.

REMOTE-CONTROLLED SELF-PROPELLED WORK EQUIPMENT (Reg 29)

28 The requirements relating to remote-controlled self-propelled work equipment apply primarily to radio-controlled equipment.

PART IV: POWER PRESSES (Regs 31-35)

29 These regulations replace the Power Press Regulations 1965 (as amended).

ENFORCEMENT - GENERAL

30 Where PUWER 98 overlaps with other legislation eg Electricity at Work Regulations 1989 (EAW Regulations), enforcement action should take place under the regulations most

appropriate to the circumstances. For example, the use of electrical equipment in a wet environment could be covered by both PUWER 98 reg 4 and EAW Regulations, reg 6.

31 Inspectors' approach to the enforcement of those regulations which are direct replacements for the requirements in PUWER 92 (regs 4,5,8,9 & 11 to 24) should not change. The policy on the enforcement of the new requirements (ie regs 6 & 25 to 30) was endorsed by HSC on 23 June 1998:

Enforcing Authorities 'will take a similar enforcement approach to that used in the implementation of the '6-pack' regulations, when it was made clear that employers would be given time to assimilate the new requirements. However, where there are serious risks or what needs to be done is not new, inspectors will be prepared to take firm enforcement action'.

ENFORCEMENT - SPECIFIC PROVISIONS

32 Regulation 3, 'persons in control' should be enforced in relation to the employer or person who is, or should have been, in control of the work equipment.

33 Regulation 5 should be used for enforcement where the requirements in relevant product safety law (such as the SM Regulations) applied to the equipment when it was supplied, and it complied with them, but it has not been maintained in its original condition. Where the user has replaced or modified the guarding (in some cases upgrading it) to suit the circumstances of use, the equipment should be maintained to that revised specification. If it is not possible to prove whether CE marked equipment complied when supplied, the use of alternative informations could be considered (reg 5 or reg 10(1))

34

(1) Regulation 6(1): A case may need to be taken regarding both the failure to properly install or reinstall equipment and from a failure to carry out an inspection. There would be a need to show that safety was critically dependent on proper installation and that significant risks resulted as a result of the installation.

(2) Regulation 6(2): Where enforcement action is contemplated, there should be evidence that there is a significant risk directly due to equipment, or parts of it, deteriorating and leading to danger and therefore a need for inspection in those circumstances. Also there should be evidence that the deterioration would not have been detected or dealt with during operator checks and normal servicing regimes, and that either no inspection system has been set up, or it is not being undertaken properly.

(3) For fork-lift trucks, the thorough examination requirements of LOLER cover the parts that are lifting equipment (including the mast, forks and the chains). The inspection requirement under PUWER does **not** apply to those parts (by virtue of reg 6(5)), but will apply to the rest. When taking enforcement action this distinction needs to be borne in mind.

35 Regulation 7: Any enforcement under this regulation should concentrate on the information, instruction and training aspects (see ACoP paras 167-169), though there may be duplication with the requirements in regs 8 & 9.

36

(1) Regulation 10: A pragmatic and evenhanded approach should be adopted, with due weight given to the primacy of the duty on manufacturers to comply with product supply

regulations. Equipment users should check that new work equipment complies with the product supply regulations (including looking for obvious defects, checking documentation etc.). It should be noted however, that reg 26 of SM Regulations for example states that '*...machinery which is accompanied by an EC declaration of conformity and to which the CE marking is affixed shall be taken to comply..., unless there are reasonable grounds for suspecting that it does not so comply.*' See also leaflet INDG271 and 'HSE Guide to the Inspection of Manufacture and Supply (in particular chapter 4).

(2) Formal enforcement will be appropriate in circumstances where a user should have had reasonable grounds for suspecting noncompliance and/or blatantly failed to ensure that new equipment is safe when first taken into use despite some obvious deficiency and, more particularly, where previous advice has been given.

(3) Formal enforcement action should be proportionate and should not be taken against the user for a technical breach, eg for using a new machine that is safe, but has no CE marking.

