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to sustainability

# Managing Compliance with Environmental and Human Rights Law in Organisations

By Colleen Theron

## ARDEA INTERNATIONAL

# Foreword

Laws and regulations provide a cornerstone for protecting people and the environment from harm. They set the minimum standards that need to be achieved to ensure that the environment isn't degraded, and that people's human rights are respected; they are an underpinning driver for organisations managing and improving their sustainability performance.

More and more laws to protect people and the environment are being passed by legislators. They cover how organisations operate, the products and services that they provide, and the way that they source goods and materials. Increasingly, market-based instruments are being used through a range of taxes and tariffs. This complexity makes it increasingly challenging for organisations to: identify and manage compliance with the laws and regulations that apply; understand who the regulators are; and ensure that effective internal processes are in place to ensure that as a minimum, compliance is achieved on an ongoing basis.

The consequences of non-compliance are multifaced and can be significant, including: damage to reputation, potentially resulting on fewer customers or being frozen out of tenders for new work; financial, especially as the scale of fines has increased substantially over the last few years; and potential imprisonment for the very worst cases.

This guide has been developed to help environment and sustainability professionals put in place management processes to ensure compliance on an ongoing basis. We hope that you find the guide useful.

Martin Baxter
Chief Policy Advisor
IEMA

# Introduction

There is a growing sense of the importance of legal compliance. In the past decade lawmakers have been enacting an increasing number of global and local regulations with which organisations need to comply, in the wake of various corporate scandals.[1] The consequences of non-compliance can have serious and sometimes devastating, commercial consequences. Take the disaster of Rana Plaza as an example. The failure by many brands to pick up on breaches of health and safety and the integrity of the building led to the deaths of over 1,000 people. The resulting media coverage also negatively impacted the brands of those companies involved. This kind of disaster has led to growing ethical expectations by consumers and investors. It is also reflected by the increase of mandatory regulation requiring organisations to disclose how they are managing their environmental and social impacts. Given the financial and reputational damage arising from non-compliance, the necessity to address compliance is rapidly moving up the corporate boardroom agenda.

Many organisations are investing in strong compliance programmes to mitigate their risks. Ensuring compliance with both local and international laws should be part of the ordinary, day-to-day activities of organisations. It is also critical that organisations with compliance policies should ensure that they are embedded in their organisations. There are various ways that a company will embed the management of legal compliance within the organisation. One of these approaches may be to implement a management system. The International Organization for Standardization (ISO) defines a management system as the way in which an organisation manages the inter-related parts of its business in order to achieve its objectives. These objectives can relate to various different topics, from operational efficiency to health and safety in the workplace, environmental performance and many more.

There is currently no agreed international standard for managing human rights impacts. However, as we will discuss in section 3 of this Guide, links can be made to other management systems, including the environmental management system (EMS) to help plug this gap.

An organisation may choose to implement a management system for a variety of reasons; for example to:

- manage legal compliance;
- demonstrate environmental commitment and achieve environmental improvements;
- demonstrate a commitment to protecting human rights and combatting forced labour and modern slavery;
- satisfy customer expectations;
- reduce risks with regard to the environment;
- reduce risks of abusing human rights;
- improve commercial performance and enhance reputation;
- provide potential investors and clients with the confidence that the organisation is taking proactive steps to manage its Environmental Social Governance performance.

From the regulators' point of view the first of these is the most important, and a well-implemented management system can be appreciably useful to an organisation in managing compliance. However, the same system can also offer benefits to the regulator in terms of assessing and evaluating compliance and of delivering performance improvement.

Regulators expect organisations to take responsibility for the environmental and social impacts of their activities, products and services. They consider management and maintenance of legal compliance to be a fundamental deliverable for a management system. Compliance with legal requirements regarding environmental and human rights protection should result in appropriate control measures and better environmental and social performance. Regulators that enforce how organisations address their responsibilities to their employees and prevent the abuse of human rights do not rely on an EMS being in place, but would require appropriate control measures, such as policies, procedures and audits to be in place.

Regulators recognise that the task of managing legal compliance is not easy. There are an ever-increasing number of environmental and human rights legal requirements placed on organisations, which are often complex both individually and collectively. In the regulators' view, consistent and continuing management of environmental impacts requires a structured approach, such as that provided by an EMS.

A number of academic studies have indicated that an EMS does not in itself guarantee legal compliance and good environmental performance.[2] The regulatory approach to any organisation will always be informed by the observed standards of environmental protection and management, including the results of environmental and compliance monitoring, permit breaches, incidents and community engagement. This is also true in respect of the regulatory approach to ensuring that organisations do not commit human rights abuses or in their approach to tackle modern slavery in their supply chains or prevent negative human rights impacts.

This Guide seeks to address these issues. It is divided into five main sections. Section 1 describes the approach to environmental and human rights regulation in the UK and sets out the regulators' expectations of an organisation's use of a management system to manage and maintain compliance with legal requirements regarding environmental and social protection.

Section 2 describes environmental management systems and their value to regulators, while Section 3 discusses best practice in managing an organisation's performance with respect to legal compliance. The underlying theme is the introduction of compliance thinking into all aspects of organisational management.

Section 4 gives guidance to organisations on roles and responsibilities. Finally, section 5 explains the certification and verification process in general, and more specifically, what approach certifiers and verifiers take when assessing an organisation's policy commitment to comply with applicable legal requirements.

The overall aim of this Guide is to provide organisations with an overview of how legislative frameworks address environmental and human rights issues. It also provides guidance to practitioners on how to achieve compliance with both environmental and human rights laws within the context of environmental and social management systems. In doing so, we hope that IEMA members and others who use this Guide will be better placed to discharge their legal obligations and improve the environmental and social performance of their organisations.

As part of developing the Guide, IEMA published a survey and ran a number of workshops across the UK to gain a better understanding of how companies are evaluating regulatory compliance of environmental and human rights issues. We have included the findings of the survey where they are helpful in underpinning company approaches to the issues raised in this Guide.

The workshops asked participants to share common barriers to achieving compliance and demonstrating compliance.

A summary of the findings from the workshops are set out below:

**Key trends and challenges in managing compliance[3]**

Please note that the table overleaf reflects a summary of the information collected during the four workshops carried out by IEMA across the UK in 2018 in preparation for this Guide. It serves as a reflection of the participants' views. While it may be that some of the information that appears under the Human Rights Issues column is also collected for the protection of the environment, these were not the key points reflected in the workshops.

