

Legislation Outlook

April 2023

This monthly legislation briefing is a **supplement** to your Activ Comply service to help you to **plan ahead** for the maintenance of your ISO 14001, ISO 45001, ISO 50001 and ISO 27001 systems. In addition to giving you advance warning about important legislation that will affect your compliance with the standards, we'll provide news, newly-published guidance and government consultations that you might find useful, as well as any other significant legislation beyond the scope of the standards listed that will potentially impact your organisation. Unlike other services, we only report items of value: we don't waste your time on items such as an increase in administrative fees or changes that only affect enforcement agencies.

When legislative changes are announced with short notice (<1 month) they are not reported here. All changes are automatically delivered directly into your [Activ Comply](#) system as they come into effect so you can be confident that you are always 100% up to date.

Last month saw the introduction of new packaging data collection and reporting obligations. It is important for all affected customers to be familiar with their new obligations. Unfortunately, the new obligations are not easy to understand. To assist our clients, we have provided some guidance in the focus section at the end of the Legislation Outlook.

Upcoming Standard-Related Legislation

ISO 45001

Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Commencement No. 2) Regulations 2023

These [Regulations](#) come into force in Scotland on 6 June to prohibit the possession in a public place of fireworks other than indoor or close proximity Category F1 fireworks. It also introduces a complete prohibition of fireworks at 'designated events' or 'designated venues' (these are defined by the legislation below). Breach of the prohibition could result in up to six months in prison or a £5,000 fine.

Fireworks and Pyrotechnic Articles (Scotland) Act 2022 (Designation of Events and Incidental Provision) Regulations 2023

These [Regulations](#) specify the 'designated events' in Scotland where there is a complete prohibition on the possession of fireworks. These are events that satisfy all the following criteria:

- where live sport or live music is to take place;
- where members of the public are admitted as an audience;
- where the person responsible for organising the event can regulate entry to the event; and
- where the venue at which the event is held has a capacity for 1,000 or more attendees within the audience.

ISO 27001

Data Protection and Digital Information (No. 2) Bill

This is the second version of the [Bill](#) to be published, the previous version having been withdrawn in September last year. Much of the latest version of the Bill is the same as the previous version (for more details on the previous version see the Focus section of our August 2022 Legislation Outlook) but with some notable new inclusions:

- records of processing personal data will only be required for organizations that carry out processing activities likely to result in "high risk to the rights and freedoms of data subjects." In the previous version, this exemption only applied if the organisation employed fewer than 250 employees; and
- organisations will be able to continue to use their existing cross-border transfer mechanisms if they are already compliant.

A second reading of the Bill will take place in a few weeks, after which the Bill will go through the committee stage. We will provide you with further updates on the potential impacts of the legislation once it the legislative process is finalised, and the Bill receives royal assent.

Remember: short-notice changes to legislation are not reported in this briefing; all changes are delivered direct into your Activ Comply system as they come into effect.



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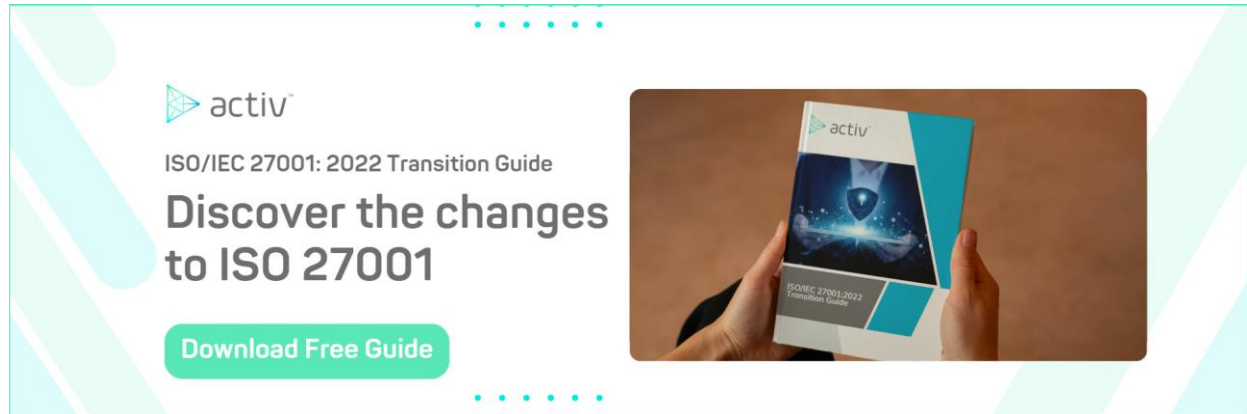
News

Safety Alert: Diacetyl Vapour


The Health and Safety Executive has issued a [safety alert](#) in relation to exposure to vapour from diacetyl, often used as a flavouring and a by-product of coffee roasting. It can lead to severe and irreversible lung disease. The alert follows studies showing that heating diacetyl above certain temperatures significantly increases airborne concentrations and the potential for exposures above safe workplace limits. If your processes include the use of diacetyl, food flavourings that contain diacetyl, or are likely to produce diacetyl, then you must take the actions set out in the safety alert.