(4) The revised wording to reg 10 means that, in the case of work equipment to which the relevant product safety regulations applied, when they were supplied, **whether or not the equipment actually complies**, PUWER 98 regs 11 to 19 and 22 to 29 do **not** apply. The exception to this is when those PUWER regulations contain requirements which are not covered by the EHSRs in the product safety regulations. For example, under reg 11(3) (c) there is a requirement to maintain guards and protection devices; there is no such requirement in SM Regulations, however, even in these circumstances reg 5 should be used in preference.

(5) Where new work equipment does **not comply** with relevant product safety regulations and it is seriously unsafe, enforcement against the user should be taken if appropriate, using reg 10(1), to bring the equipment to the required level of compliance. At the same time, enforcement should be considered against the supplier under the relevant product safety regulations.

(6) Solicitor's Office advise that the date of an alleged offence under reg 10(1) should be the date the equipment was first seen by the inspector.

(7) The same approach should be taken with second-hand equipment, although HSW Act s 6 will usually apply rather than product supply regulations. The HSE Guide to the Inspection of Manufacture and Supply considers the supply of second-hand products in more detail (see Chapter 4.1).

37 Regulations 11 to 19 and 22 to 29 should only be used for enforcement if the equipment was supplied **before** any relevant product safety law applied to it (see **paragraph 14**). However where there is uncertainty as to the date of supply, alternative information's can be considered. The regulations can also be used if there is no product safety law which applies to the equipment in question.

38

(1) Regulation 11: The offence under the first two parts of reg 11 is created by reg 11(1). It is **not** now considered that reg 11(3) also creates an offence.

(2) Any reference, in an offence under reg 11(1) to reg 11(2)(d), the provision of information, instruction, training and supervision, should be considered in conjunction with potential offences under reg 8 (information and instructions) and reg.9 (training).

(3) Where there has been a failure to maintain guards on non-CE marked equipment, enforcement action should be taken under reg 11(1) referring to the provisions in 11(3)(c). However, reg 5 should be used in preference for the maintenance of guards on CE marked equipment, since reg 11(1) will not apply.

39 The offence under reg 12 is created by reg 12(1); reg 12(2) indicates the measures that an employer should or should not take.

40 Regulation 22 does not deal with systems of work, so enforcement action for failure to carry out the maintenance operations in a safe manner should be taken under HSW Act s.2.

ENFORCEMENT OF PART III (Regulations 25 TO 30) BETWEEN 5 DECEMBER 1998 AND 5 DECEMBER 2002.

[Note: for 'hired' mobile work equipment, see **Appendix I**].

41

(1) Part III of PUWER applies immediately to mobile work equipment taken into use in an undertaking on or after 5 December 1998. For existing equipment already in use in the undertaking or establishment, before this date, the employer has 4 years to comply ie until 5 December 2002.

(2) While the requirements in Regulation 4, 'Selection of suitable work equipment', could be used where existing mobile work equipment does not have to comply until 2002, Solicitor's advice was sought and, based on his advice, HSE's policy is **not** to seek to use Reg.4 to circumvent the transition period. The guidance at para 102 of L22 is particularly relevant here. It states: '*.....Therefore until this date (5 December 2002) you do not need to comply with Part III when considering the selection of suitable mobile work equipment*'. However, where there was a significant risk on existing equipment, enforcement action could be taken before 5 December 2002 using HSW Act.

42

(1) Accident / incident experience indicates that certain generic classes of mobile work equipment are more likely to roll over. For the following, ROPS are the most practical solution: tractors (where no cab is/can be fitted); certain compact dumpers; all terrain vehicles (sit-in type); rough terrain variable reach trucks (telehandlers). (See also **para 2 in Appendix I** and HSE Information Sheet MISC 156). However, even for these classes of equipment, the risks when they are in use may not be sufficiently serious to justify formal enforcement or other action.