| ISSUE | ENVIRONMENTAL ISSUES | HUMAN RIGHTS ISSUES |
| --- | --- | --- |
| **How companies evaluate compliance** | 1. Legal registers<br>2. Self-regulation, e.g., aspect/impact registers<br>3. Site-specific analysis/legal registers/compliance<br>4. Legal update services<br>5. External regulation – audits, regulatory visits and accredited industry schemes<br>6. Management systems which support localised staff | 1. CSR/sustainability policy and procedures<br>2. Human rights mapping/ supplier lists<br>3. Risk assessments<br>4. Online staff training and awareness<br>5. Audits/regulators and due diligence<br>6. Data collection/ evaluation of data |
| **Barriers to achieving compliance** | 1. Various laws are complicated/there is a lack of understanding about what they need to comply with<br>2. They do not have the management and governance structures in place to work on these issues<br>3. Implications of Brexit complicate this further<br>4. The cost of implementing policies does not equal the perceived value<br>5. There is a lack of motivation from the governance team<br>6. Data is disparate, making it too hard to gather | 1. There is a lack of understanding about what forced labour and human rights is – awareness lies with the HR and legal teams, not governance<br>2. Regulatory enforcement by governments is weak (and a lack of ISO standards) which leads to a lack of understanding/motivation<br>3. Boards are unwilling to buy into these issues<br>4. Supply chains are complicated and hard to track – there are problems in trusting the information given by suppliers<br>5. There are concerns about being transparent<br>6. Advisory expertise is limited |

| ISSUE | ENVIRONMENTAL ISSUES | HUMAN RIGHTS ISSUES |
|---|---|---|
| **Barriers to demonstrating compliance** | 1. Legislative guidance and interpretation are difficult<br>2. There is inconsistent enforcement from the government/regulators<br>3. There is a lack of communication between auditors and regulators<br>4. Lack of training, skills and abilities of staff<br>5. Whistleblowing opportunities are lacking<br>6. It is difficult to evidence compliance and there are no ways to compare performance | 1. There is a lack of understanding by the auditors of how the auditing system works<br>2. There is no real depth to the audit – it is only a tick box exercise<br>3. Some feel they have the data but are not sure how to act upon it, and are not sure how to put it in simple and understandable terms<br>4. A lack of media exposure (and a focus on high risk occurrences) and consumer complacency means there is reduced motivation<br>5. There are no common standards, making it hard to know how to act |

The data collected from these workshops does not necessarily reflect whether the approach taken by the organisations to address compliance with environmental and human rights laws is integrated.

However, the online member survey[4] conducted by IEMA in early 2018, in parallel to these workshops, did confirm that nearly two thirds of the survey participants worked for organisations that did not have integrated compliance management systems in place to manage environmental and human rights compliance.

The data collected by IEMA in both activities therefore clearly underscored the urgent need for a practitioner's guide on the topic of integrated compliance management and the information that follows in these chapters.

# About the author

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Colleen is a tri-qualified solicitor and founder of Ardea International, a specialist company that provides sustainability, business and human rights and modern slavery expertise to enable companies to meet both their legal obligations and develop voluntary best practice standards. She is a Fellow of IEMA.

She has over 25 years of legal and commercial experience of working with businesses, organisations and NGOs across sectors on both a strategic and operational level, and provides training and online resources to both directors and employees on human rights, modern slavery and sustainability issues. Colleen has an LLM (with distinction) in Environmental Law from the University of Aberdeen.

Colleen's indefatigable passion for combating human trafficking led her to help found the not-for-profit organisation Finance against Trafficking. Colleen lectures on business and human rights and environmental issues at Birkbeck School of Law and has been appointed a Fellow of the Centre for the Study of Modern Day Slavery, St Mary's Twickenham. Her book 'Strategic Sustainable Procurement: law and best practice' is published by Routledge. She has spoken widely on the UN Guiding Principles on Business and Human Rights, modern slavery and sustainable business. She is a member of the steering group of the British Association for Sustainable Sport (BASIS) and was an executive member and trustee of the UK Environmental Law Association for seven years. She sits on the advisory board for LexisPSL Environment and is on the Advisory Council for Positive Luxury. She is nominated as one of the Top 100 Corporate Modern slavery influencers in the UK in 2018.

Colleen was part of the Modern Slavery Garden team which won Gold at the Chelsea Flower Show 2016 and has been nominated for an award by the Anti-Slavery Awards group. She has set up an anti-trafficking hub at the Towers Convent school in West Sussex.

# About IEMA

We are the worldwide alliance of environment and sustainability professionals.

We believe there's a practical way to a bright future for everyone, and that our profession has a critical role to play.

Ours is an independent network of more than 14,000 people in over 100 countries, working together to make our businesses and organisations future-proof.

Belonging gives us each the knowledge, connections, recognition, support and opportunities we need to lead collective change, with IEMA's global sustainability standards as our benchmark.

By mobilising our expertise, we will continue to challenge norms, influence governments, drive new kinds of enterprise, inspire communities and show how to achieve measurable change on a global scale. This is how we will realise our bold vision: transforming the world to sustainability.

# Acknowledgements

# Contents

# Section One
# Environmental and human rights laws, regulations and organisations

## 1.1. The link between environmental law and human rights law

The body of environmental and human rights law and its impact on organisations, both in the public and private sector, has evolved over time, to a point where it no longer makes business sense to consider each of these areas in isolation. This Guide seeks to make the case for organisations to take an integrated approach to compliance with these legal obligations.

Given the complex nature of the relationship between human rights and environmental protection in international law, it is important to gain a better understanding of the different types of environmental and human rights legislation and how to identify legislation applicable to your organisation.

*What is the interrelationship?*

Environmental law and human rights law have intertwined objectives, ultimately striving to produce better conditions for life on earth by addressing challenges that must often be solved at both an individual and a global level.[5]

Three main dimensions of the interrelationship between human rights and environmental protection as set out by the United Nations Environment Programme are:[6]

- The environment is seen as a pre-requisite for the enjoyment of human rights. This implies that human rights obligations of states should include the duty to ensure the level of environmental protection necessary to allow the full exercise of protected rights.

- Certain human rights, especially access to information, participation in decision-making and access to justice in environmental matters, are essential to good environmental decision-making (implying that human rights must be implemented to ensure environmental protection).

- The right to a safe, healthy and ecologically balanced environment is a human right.

In March 2018, John Knox, the first Special Rapporteur on human rights and the environment, presented a report to the Human Rights Council setting out Framework Principles for states to ensure the enjoyment of a safe, clean, healthy and sustainable environment within the context of human rights. These Framework Principles[7] set out the norms that states should adopt to ensure greater uniformity and certainty in application of human rights law and the environment.

Businesses are encouraged, although not mandated, to take the principles into account in their own activities.

**Examples of international initiatives and frameworks that cover both environmental and human rights issues**

In response to international concerns about human rights, health and environmental protection, the international community has developed a number of legal and policy instruments at global levels including the Universal Declaration of Human Rights, the Sustainable Development Goals and the Rio Declaration on Environment and Development.

Some international initiatives are non-binding legal frameworks which highlight the value to organisations of implementing strategies that tackle environmental and human rights issues in a more integrated way, to help the transition to a more sustainable world. A couple of examples of such initiatives are listed below.

### The UN Global Compact (UNGC)[8]

The UNGC is a policy initiative for organisations. It seeks to align business strategies to ten universal principles covering human rights and labour, anti-corruption, and the environment. It is a membership scheme and affiliated companies report on their implementation of these ten principles in the format of a Communication on Progress (COP). In 2013, the UNGC and the GRI renewed their memorandum of understanding with a view to aligning the new GRI Standards with the ten universal principles.[9]

### The Sustainable Development Goals

In 2015, heads of state and government agreed to adopt the 2030 Agenda for Sustainable Development. This includes 17 Sustainable Development Goals (SDGs)[10] which set out quantitative objectives across the social, economic and environmental dimensions of sustainable development. The goals provide a framework for action and are to be implemented by 'all countries and all stakeholders acting in collaborative partnership'.

