

# Advice for Owners and Managers

## Maintenance of Potentially Unsafe Systems

### The problem

Maintenance companies have a legal responsibility under national criminal health and safety legislation not to leave equipment they have been working on in an unsafe condition due to: the Health and Safety at Work Act 1974 (section 3) in England, Scotland and Wales; the Health and Safety at Work Order 1978 in Northern Ireland; and the Safety, Health and Welfare Act 2005 in the Republic of Ireland.

The legal test for compliance with these pieces of legislation is whether or not 'reasonable and practicable' steps have been taken to provide safety.

Multiple prosecutions of door and gate maintenance companies in the UK have shown that leaving an unsafe system in service following maintenance work has failed this legal test in the UK criminal courts on multiple occasions.

### What is safe?

Safe is defined by the 'reasonable and practicable' legal test. Past criminal prosecutions in this environment have indicated that providing the levels of safety outlined in the current product specific British and European Standards, or to leave an unsafe system out of service, is seen by the regulatory authorities to be both reasonable and practicable.

### British and European Standards

The current package of British and European standards affecting industrial doors, garage doors, powered gates and traffic barriers have a chequered history. In 2011, HSE issued a formal objection to the standards as a result of its 2010 child death investigations. In 2013, the serious injury of another child in a sliding gate incident led to reinforcement of the HSE position.

By 2015, the European Commission had agreed with the HSE objection and withdrew the legal harmonisation status of EN 13241, the central standard.

From this point on, there has not been a standard available that could be used to confer legal compliance for powered industrial doors, garage doors, gates or traffic barriers. During 2015, drafts of revised standards were circulated for comment across Europe which generated many comments and objections.

By 2017, following the comment resolution process, revised standards were finally published across Europe, but the European Commission still refused to give the approval needed for legal harmonisation.

When the standards were published in the UK, BSI included a warning in the foreword advising users of the standards not to rely on them entirely for legal compliance, as some areas were still not adequately covered. It is with this somewhat confusing background that companies have been attempting to operate.

### DHF Codes of Practice

To assist our members with this confusion, DHF produce code of practice documents. The first, DHF TS 011, was published in 2016 and covered powered gates and traffic barriers. More recently, we have published DHF TS 012, covering industrial doors and garage doors.

Our COP documents are revised at regular intervals to accommodate any changes to current standards as and when they occur. We also provide regulations and standards training for installers, maintainers, and managerial and supervision staff.

The period since 2010 has seen a gradual and ongoing improvement in the understanding of the rules within our industry as our training programs roll out. It is though understandable that there are still large number of unsafe systems in operation today and that, as maintenance companies encounter them, they will be duty bound to inform the owners of safety problems with their gates.

At a recent industry seminar, HSE offered the following advice:

*'The prime function of identifying the responsibilities of duty holders, is not to hold them accountable when things go wrong, but to ensure that things do not go wrong in the first place. Don't think, what do I need to do to avoid prosecution, more importantly, think, what do I need to do to make the situation safe?'*

This advice came following HSE's prosecution of two maintenance companies as a result of one of the 2010 child deaths. The companies were prosecuted because they had left a 'safety critical' powered gate in service following maintenance.

The regulations applicable to maintenance companies are now quite clear, largely due to the legal precedent set by multiple criminal prosecutions of install and maintenance companies between 2000 and the present day.

If your maintenance provider comes to you with concerns over the safety of your system, please understand that they are not just looking to protect themselves, but also they are attempting to protect you, your employees, your tenants, or anybody else who may come into contact with systems within your care.

You may have concerns that it seems rather late in the day to be raising this issue, or that your systems may not have been entirely safe when they were first installed. Please take into account that there has been a steep learning curve for all concerned this industry (including HSE) and that the most important thing now is to ensure that the correct course of action is taken going forward.

### Advice for maintenance companies

DHF codes of practice advise members to follow a simple 4-step plan when dealing with the maintenance of potentially unsafe systems as follows:

1. Advise the client that powered systems must be switched off for initial visual safety checks and that any system that proves to have safety critical defects should be left in a safe condition. This can be any one of: operating in hold-to-run, switched off, left closed or secured against collapse depending on the nature of the defect(s). We have split the common hazards up into 'requiring improvement' and 'safety critical' depending on the degree of harm possible and the likelihood of occurrence.
2. When on site, make an assessment of the system and what work is being requested. Identify if the system will be safe following the requested work or what diagnostic work will be necessary to fully diagnose safety.
3. Request clearance from the client and proceed as instructed. Do not however leave the system in service if it has safety critical defects. We also advise that they issue an unsafe system notice to the client, in a traceable manner, that explains the exposed hazards and whether or not they are considered 'safety critical' or 'requiring improvement'. The maintenance company should explain how they have made the system safe, e.g., explain where the switch is.
4. If, on a repeat visit, the system is still in service in an unsafe condition, the maintenance company should repeat steps 2 & 3.