(2) For the sit-astride type of all terrain vehicle (usually known as a quad bike), see guidance in Agriculture Information Sheet '*The Safe use of All Terrain Vehicles (ATVs) in Agriculture and Forestry*' AIS 33 'PUWER 98 How the regulations apply to agriculture and forestry'.

(3) Where an employer's existing equipment is likely to be at risk of roll-over and for which ROPS and/or restraining systems will need to be fitted, they should ensure that this work is carried out by 5 December 2002. Where the numbers of items of equipment is large, they will need to produce an action plan to ensure that the work is done on time.

(4) There may be situations where there is a serious risk of rolling over because of the location and conditions under which the mobile work equipment is in use. In such

situations only equipment that complies with regulation 26 should be used, even during the transition period. In such circumstances, formal enforcement action can be taken under HSW Act regarding non-compliant existing equipment.

(5) For **new** equipment, there should be no difficulties regarding the provision of ROPS for most of the classes listed in **paragraph 42 (1)**. However, for new compact dumper, supplied without ROPS, or any second hand CE marked dumper which are not capable of having a ROPs fitted and they are in use where there is a serious risk of rolling over.

43 For several years, new rough terrain variable reach trucks (telehandlers) should have been supplied with ROPS. Therefore, it is only the older models which will eventually need retrofitting before the transition period ends. Where a ROPS is fitted to a telehandler, then seat restraints will also be required and this should be enforced where there is a risk of rolling over.

44 Counter-balanced, seated, centre-controlled, fork-lift trucks do not need ROPS (because they have a mast), however, seat restraints will be required where this is necessary because of the risk of overturning. However there may be some difficulties in fitting restraints to certain older fork-lift trucks, particularly those that are battery powered.

45 Regulation 28 (e) should not be used for existing mobile equipment in advance of the transition period, see also para 40 regarding reg 17(3).

APPENDIX I

Note: An earlier version of this Appendix has been made available to trade associations and companies in the 'hire' industry and the 'general public'.

HIRING & LEASING OUT OF MOBILE WORK EQUIPMENT: APPLICATION OF PUWER 98, REGULATIONS 26 & 27 (ROPS & RESTRAINING SYSTEMS)

BACKGROUND

1 'Existing' mobile work equipment (ie that provided for use in the undertaking or establishment before 5 December 1998) does not need to comply with the requirements in Part III of PUWER 98 until 5 December 2002. However, mobile work equipment taken into use in the undertaking for the first time **on or after** that date has to comply straight-away, and this will include such equipment that is hired-in¹.

2 It was accepted that those who hire, rent, lease or lend certain work equipment could not comply with the new requirements in regulations 26 and 27 by 5 December 1998. This is because the only practical way, in which they can comply, is to fit a roll-over protective structure (ROPS) and/or restraining systems (eg seat belts) to the equipment most at risk of roll-over ie compact dumper, agricultural tractors, variable reach, rough-terrain trucks (telehandlers) and centre control, seated, counterbalanced fork-lift trucks of less than 10

tonne capacity. But this was not possible due, among other things, to the large numbers of equipment involved, the availability of the materials needed to do the work, and the acknowledged technical difficulties for some equipment.

AGREEMENT BETWEEN HSE, HELA AND THE INDUSTRY

3 Following Ministerial involvement, HSE, HELA and representatives of the hire industry and other trade associations agreed a practical approach for those who hire mobile work equipment. This agreement required hire companies to produce, and then implement, an action plan for their mobile work equipment -the agreement is reproduced in HSE Information Sheet, MISC 156 '*Hiring and leasing out of plant: application of PUWER 98, regulations 26 and 27*'. (subject file 200), and this Annex should be read in conjunction with that publication.