The goals are set for 2030 and as such organisations should be acting on them now. Goal 8.7 includes a target to 'take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and, by 2025, end child labour in all its forms.

Within the UK, the government has implemented legislation that seeks to recognise this need for business to align its strategies with sustainable development by putting the onus on organisations to report on environmental and social issues. Some of this legislation is included in the table overleaf.

**Examples of UK legislation requiring companies to report on environmental and human rights issues**

| UK Companies Act 2006[11] | The Companies Act (section 414C) requires that all medium-sized, large and listed companies (other than small companies) provide information in their strategic report on environmental and social matters (with key performance indicators, unless the company is an SME) to the extent necessary for an understanding of the development, performance or position of the company's business |
|---|---|
| The Company's Act 2006 (Strategic Report and Director's Report) Regulations 2013[12] | Directors of medium-sized, large and listed companies (other than small companies) must prepare a strategic report. This information should be sufficient to allow the reader to understand the development, performance or position of the company's organisations, with reference to environmental and social issues. Listed companies must report on human rights. The Financial Reporting Council (FRC) has produced guidance for organisations on these requirements.[13] |

# 1.2 Environmental law

## i) What are environmental rights?

Several human rights norms and environmental principles relevant to regulatory compliance complement one another. For example: Principle 10 of the Rio Declaration (1992) formulates a link between human rights and environmental protection.

The Rio Declaration comprises 27 principles formulated at the UN Earth Summit that intended to guide countries towards sustainable development. For instance, rights of access to environmental information, public participation in decision-making and the rights of access to justice including access to the courts, are contained in national and international legislation. Notably, the Aarhus Convention 1998,[14] has been adopted by 47 parties across the broader European continent, including the EU.

The environmental rights are often expressly transposed into 'hard-law' requiring compliance by nation states and sanctions for non-compliance. The Aarhus Convention provides the opportunity for individuals, communities and other signatory parties to submit allegations of non-compliance with the convention to the Aarhus Compliance Committee. The Aarhus Implementation Guide 2/e[15] explains that the Article 1 objective of the Convention which requires each party to guarantee rights of access to information, public participation and access to justice is: 'strongly rooted in pre-existing international and domestic environmental and human rights law, pulling these elements together into a succinct new formulation. Despite its brevity, it is densely packed with language significant not only to the convention itself, but to the overall development of international law regarding the environment and sustainable development.'

**The key environmental rights in the Aarhus Convention 1998**

The Aarhus Convention contains a number of detailed provisions setting out the scope and nature of the environmental rights afforded to members of the public, non-governmental organisations and other relevant organisations. Four key provisions of the Convention are set out below.

| Article 1: objective | In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each party shall guarantee the rights of access to information, public participation in decision-making and access to justice in environmental matters in accordance with the provisions of this convention |
|---|---|
| Article 4: access to environmental information | 1. Each party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public |
| Article 6: public participation in decision-making | 4. Each party shall provide for early public participation, when all options are open and effective public participation can take place |
| Article 9: access to justice | Each party shall, within the framework of its national legislation, ensure that members of the public concerned (a) having a sufficient interest or, alternatively, (b) maintaining impairment of a right, where the administrative procedural law of a party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission |

These environmental rights should be borne in mind by both public and private bodies.

For instance, the environmental information rights are wide-ranging with public bodies required to disclose information unless certain, quite limited, exceptions apply, such as international relations, national defence and public security (Article 4(4)(b)) and commercial confidentiality (unless the information relates to emissions) (Article 4(4)(d)). While it is the public body that must provide the environmental information sought, the public body is required to disclose environmental information of third parties that it holds, including private organisations. This may include documents submitted in support of a permit application or correspondence relating to alleged breaches of a consent.

Similarly, it is important to be aware that individuals and NGOs cannot be prevented or prohibited from bringing legal proceedings, whether those proceedings are against public or private bodies. The environmental right is a public right of access to the courts and tribunals, but it should ensure access for all environmental cases whether these are public law claims such as judicial review, or private law claims such as environmental nuisance: see for example Decision VI/8k concerning compliance by the UK which was adopted on 13.9.17 by the Meeting of the Parties of the Aarhus Convention.[16] It underlines the point that environmental rights apply to private law claims as well as public law claims.

## ii) Types of environmental legislation

**International treaties and agreements**

International treaties may or may not be binding legal requirements on signatories, who are usually national governments. Where a country is a signatory to a treaty, there may be an international dimension to European and national legislation. This may not be apparent at organisation, operator and site levels, although one would expect organisations operating across national boundaries to be aware of international obligations. Organisations that operate outside the UK should bear in mind that the jurisdictions in which they operate may or may not be bound by international treaties.

**Examples of international treaties covering the environment:**

- Convention on International Trade in Endangered Species, adopted in 1973 (amended 1983);

- The Rio Convention on Biological Diversity, 1992;[17]

- The United Nations Framework Convention on Climate Change (UNFCCC), 1992, and the Kyoto Protocol, 1997;[18]

- The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, 1998;[19]

- Kigali Amendment to the 1987 Montreal Protocol on substances that deplete the ozone layer in 2016;[20]

- The International Tropical Timber Agreement, 2006;[21]

- The Paris Agreement 2015.[22]

International treaties on climate change, such as UNFCCC and the Paris Agreement, have influenced the creation of EU and domestic legislation such as the EU Emissions Trading System[23] and related directives, and the UK Emissions Trading Scheme[24] that preceded the EU system, reflecting the impact of those conventions in framing regional and national legislation.

**European and national legislation**

Most UK environmental and human rights legislation originates at the European level, where the main legal instruments are EU Directives and Regulations. European Directives are transposed into national legislation by each Member State. For example, the EU Directive 2010/756/EU on industrial emissions is implemented in the UK by the Environmental Permitting (England and Wales) Regulations 2010, SI 2010/675.[25]

There are of course exceptions to this, including the European Convention on Human Rights (ECHR) and the European Court of Human Rights (ECtHR) which are part of a completely different legal system to the EU. The ECHR and ECtHR are in fact both part of the Council of Europe which has 47 member states including Russia and the UK.[26]

European regulations, on the other hand, usually apply directly to member states; for example: the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulations (REACH); the Eco-Management and Audit Scheme (EMAS) Regulation;[27] the Transfrontier Shipment of Waste Regulations;[28] and the Eco-Label Regulation;[29] and do not necessarily need to be transposed through specific national legislation. The EU Non-Financial Reporting Directive, which is transposed into the UK and other member states, is an example of an EU directive that requires certain organisations to understand their social and environmental impacts and to report on them.

In the UK, legislation comprises Acts (primary enabling legislation) and statutory instruments (secondary legislation), the latter often being referred to as 'regulations'. Acts provide the policy principles and broad requirements, while statutory instruments (SIs) are specific and detailed. Acts normally remain static, unless there are changes to policy. SIs may be updated periodically when there are changes at the detailed operating level. A series of SIs (denoted by an SI number and date, for example, SI 2709:2000) may be applicable over time.

SIs relating to UK initiatives or to transposed EC directives may be different in any of the four UK territories: England, Wales, Scotland and Northern Ireland (NI). The need for separate regulations is determined by the devolution settlements to Wales, Scotland and NI. This is important to note when operating sites in more than one UK jurisdiction.