Asbestos Safety Campaign for Young Workers

The Health and Safety Executive has launched [Asbestos and You](#), a new campaign to raise awareness of the dangers posed by asbestos that will focus on young tradespeople. It follows concerns that young workers in particular are failing to take the risks from asbestos seriously. The campaign publicises the fact that five thousand people a year still die from asbestos-related illnesses and that asbestos can still be found in buildings built or refurbished before the year 2000.



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Consultations

Persistent Organic Pollutants

The Department for Environment, Food & Rural Affairs has published a [consultation](#) seeking views on proposed changes to the regulatory regime for persistent organic pollutants (POPs), including:

- amending and/or addition of POPs waste concentration limits for several POPs;
- removal of specific exemptions for several POPs;
- addition of unintentional trace contaminant exemption levels for at least two POPs;
- amending and/or removal of unintentional trace contaminant exemptions for perfluorooctanoic acid (PFOA);
- addition of a new toxic equivalency factor for dioxin-like polychlorinated biphenyls (PCBs);
- amending maximum concentration limits for several POPs.

The consultation ends on 27 April 2023.

Focus: Packaging Waste Data Reporting

What is it?

Extended Producer Responsibility (EPR) for packaging waste is due to be introduced in 2024. It will ensure that organisations take responsibility for the full environmental impact of the packaging they supply by having to pay for the collection and disposal costs of this packaging when it becomes waste.

In order to calculate the fees that organisations will have to pay under the EPR scheme, legislation has been introduced in England, Scotland and Northern Ireland that will require some organisations to collect and report data relating to packaging.

Will it apply to me?

You will need to collect packaging data if you meet all the following 'producer' criteria:

- you are an individual business, subsidiary or group (but not a charity);
- you have an annual turnover of £1 million or more (based on your most recent annual accounts);
- you were responsible for more than 25 tonnes of packaging in 2022; and
- you carry out any of the following 'packaging activities':
 - you supply packaged goods to the UK market under your own brand, or pay or licence another company to:
 - produce or pack goods that will be sold under your brand name;
 - place your branded goods on the UK market; or
 - import goods for you;
 - you place goods into packaging that is unbranded when it is supplied, whether for your own organisation or for another organisation;
 - you import products in packaging (even if the packaging is discarded before selling the goods), but not including:
 - branded goods that have been imported on behalf of the brand owner; or
 - unbranded goods that are supplied to a 'large' organisation that brands the goods before supplying them on (see below for more information on what constitutes a 'large' organisation);
 - you own an online marketplace (i.e., you operate a website or app that allows non-UK businesses to sell their goods into the UK);
 - you hire or loan out reusable packaging;
 - you manufacture or import empty packaging that is then supplied to a 'large' organisation.

What is a 'large' or 'small' organisation?

You are a 'large' organisation if you meet the above producer criteria and in addition:

- you have an annual turnover of £2 million or more (based on your most recent annual accounts); and

- you are responsible for more than uses more than 50 tonnes of packaging in a 'packaging activity'.

A 'small' organisation is any organisation that meets the producer criteria but does not reach the 'large' organisation threshold.

How is packaging defined?

Packaging is any material that is used to cover or protect goods that are sold to users or consumers. It consists of the following categories:

- primary packaging, which is packaging conceived to constitute a sales unit to the final user or consumer at the point of purchase;
- secondary packaging, which is packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is supplied as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale; it can be removed from the product without affecting the product's characteristics;
- tertiary packaging, which is packaging conceived to facilitate handling and transport of a number of sales units or secondary packaging in order to prevent damage from physical handling and transport damage, but does not include road, rail, ship and air containers;
- shipment packaging, which is packaging, added in addition to primary packaging, on items which are sold online or by mail order which are either delivered direct to the purchaser or collected by the purchaser from a shop or other collection point after they have been purchased.

However, the following categories of packaging are exempt from collection and reporting obligations:

- reused packaging which is primary packaging;
- production residues from the manufacture of packaging;
- packaging exported from the UK;
- reused secondary or tertiary packaging, provide it has not been imported into the UK; and
- drinks packaging that is subject to the Scottish Deposit and Return Scheme.

What will I need to do?


All affected organisations will need to record data about all the empty packaging and/or packaged goods you supply or import in the UK from either 1 January 2023 (if you have it) or 1 March 2023. The type of data that you need to record depends on your size and the packaging activity that you carry out. The data collection obligations are too complicated to easily summarise here, but more information can be found in the [official guidance](#).

'Large' organisations will also have to report their data every six months. The report will need to be submitted to the appropriate authority (the Environment Agency, the Scottish Environment Protection Agency or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland) by 1 April (for the period 1 July to 31 December in the previous year) and 1 October (for the period between 1 January and 30 June). The first report will need to be made by 1 October 2023.

'Small' organisations are expected to be required to submit their reports annually by 1 April for data collected during the previous year. However, the relevant legislation has yet to be published so we are unable to confirm this as yet.


What happens if I don't comply?

The various regulators have the power to apply wide-ranging criminal penalties for non-compliance with the data collection and data reporting obligations. The maximum penalty is a fine of £10,000 on summary conviction or an unlimited fine on conviction on indictment.



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