WHAT COMPANIES IN THE HIRE INDUSTRY SHOULD BE DOING

4 To identify the equipment requiring action, companies needed to;

- (i) decide which classes of mobile work equipment which they own could be at greatest risk of rolling over, using the list in the Information Sheet as a starting point;
- (ii) determine whether anchorage points, ROPS and restraining systems were fitted;
- (iii) where these safeguards were not fitted, prioritise the action to be taken for equipment in each class. This could be done in the same order as the suggested groupings in the Information Sheet;
- (iv) decide what could be achieved, the time scales for doing it, and include this in their action plan; and
- (v) set up a system to organise the work and monitor progress.

The time scales depended in part on the type, numbers, age and condition of the mobile work equipment that each hire company owned, but each company should fit the additional safeguards as soon as practicable.

5 For equipment in Group 3, (ie machines for which ROPS, restraining systems and attachment points may need to be designed and tested or the machines replaced), the hire companies may decide to replace equipment for which it is either not technically possible or cost effective to fit ROPS and/or restraining systems. However, they are unlikely to be able to effect such replacements immediately. Also it may take time to determine whether or when the equipment is to be replaced, since this depends on the feasibility and costs of ROPS etc.. Therefore, the action plan may not have initially contained the full information on the replacement programme, but the plan should be modified when such information is available.

6 Furthermore, the hire companies should have a policy for hiring out mobile work equipment, so that equipment without ROPS/restraining systems is, where possible, hired to low risk sites such as those where there are good ground conditions and vehicles are not used on steep slopes. However it is accepted that users will normally determine where and how such equipment is used.

ACTION BY FOD SAFETY UNIT

7 FOD Safety Unit (SU) acted as the main link between HSE and representatives of the trade associations on this matter. SU arranged for a mailshot to be undertaken, in January

1999, to the head offices of some 5,400 companies who were involved in the hiring or leasing of construction plant and fork-lift trucks. (The mailshot consisted of a standard letter outlining the hirer's duties under regs. 26 & 27 of PUWER 98 and the need to produce action plans, together with a copy of the Information Sheet). Following dispatch of these letters, SU distributed relevant lists of the hire / lease companies, to whom the mail shot was sent, to each Region.

ACTION BY INSPECTORS

ROUTINE VISITS

8 During routine visits, Inspectors will encounter the mobile work equipment described in **paragraph 2** being used in a variety of work places. Their first priority should be to ensure that users eliminate or adequately control any risk of rolling over, since ROPS and restraining systems can only reduce the risk of injury resulting from rolling over. Users should be reminded of the need to consider the site layout, the type of vehicles, how they are used, as well as the training provided to drivers etc. Further information is given in HS (G) 136 *Workplace Transport Safety* and HS(G) 144 *Safe Use of Vehicles on Construction Sites*.

9 Where ROPS and/or restraining systems are not fitted, Inspectors should ask whether the equipment belongs to the company using it or whether it is hired or leased.

(a) User owns the equipment and the risks of rolling over are not serious

10 Where the equipment has been in use in the user's premises since before 5 December 1998, they should be informed of the new requirements in regs 26 & 27 of PUWER 98 and of the fact that, should there be a risk from rolling over, they will have until 5 December 2002 to take action. If there is a lot of equipment that could be at risk, the user will need to produce an action plan to ensure that all the additional safeguards are fitted by 5 December 2002.

(b) User has hired-in the equipment and the risks of rolling over are not serious

11 Where the equipment is hired, Inspectors should normally make no further enquiries regarding the fitting of ROPS and restraining systems. However, users should be reminded that it is their responsibility to inform a hire company, from whom they intend to hire mobile work equipment, when they know that there will be serious risks of rolling over (eg when dumpers are used on gradients approaching 25%) which cannot be either eliminated or adequately controlled (as in **para 8** above).

(c) Equipment in use where there are serious risks of rolling over

12 Where any mobile work equipment, involving one of the types of mobile work equipment in **paragraph 2**, is found in use in situations where there is a risk of serious personal injury which cannot otherwise be eliminated or adequately controlled, **and** ROPS and/or restraining systems are not fitted, Inspectors should issue a Prohibition Notice (PN). This action should be consistent with any action they would have taken under HSWA before the new requirements in PUWER 98 came into force. The PN can allege breaches of HSWA ss2 and 3, and/or MHSWR reg 3, however it should not allege a breach of regs 26 or 27 of PUWER 98 if the equipment was in use at the undertaking before 5 December 1998.