Regulations are often supplemented by statutory guidance and approved codes of practice; for example, covering Best Available Techniques (BAT) for local authority air pollution control.

Where legal interpretation of regulations has been necessary, usually in court, there will be case law that is relevant in similar circumstances. Occasionally, issues may be referred for interpretation by higher courts outside the UK, such as the European Court of Justice.

**Moving towards environmental economics – efforts to combat climate change from the international to the national level**

**International level: Paris Agreement**

On 12 December 2015, a historic agreement was negotiated by representatives of 196 member states at the 21st Conference of the Parties of the UNFCCC in Paris. As of May 2018, 176 out of 197 parties to the UNFCCC have ratified the agreement.

**Key outcomes include:[30]**

- a global goal to hold average temperature increase to well below 2°C and pursue efforts to keep warming below 1.5°C above pre-industrial levels;

- all countries to set mitigation targets from 2020 and review targets every five years to build ambition over time, informed by a global stocktake;

- robust transparency and accountability rules to provide confidence in countries' actions and track progress towards targets;

- promoting action to adapt and build resilience to climate impacts;

- financial, technological and capacity-building support to help developing countries implement the agreement.

The Paris Agreement will impact organisations where national legislation places reduction targets or other requirements on organisations to address climate change.

**European level: The EU Emissions Trading Scheme**

In 2005, the EU set up the world's first international emissions trading scheme, which accounts for three quarters of international carbon trading.

The EU Emissions Trading System (ETS) works on a 'cap and trade' principle to incentivise investment in low carbon technologies by companies.

A cap is set on the total amount of particular greenhouse gases. In the initial two phases, six greenhouse gases were incorporated into the scheme, although more gases and sectors have been included for the third phase.

Within the cap, companies receive and buy emission allowances which they can trade with one another as needed.[31]

The third phase of the EU ETS runs from 2013 to 2020. It is a single EU-wide cap on emissions which applies in place of previous systems.

### Brexit

It is UK government policy that, upon withdrawal from the EU in March 2019, the UK will remain bound by its existing international environmental and human rights obligations. Whatever the legal instrument in discussion (be it a convention or a treaty) the legal process that the UK will need to follow to ensure it remains bound by these obligations will vary each time and this in turn means that it will take time[32] to transpose into national legislation. The European Union (Withdrawal) Act[33] (2017-19) is yet to receive Royal Assent. About 1,200 statutory instruments will be required across all government departments. The impact on environmental and human rights law will vary depending on the legislation. In some areas of law, the situation may remain the same, for example, the UK will remain party to the European Convention on Human Rights as this document was ratified within the Council of Europe rather than the European Commission,[34] whereas in other areas of law such as the EU ETS, the March 2019 deadline may affect compliance cycles.

### The impact of Brexit on compliance cycles

Environmental regulators in the UK work to the Regulators' Code. This code states that regulators (otherwise referred to as Competent Authorities) should consider risk at every stage of decision-making processes and should carry out their activities in a way that supports those they regulate to comply and grow. Competent Authorities across the UK acknowledge that the legislative framework particularly for environmental legislation is in a tremendous state of flux as a result of the UK's decision to exit the EU. There remains the question, particularly for industry, of what standards should be applied after Brexit. Will Best Available Technology decided at the European level still be enforceable? What happens to chemicals registrations? What about benchmarks and targets?

Often regulators do not know the answers to these questions either, and in such an uncertain legislative climate, the Regulators' Code is an important fall-back. One thing is certain, maintaining the status quo short term is the target, but regulators remain obliged to help those they regulate to comply first, and only to take enforcement action if deemed necessary.

*(Chris O'Brien, Consultant (environment and social) at SRK Consulting, Cardiff.*
*Formerly Senior Permitting Officer (EU ETS, CRC and ESOS) at Natural Resources Wales)*

## iii) Identifying applicable legislation: Sources of information on environmental law

The first step in managing compliance with both environmental and human rights legislation is to know which legal requirements are applicable to an organisation's activities, products and services. Various sources of information can be used, which include the sources set out in the table below.

**Sources of information on environmental legal requirements in the UK**

**Government departments**

- Department for Environment Food and Rural Affairs (DEFRA)
- Department for Business Energy and Industrial Strategy (BEIS)
- Department for Environment, Food and Rural Affairs (Wales)
- Department of Agriculture, Environment and Rural Affairs (Northern Ireland)
- Environment and Forestry Directorate (Scotland)

**Local authorities (various departments) Professional and trade bodies**

- Institute of Environmental Management and Assessment (IEMA)
- The Chartered Institution of Water and Environmental Management (CIWEM)
- Chartered Institution of Wastes Management (CIWM)
- Trade bodies and corporate information such as bulletins and intranets
- Environmental and legal consultants

**National regulators**

- Environment Agency
- Scottish Environment Protection Agency (SEPA)
- Natural Resources Wales (NRW)
- Natural England
- Scottish Natural Heritage

**Environmental management and law publications**

- Transform magazine
- The ENDS Report
- Commercial subscription services
- Email updates from law firms

**Websites**
- Europa.eu
- HMSO – UK Legislation
- HMSO – Northern Ireland Legislation
- HMSO – Scotland Legislation
- HMSO – Wales Legislation
- Netregs.gov.uk

### Environmental regulators

The main environmental regulators in the UK are the Environment Agency (EA) for England, the Scottish Environment Protection Agency (SEPA) and Natural Resources Wales. The Northern Ireland Environment Agency (NIEA) is an executive agency within the Department of Agriculture, Environment and Rural Affairs rather than an independent environmental regulator.

The European Union (Withdrawal) Act 2018[35] which was enacted on 26th June 2018, makes provision for the transfer of EU law into UK law from the date that the UK leaves the EU and creates powers for the correction of any laws that will no longer operate appropriately. This includes the creation of a new environmental body to underpin England's environmental laws after the UK exits the EU. As part of this effort, the UK government launched a consultation on 10th May 2018 on the development of an Environmental Principles and Governance Bill[36] that will mark the creation of a new independent environmental watchdog to hold government to account on its environmental ambitions and obligations once the UK will have left the EU.

The consultation asks for general comments on the environmental governance framework in England or the UK and is an opportunity to put forward ideas to deliver on the 25-Year Plan and provide long-term environmental stewardship. At the time of writing, IEMA is working with others on a number of proposals to make a strong case for this body to have real teeth, and the legal underpinning to hold government to account.

A more comprehensive list of regulators and their responsibilities can be found in the table on principal environmental regulators in the UK (p35).

Environmental legislation and guidance covering England and Wales is available on www.gov.uk. Regular updates on environmental law in Scotland and Northern Ireland are also found on the NetRegs website www.netregs.gov.uk.

## iv) The purpose of environmental regulation

The environmental regulation of organisations is intended to protect human health and the environment from harm within the context of sustainable development.

Traditionally, environmental regulation has covered the environmental media (air, water and land), together with wildlife protection and conservation. It has focused on the control of polluting emissions and on maintaining and improving water quality and waste management. There is evidence that this traditional division of environmental regulations into distinct groups addressing pollution of water, air and land separately limits the effectiveness of environmental policy and fails to take full advantage of technological innovations.[37]

The Environmental Permitting Regulations that were introduced in England and Wales in 2007 and the Industrial Emissions Directive (IED), introduced in 2010, are examples of legislation helping to create a more integrated approach to environmental regulation, taking into account an activity's performance across all regimes.