The intended outcome of this process is to ensure that the maintenance company is operating within the law, that you are kept fully informed of any hazards present, and that you are free to decide how to proceed with your system, albeit entirely on your own authority and at your own risk.

The process quite simply makes sure that both parties are taking full responsibility for their individual legal obligations.

### Advice for owners & managers

It is entirely possible that a maintenance company will advise that a 'safety critical' system has been left switched off or otherwise secured to make it safe. Please take note of this advice, but also be aware that the system is yours and that the ultimate decision will be up to you. If you elect to continue using it, you do so entirely at your own volition and against good sound professional advice.

At no point should the owner and maintenance company attempt to enter into a disclaimer agreement that transfers the maintainer's criminal responsibilities to the owner. It is not possible, in UK law, to transfer a criminal responsibility from one party to another by means of civil contract.

If an owner continually refuses to have an unsafe system under maintenance made safe, then it could be that at some point the maintenance company may have no other option than to exit the contract. If the end result of the process is a 'safety critical' system remaining in continual service, then both DHF and HSE see this as an unacceptable situation.

Systems in workplaces and rented property are required to be kept maintained in a safe condition by various pieces of criminal health and safety legislation depending on the nature of the site and the legal jurisdiction. Please see the links below for more detailed advice about the law in your jurisdiction or environment.

### Advice to domestic owners

Although private domestic owners are not generally covered by criminal health and safety legislation, there is still potential for legal action for negligence, or, in more severe cases, a charge of manslaughter is possible if there is an incident involving an unsafe system in your care. Please also be aware that if your system has been judged to be unsafe by a competent contractor, this is probably a material fact that you may need to inform your insurance company about.

Regardless of your legal liabilities, maintenance companies carrying out work on your system cannot leave your it in a safety critical condition; to do so would leave them in breach of criminal health and safety legislation.

Please see the links below for more detailed legal advice.

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## Further advice and guidance

DHF advice on maintenance legislation:

<https://www.dhfonline.org.uk/maintenance/law-relating-to-maintenance/7.htm>

DHF codes of practice (click on the appropriate product group):

<https://www.dhfonline.org.uk/publications/technical-specifications/1.htm>

HSE advice on the recent revision of standards:

<http://www.hse.gov.uk/safetybulletins/revision-standards-powered-doors.htm>

HSE advice on legal responsibilities (maintenance companies, owners, managers and landlords):

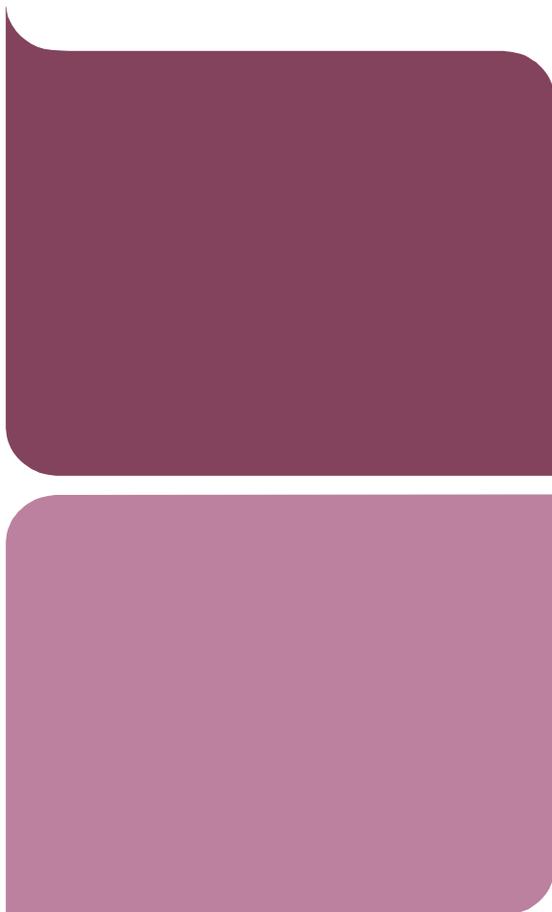
<http://www.hse.gov.uk/work-equipment-machinery/power-gates/responsibilities.htm>

HSE FAQs (including advice for domestic owners):

<http://www.hse.gov.uk/work-equipment-machinery/faq-powered-gates.htm>

HSE advice on ensuring safety of powered doors, gates & barriers:

<http://www.hse.gov.uk/work-equipment-machinery/power-gates/safety.htm>



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