13 In such circumstances, if the user owns the equipment, they will need to modify it

before using it again for that purpose, or else obtain suitable alternative equipment, or restrict its use to work where there is no, or lower, risk of rolling over.

14 However, if the equipment is hired, then the following information should be obtained:

- (i) make, model and serial number of the equipment;
- (ii) details of the company from whom the equipment was hired; and
- (iii) details of the hire company's head office (if different to (ii)).

This information should then be forwarded to the PI Supplier for the head office without delay. The equipment will need to be modified before the user can return it to use in those circumstances or else suitable alternative equipment will need to be obtained.

15 If the equipment is new and CE marked (i.e. both supplied and taken into use for the first time in **any** undertaking after 4 December 1998) FOD SU should also be informed.

16 There may also be situations where mobile work equipment, other than one of the types listed in **paragraph 2**, will need to be fitted with a ROPS and or restraining system, because of the conditions in which they are to be used or are being used. Similar action to that described in **paras 12-15** should be taken.

ACCIDENT OR COMPLAINT INVESTIGATIONS

17 Where, as a result of an accident or complaint investigation involving hired equipment of one of the types of mobile work equipment in **paragraph 2**, it is necessary to issue a PN as the equipment is not fitted with a ROPS and/or restraining system in circumstances where there are serious risks, then the information specified in **paragraph 14** should be obtained and the PI Supplier should be informed without delay.

ACTION BY PI SUPPLIER

18 In the majority of situations, the enforcement responsibility for the head office of the hire/lease company will be allocated to HSE rather than local authorities (LAs). However, for those few premises which might be allocated to LAs, HELA has agreed that, as with other supply issues, HSE should take the lead in dealing with hire / lease companies in relation to the application of regulations 26 and 27 in Part III of PUWER 98.

19 If the PI Supplier receives information that a PN has been issued, this should be discussed with the hire company's head office as soon as possible. Compliance with the Notice may be achieved, for example, by withdrawing the equipment from service until a ROPS and / or restraining system are fitted, or restricting the use of that item of equipment to 'low risk' situations, or providing alternative equipment which is fitted with such safeguards.

20 During routine visits to the head offices of hire companies, the PI Supplier should discuss the progress with the work outlined in the action plan. If, after 31 March 1999, there is no action plan or it is inadequate, an Improvement Notice (IN) should be issued. If progress is unsatisfactory and this is due to a lack of action by the hire company (as opposed to difficulties encountered in obtaining ROPS and/or restraining systems from manufacturers/suppliers), then an IN should be issued. In such a situation the IN should require the fitting of ROPS and/or restraining systems to certain equipment to bring the company 'back on track' with the timescales laid down in the action plan.

Note: The PI Supplier for hiring out of construction machinery will normally be the PI

construction and for hiring out of fork lift trucks may be the PI who deals with the food and entertainment sector.

OTHER ACTION

21 Contacts with the hire company should be recorded on SAPID in the normal way - see the *HSE Guide to the Inspection of the Manufacture and Supply of Products and Substances*, Chapter 6.

22 In future years it is possible that Inspectors will be asked to participate in a coordinated national approach to hire/lease companies in order to check that satisfactory progress has been made with the items included in the companies' action plans.

FURTHER GUIDANCE

23 A further Information Sheet, MISC 175 '*Retrofitting of roll-over protective structures, restraining systems and their attachment points to mobile work equipment*' has been produced covering the technical and legal aspects.

24 Further guidance regarding Fork Lift Trucks is also proposed.

1 Hired-in equipment means equipment obtained (rented) from a plant hire company on a time related hire, with or without an operator, and for which the plant hire company remains the owner. It does not mean equipment bought under a hire purchase agreement.