As a result of growing pressure from the public and internationally on environmental issues, it is likely that environmental regulation in the future will be considered in the following key areas:

- management of the environmental impacts of products and associated activities and services (such as manufacturing and transport) across lifecycles;
- efficient use of resources as part of the drive towards sustainable consumption and production;
- biodiversity and environmental net gain;
- sustainability/corporate and social responsibility/ESG issues;
- public participation; and
- artificial intelligence (AI) as related to the environment.[38]

There has also been a growth in mandatory legislation requiring organisations to be more transparent on how they address environmental impacts in their supply chains. For example, the EU Timber Trade Regulations, the Non-Financial Reporting Directive and the Companies Act 2006 (Strategic and Directors' Report) Regulations 2013 all require mandatory reporting by particular organisations on their environmental impacts.

**Northern Ireland Environment Agency (NIEA) and the necessity to go beyond environmental compliance**

Going beyond environmental compliance can bring business benefits: progressive businesses have realised that acting in a socially and environmentally responsible way is more than just a legal duty.

It affects the bottom line and the long-term success and competitiveness of a business. NIEA wishes to transform its regulatory approach to facilitate opportunities for those businesses who have this ambition, whilst rigorously pursuing those who seek to circumvent legal requirements and cause environmental harm.

NIEA's Regulatory Transformation Programme (RTP) will deliver simpler, more effective environmental regulation for Northern Ireland – a system in which all regulated businesses will find it easier to apply for environmental permissions and understand their compliance obligations.

This will require the development and implementation of:

- agency support for organisations that aspire to comply and go beyond compliance such as voluntary Prosperity Agreements;
- new streamlined legislation that underpins a modern environmental regulation regime;
- intelligent, risk-based approaches to environmental regulation;
- an effective and efficient integrated service for businesses on all environmental aspects of their activities via a straightforward contact system and an integrated permit where appropriate; and
- significant investment in data management systems, online services and guidance to support effectiveness and innovation.

NIEA uses a range of regulatory tools to ensure it protects the environment while also supporting businesses. Prosperity Agreements were initiated as a means of working in partnership with regulated businesses, in an innovative way, to find opportunities for step change in environmental performance and to secure positive business growth and development.

Prosperity Agreements are voluntary agreements, signed between NIEA and a company or organisation. The agreements contain commitments for both NIEA and the company or organisation which are intended to deliver significant environmental benefits, beyond the legal requirements of a permit or authorisation. They are focused on developing a more strategic relationship between business and regulator and to help businesses realise environmental gains which will increase their competitiveness.

These agreements are intended to deliver benefits for both parties to the agreement, including:

• helping NIEA regulate more efficiently, enabling 'lighter touch' regulation and freeing up resources to focus on those companies with compliance issues;

• facilitating a more co-ordinated approach to the regulation of sites with multiple activities, shifting focus to outcomes rather than process; and

• supporting companies capitalise on opportunities for technological innovation and to respond to new potential markets or grow their business through addressing strategic issues.

*(Liz Smyth, Regulatory Transformation Programme: operational delivery, NIEA)*

## Duties and powers of the environmental regulators

Legislation provides regulators with specific duties and powers. Duties refer to the obligations regulators must follow and therefore tend to be prescriptive; for example, the duty to determine and issue environmental permits.

Powers are usually discretionary in the way they are applied; for example, powers to enter premises or to take appropriate enforcement action. Once a power has been used, such as entering premises, there may be duties that are applicable such as to prohibit activities that are causing harm to the environment.

Regulators have a number of tools at their disposal to implement duties and powers ranging from the provision of advice and guidance through to formal enforcement and prosecution –

## Regulator tools to support enforcement response

**Least prescriptive**

*Education and advice (provision of information)*
*Voluntary codes of best practice*
*Voluntary agreements*
*Negotiated agreements*
*Economic instruments (taxes, trading schemes)*
*Statutory codes of practice/general binding rules*
*Statutory guidance*
*Direct regulations*
*Exemptions (to permits)*
*Permits (permit variation)*
*Notices (works, improvement, prohibition, suspension)*
*Revocation of permit or permission*

**Most prescriptive**

## v) The principal environmental regulators

There are differences in environmental legislation across England, Wales, Northern Ireland and Scotland. This is reflected in the existence and responsibilities of the national environmental enforcement bodies, as set out below.

**Principal environmental regulators in the UK**

**Environment Agency**
Emergency planning e.g., control of major accident and hazard (COMAH) 39 sites (with the Health and Safety Executive)
- Fisheries (resource management and licensing)
- Flood defence (flood mitigation, warning and permitting)
- Information law (public registers and access to environmental information)
- Industrial pollution and air quality (Industrial Emissions Directive)
- Land quality (for example, management of contaminated land at special sites)
- Radioactive substances (permitting of nuclear and non-nuclear sites)
- Waste management (permitting of storage, treatment and disposal activities)
- Water quality (environmental monitoring and permitting)
- Water resources (abstraction licensing and demand management)
- Wildlife crime
- All pollution prevention and control (PPC) requirements

**Scottish Environment Protection Agency (SEPA)**
Responsibilities are similar to the Environment Agency's, with the following differences:
- All PPC requirements are regulated (there are no local authority powers under PPC in Scotland)
- Flood defence
- No fisheries involvement
- Water resources (abstraction licensing). Responsibilities were acquired in 2005 under the Water Framework Directive

## Natural Resources Wales

- Major industries (refineries, chemicals, cement, power stations, iron and steel, food and drink)
- Waste industry (storage, treatment, disposal)
- Sites of Special Scientific Interest (consents and assets)
- Radioactive substances (nuclear and non-nuclear)
- European protected species licensing
- Marine licensing
- Tree felling licensing
- Water discharges (surface and groundwater)
- Water resources (abstraction, impoundment, drought)
- Packaging regulations and EU/UK trading schemes
- Commercial fisheries (eels, salmon, shellfish)
- Countryside Rights of Way Act (access restrictions, open access land)

## Northern Ireland Environment Agency (NIEA)

- Waste
- Water (quality and public health while respecting needs of industry)
- Pollution (air, land and water)
- Biodiversity (wildlife and habitats)
- Historic environment (protecting and conserving built heritage)
- Land and landscapes
- Road users (promoting road safety and licensing of transportation)
- Marine
- Local government (local government policy division supports councils)

## Local authorities

- Land use planning
- Local air quality strategies (to reflect the national air quality strategy)
- Local Authority Air Pollution Control (LAAPC) including PPC Part B installations in England and Wales
- Clean Air Act 1993
- Noise and statutory nuisance (for example, dust and odour)
- Environmental health
- Contaminated land
- Tree preservation orders

Other environmental regulators

| REGULATOR | RESPONSIBILITIES/LEGISLATION |
|---|---|
| Canal & River Trust Scottish Canals | Maintenance of inland waterway network |
| Cadw – Cadw is a Welsh word which means 'to keep' | Protection and conservation of the built environment in Wales |
| Department for Environment, Food and Rural Affairs (DEFRA) policy on the environment | Principal government department for policy on the environment |
| Oil and Gas Authority | Regulation of offshore oil and gas installations in the UK |
| Drinking Water Quality Regulator for Scotland | Monitors the performance of Scottish Water in terms of the quality of drinking water it supplies |
| Drinking Water Inspectorate | Regulates public water supplies in England and Wales. Responsible for assessing the quality of drinking water, taking enforcement action if standards are not being met, and appropriate action when water is unfit for human consumption |
| Historic England | Protection and conservation of the built environment in England, including listed buildings and scheduled ancient monuments. It has the power to prosecute offences under the Ancient Monuments and Archaeological Areas Act 1979 |
| Natural England | Conservation of wildlife and geology in England, including Sites of Special Scientific Interest (SSSIs), and protected species licensing. It has enforcement powers to prevent damage to habitats |

| REGULATOR | RESPONSIBILITIES/LEGISLATION |
|---|---|
| Health and Safety Executive | Joint competent authority (with EA, SEPA and NIEA) for Control of Major Accident Hazards Regulations 1999 (COMAH) sites. The Chemicals Regulation Division within the HSE regulates biocides, pesticides, detergents and chemicals covered by the EU REACH Regulation, and for compliance with the Classification, Labelling and Packaging (CLP) Regulation |
| Marine Management Organisation | Administers marine works consents in tidal waters and at sea: marine developments, offshore energy, coast defences, dredging and waste disposal. Administers certain applications on behalf of the Welsh Government, which is the licensing authority in Welsh waters |
| Scottish Government and local authorities | Flood defence in Scotland |
| Scottish Natural Heritage | Conservation and enhancement of habitats, species and landscapes in Scotland, including designated protected areas including National Nature Reserves, Special Protection Areas and National Parks |
| Water companies (England and Wales) | Water companies have a number of duties relating to water supplies (to collect, store and transfer water to cope with normal fluctuations in rainfall) and sewerage but they also hold powers to control and police discharges of trade effluent to foul drains under the Water Industry Act, 1991 |

## vi) The principles and approach to modern environmental regulation

The approach that regulators adopted for their regulatory activities in the past have taken a command and control, generally following the model:

- apply a set of rules;
- monitor and assess compliance with the rules; and
- enforce compliance with the rules.

**The principles applied to modern environmental regulation are that it should be:**

- **proportionate** (or risk-based): regulators allocate resources according to the risks involved and the scale of outcomes which can be achieved;
- **targeted** (or outcome-focused): regulators use environmental outcomes to plan and assess performance;
- **consistent**: regulators apply the same approach within and between sectors, and over time;
- **transparent**: regulators have rules and processes which are clear and available to organisations and local communities; and
- **accountable**: regulators explain their decisions and performance.

**The modern approach to regulation**

- Operators take responsibility for their environmental performance, demonstrating to regulators that they can effectively manage environmental impacts, use resources efficiently and operate in a socially responsible manner.

- Regulators assess the performance of regulated organisations and apply incentives and sanctions proportionate to the risk posed to the environment and observed standards of performance.

Following the Cabinet Office's 2017 'Regulatory Futures Review' in the UK, regulators are starting to complement this traditional command and control form of regulation and are starting to develop ways to better use data, behavioural interventions and incentives to recognise and reward star performers.

## vii) Regulatory definitions on environmental matters

The terms below are defined to ensure a clear understanding of their use in this Guide and, in particular, in the following sub-sections covering regulatory rules, compliance assessment and enforcement.

**Audit (regulatory):** in-depth evaluation of an operator's ability to comply with all, or parts of, the permit or directly applied legislation. For example, an audit might include specific reviews of the effectiveness of an operator's procedures and management system.

**Compliance:** the European Union Network for the Implementation and Enforcement of Environmental Law' (IMPEL)[40] defines compliance as: 'full implementation of environmental requirements. Compliance occurs when requirements are met and desired changes are achieved.'[41]

**Compliance assessment (regulatory):** the overall approach taken to check compliance with all the conditions of a permit or other regulatory instrument.

**Compliance monitoring:** compliance monitoring is defined by IMPEL as: 'collecting and analysing information on compliance status'. Compliance monitoring may be carried out either by an operator (who is subject to legislation) or a regulator (who enforces legislation).

**Operator:** In relation to a regulated facility, means:

**a)** the person who has control over the operation of the regulated facility;

**b)** if not yet operational, the person who will have control over the regulated facility once it is operational; or

**c)** if no longer operational, the person who holds the environmental permit.

**Operator self-monitoring:** operator self-monitoring is defined by IMPEL as 'monitoring undertaken by the operator in accordance with a requirement of a permit or relevant legislation'. It may include monitoring of emissions and of impacts on receiving environments.

**Sampling (check monitoring):** taking measurements of inputs, emissions or the receiving environment.

**Site inspection:** attendance at a site to check compliance with all or some of the permit conditions, or directly applied legislation (other than by check monitoring) using, for example, visual assessment.

## viii) Regulatory rules on environmental matters

**Directly applied regulations:** regulators enforce specific rules within legislation that are directly applied to operators, such as the Waste Duty of Care.[42]

**Duty of Care:** The Duty of Care applies to all controlled waste, defined as waste materials produced as part of an organisation or within the workplace. All organisations have a duty to ensure that any waste produced is handled safely and in accordance with the law. The duty applies to anyone who produces, imports, carries, keeps, treats or disposes of controlled waste or acts as a waste broker in this respect.

**Environmental permits:** regulators implement environmental legislation by issuing environmental permits[43] that contain conditions that the permit holder must fulfil to operate activities prescribed by legislation. These are normally applied to activities at specific sites or installations, and typically regulate polluting emissions to air (such as local authority air pollution control), water (water quality and abstraction licences) and land (waste management).

It is the responsibility of an organisation or operator to apply for a permit once it has recognised that one is required under legislation. The regulator receives an application and determines whether a permit is issued and what permit conditions are applicable.

Regulators issue guidance on the requirements for permits and on how to apply for them. This may include technical guidance, such defining Best Available Techniques (BAT) within BAT Reference Documents (BREFs); for example on environmental assessment, energy efficiency and sector-specific BAT requirements. For more information on guidance issued by regulators, visit gov.uk.

Permit conditions typically set out requirements in the following areas:

- **noise assessment and control:** regulation of noise under the environmental permitting regulations (EPR[44]) in line with the principles of noise measurement and prediction, and the control of noise by design, operational and management techniques and abatement technologies;

- **emission limit values:** numerical limits for emissions and ambient pollutant loads, sometimes expressed as a range of acceptable environmental loading;

- **technical standards:** for example, the operation and maintenance of abatement equipment to specified limits;

- **management standards:** requirement for a written management system that identifies the risks from the activity and outlines procedures and preventive measures to mitigate risks, for example;

  1. preventing or reducing accidents and incidents which might cause pollution or other environmental harm;

  2. operator and staff competency, managing and training staff;

  3. communication, with stakeholders including complaints procedures and engagement with the public and regulators; and

  4. procedures for review and evaluation to ensure the management system is effective and implemented.

- **notifications (of non-compliance) and reporting requirements:** for example, self-monitoring data and information, and records to document legal compliance checks, maintenance checks and completed improvements; and

- **improvement measures and programmes:** typically brought in when it is considered that a further period of time and/or further resources are required to meet permit conditions. This may be especially important with longer-term issues such as climate change.

**Other rules:** regulators may enforce other requirements.

An example is the EU ETS. Emissions trading gives companies the flexibility to meet emissions targets according to their own strategy. By allowing participants to trade in allowances, overall emissions reductions are achieved in the most cost-effective way possible. The scheme covers emissions of greenhouse gases from a number of industries which are specified in the EU Emissions Trading Directive (2003), initially covering emissions of carbon dioxide. The first phase of the EU ETS commenced on 1 January 2005.

For further information about the scheme, the EC Monitoring and Reporting Guidelines and the National Allocation Plan (NAP), contact the EA helpdesk at: ethelp@environment-agency.gov.uk

In order to tackle air pollution at the city level, urban centres like Stockholm, London and Singapore have implemented local charging schemes that impact drivers. Although they are not permits, they do set strict requirements and can lead to enforcement action if road users do not abide by them. Increasingly, more and more cities are introducing similar air quality schemes that look to limit the number or types of automobiles that can enter downtown zones, with a particular focus on vehicles responsible for the worst emissions like diesel cars.[45] In London, the Mayor has confirmed that from 8 April 2019 new, tighter emission standards – Ultra Low Emission Zone (ULEZ) standards – will affect petrol and diesel vehicles in central London.[46]

## ix) Compliance assessment on environmental matters

The Environment Agency sees the purpose of compliance assessment on environmental matters as being to:
check compliance of regulated organisations with relevant environmental legal requirements, including with directly applied regulations, conditions in permits or any other legal obligations that are applicable; and

• monitor the impact of regulated organisations on the environment to determine whether further regulatory effort is required (including further inspections, notices or permit variations) to secure compliance with environmental legal requirements.

| COMPLIANCE ASSESSMENT ACTIVITY | DESCRIPTION |
| --- | --- |
| Sampling and check monitoring | Taking measurements of inputs, emissions or the receiving environment. This may also include qualitative assessments such as odour monitoring |
| Review of reports and data | Scrutiny of reports and data submitted by the permit holder, such as emissions and environmental monitoring data, notifications of non-compliances and technical reports. This may also include reports and data from others such as local community in relation to pollution incidents |
| Procedure review | An operator may be required to submit procedures for agreement prior to implementation; particularly elements which are deemed high risk, such as amenity, climate change or fire prevention procedures). Regulators will check whether such procedures are in place and contain appropriate measures |
| Site inspection | Attendance at a site to check compliance with all or some of the permit conditions, or directly applied legislation |
| Audit | In-depth evaluation of an operator's ability to comply with all, or parts of, the permit, or directly applied legislation; for example, an audit might include specific reviews of the effectiveness of an operator's procedures and management system |

### How is compliance with environmental law demonstrated?

It is the responsibility of operators to manage their activities to achieve legal compliance, and it is the job of the regulator to check whether an operator is complying with legal requirements and decide whether further action is required.

An operator is assessed as compliant where they can provide evidence to show they have met permit (or other) requirements. Regulators expect operators to carry out their own evaluations to test whether they are in compliance. Evaluations should be risk-based, according to the hazards posed by operational activities. A systematic approach to compliance management, such as that provided by an EMS, should provide evidence of how environmental legal requirements are assessed and met, and identify any legal non-compliances. While an EMS will not cover human rights, the same principle of adopting a risk-based approach applies.

Regulators scrutinise evidence provided by operators in order to help determine whether permit conditions or other requirements are being met. The frequency of regulatory assessments will be informed by such evidence and observed standards of performance.

There may be circumstances where an operator is not fully compliant with one or more conditions in a permit, or other legal requirements. The operator should (a) immediately notify the regulator of the non-compliance(s), and (b) agree with the regulator the actions needed to return to compliance and mitigate any harm to the environment. It should then (c) implement those actions within the agreed timeframe.

**Environmental compliance is assessed using one or more of the following types of assessment:**

- **Continuous assessment:** this occurs when in-situ monitoring apparatus records data continuously either in real time for alarm purposes or in archive mode for subsequent examination. In this case, equipment is installed to monitor important aqueous discharges and stack emissions, typically at complex sites. However, not all aspects of a site's activities can be monitored in this way and therefore continuous assessment, where it is carried out, tends to be selective.

- **Retrospective assessment:** periodic and annual assessments rely on a retrospective assessment of compliance in which evidence is sought by the regulator to confirm that the operator has been in compliance. EMS evaluations and records can provide such evidence.

- **Periodic assessment:** this is the most common form of regulatory assessment. When used as part of a risk-based approach, this type makes optimum use of staff resources. There are three subsets:

  1. **Site-based assessment:** regulatory officers visit a premises and carry out either a comprehensive assessment, such as a legal compliance audit, or a targeted inspection such as check monitoring, based on pre-determined criteria for evaluation.

  2. **Report-based assessment:** regulatory officers receive and examine information, data returns, analytical results and programme reports back in their offices, between site visits.

  3. **Incident-based assessment:** regulatory officers respond to incidents notified to them by the operator or indirectly as a complaint by a member of the public. The response can include attendance at the scene of the incident.

- **Annual assessment:** regulators compile annual data and information for input into annual reports and plans. These contain summary data and it is necessary to assess compliance retrospectively in order to reach fair conclusions.

## x) Environmental monitoring

There are primarily two types of monitoring carried out or required by regulators; these are:

- monitoring of compliance with environmental legal requirements, for example permit conditions; and

- monitoring of environmental quality, for example meeting environmental quality standards.

Monitoring can be carried out in a number of ways (see table on page 42) and by operators themselves, or by regulators. The exact mix of monitoring will depend on regulatory requirements and resources, operator competence, third-party involvement and available techniques and technology.

It is vital that organisations deliver monitoring results that are valid, reliable, accurate, precise and appropriate. This requires the proper use of suitable methods, standards, services and equipment, trained and qualified personnel, effective planning, quality assurance and quality control.

With this in mind, the Environment Agency established its Monitoring Certification Scheme (MCERTS – www.mcerts.net) for England and Wales, to improve and ensure the quality of monitoring data. MCERTS is a means of assuring compliance with mandatory national and international standards for monitoring, which are now typically specified in legislation.

SEPA in Scotland recognises MCERTS-certified monitoring equipment and MCERTS-accredited services, such as test laboratories which perform periodic stack-monitoring, as a means of demonstrating compliance with standards for monitoring. The NIEA in Northern Ireland encourages operators to use MCERTS-approved continuous emission monitors and have manual spot monitoring work carried out by MCERTS-accredited personnel.

The Environment Agency has introduced Operator Monitoring Assessment (OMA), an auditing tool to assess an operator's provisions for monitoring and compliance with the requirements specified in permits.

## MCERTS and OMA

MCERTS is operated by CSA Group, SIRA Certification Service (SCS) and accredited by the UK Accreditation Service (UKAS) on behalf of the Environment Agency. The scheme is based on the following accreditation standards:

- ISO/IEC 17025 for monitoring and equipment testing;
- ISO/IEC 17020 for inspection;
- ISO/IEC 17021 for management systems;
- ISO/IEC 17024 for personnel certification; and
- ISO/IEC 17065 for product certification.

MCERTS covers:

- continuous emissions-monitoring systems (CEMs);
- manual stack-emissions monitoring;
- continuous ambient air-quality monitoring systems (CAMs);
- portable emissions-monitoring equipment;
- continuous water-monitoring systems (CWMS);
- the physical, chemical and biological analysis of effluent;
- data-acquisition and handling software;
- self-monitoring of effluent flow; and
- chemical testing of soil.

MCERTS assures users of certified instruments and services that such services and equipment:

- meet performance standards specified in current international standards and the requirements of EC directives; and

- comply with applicable national regulations and requirements; e.g., the Environment Agency's OMA requirements.

MCERTS also:

- enables instrument manufacturers and service providers to assure customers that certified instruments and services are suitable; and

- provides independent assurance of compliance to Environment Agency requirements, for installations.

**Environment Agency's Operator Monitoring Assessment (OMA) tool**

The Environment Agency introduced this auditing tool to assess operators' self-monitoring arrangements of emissions to air and effluent discharges from industrial processes. The agency has also adapted OMA for processes within the nuclear cycle and wastewater treatment works. OMA provides a means of:

- assessing operators' self-monitoring (including monitoring undertaken on behalf of operators by contractors) using a consistent and transparent approach;

- assessing compliance with permits and hence determine the degree of regulatory attention needed; and

- providing a driver for improvements in monitoring.

Source: EA, 2018

## xi) Environmental law enforcement actions

Enforcement action is taken by regulators as a response to an organisation failing or refusing to comply with legal requirements of any permits, permissions or other law that may have direct application.

The options open to regulators are wide-ranging: formal cautions, civil penalties, accepting an enforcement undertaking and, if need be, prosecution and sentencing. Regulators may also use legislation such as the Proceeds of Crime Act to confiscate money earned through environmental crime. Environmental sentencing includes a number of exceptionally high-levels of fines and imprisonment set in such a way as to act as a deterrent. Below are some examples of these penalties.

Prior to any enforcement response, regulatory tools such as notices may be used to mitigate the polluting effects of incidents and to prevent further incidents and pollution which may cause serious environmental damage or harm to human health. These may include:

- a prohibition notice to stop or prevent illegal and polluting activities;
- a suspension notice to suspend operations and certain polluting events; or
- a revocation notice that informs an organisation that its permit to operate has been revoked.

**Examples of exceptional statutory maximum penalties**

Under regulations 12, 38 and 39, The Environmental Permitting (England and Wales) Regulations 2016, the maximum penalty for operating a regulated facility without a permit is an unlimited fine and/or a five-year prison sentence.[47]

Under section 34 of the Environmental Protection Act (EPA), 1990 the maximum penalty for a breach of the duty of care relating to the treatment and disposal of waste is an unlimited fine.

Under s. 33 (1) (c), of the EPA 1990, the maximum penalty for disposing of waste in a manner likely to cause pollution or harm to human health is an unlimited fine and/or five-year prison sentence.[48]

**A positive approach to enforcement action**

Enforcement action should be proportionate to the potential or actual damage to the environment, the level of non-compliance and offences committed.

Any regulation should also be consistent with general rules governing organisations in all socio-economic spheres. For instance, in the UK, all regulators must have regard to the Regulators' Code (2014)[49] which states that regulators:

(1)   should carry out their activities in a way that supports those they regulate to comply and grow;

(4)   should share information about compliance and risk; and

(6)   should ensure that their approach to their regulatory activities is transparent.

Enforcement in recent years has seen a focus on proportionate action where regulators take account of and balance factors such as:
the risk posed to people and the environment;

• the seriousness of the breach – the potential or actual impact on the environment, people, legitimate organisations and critical infrastructure;

• the cost of clean-up and other aggravating features;

• the cost of taking enforcement action against the benefit of taking it; and

• the impact on economic growth: see, for example, the Environment Agency's Enforcement and sanctions policy (2018).[50]

Proportionality in enforcement has been assisted in the UK by an increasingly tough approach by the courts to pollution offences since the publication of the Sentencing Council's Environmental Offences: Definitive Guideline (2014). Within a year, the new guideline was, according to the Environment Agency, having: a 'marked impact' on sentencing with very many cases seeing increase in the fine which might otherwise have been imposed by the court, https://transform.iema.net/issue/october-2016.

**The Environmental Offences Definitive Guideline (2014)**

The Environmental Offences Definitive Guideline sets a 12-step sentencing plan which the court is required to follow [: s. 125(1) of the Coroners and Justice Act 2009]. This includes:

**Step 1:** that the court must consider making a compensation order requiring the offender to pay compensation for any injury, loss or damage resulting from the offence;

**Step 2:** Confiscation must be considered if either the Crown asks for it or the court thinks that it may be appropriate.

**Step 3:** the court is required then to determine the offence category using the culpability and harm factors provided in step three; for example, whether the offence was caused deliberately, recklessly or with little or no fault (culpability), and whether the offence involved a major adverse polluting event or a minor localised effect (harm).

**Step 4:** The court must then determine the appropriate level of sentencing, such as a fine for a company, which must reflect the seriousness of the offence and also take into account the financial circumstances of the offender. There are then a series of tables providing the range of fines for large, medium and micro organisations.

**Step 5:** The court will next consider a number of factors to ensure that the combination of financial orders such as compensation and fines removes any economic benefit from the offending.

**Steps 6-12:** provide a number of further factors that the court should consider and that provides some discretion on sentencing. These include step 7, any adjustment of the fine, and step 9, reduction for a guilty plea.

**UK Case Law on Environmental Offences: Definitive Guideline in action**

### R vs United Utilities

In R vs United Utilities (unreported) (Nov 2017) the Crown Court ordered United Utilities to pay a fine of £666,000 plus costs after it pleaded guilty to the negligent leak of untreated sewage into the River Medlock, Manchester, in 2014. On sentencing, Judge Potter noted that 'by far the most serious feature of the case is the defendant company's dreadful record or previous offending'. Consistent with the new guidelines, he explained that company's size and annual turnover of £1 billion left it liable to a higher band of sentencing.

(Transform p.11, Nov 2017[51])

### R vs Thames Water Utilities Ltd

In R vs Thames Water Utilities Ltd (Thames Water) (March 2017) Aylesbury Crown Court ordered Thames Water to pay a fine of £20,361,140.06 in fines and costs for a series of significant pollution incidents on the River Thames. These offences were caused by negligence leading to the death of wildlife and distress to the public. Judge Sheridan condemned the 'disgraceful conduct, of Thames Water Utilities Limited, which he said was 'entirely foreseeable and preventable'.

(Environment Agency, March 2017[52])

Fines imposed by the courts are often insignificant in comparison to the offending organisation's annual turnover or profit; however, the Sentencing Council 2014 revision of Environmental Offences has sought to address this, taking into account an organisation's size and turnover.

However, the biggest worry for an organisation is usually the indirect effect of enforcement action, and sensitivities to this vary according to circumstances (see Table on Effects of enforcement action). For example, a company with a large stockpile of unsold finished goods could be less concerned about a prohibition or suspension notice than another company struggling to fulfil orders. Similarly, a back-street supply chain intermediate with little public visibility may not place the same degree of emphasis on protecting its reputation as would a high-profile multinational with brands on supermarket shelves.

Where companies have had environmental incidents in the past that have led to legal action, another indirect effect is that they may be precluded from tendering for work where the client asks pass/fail type questions, similar to the pass/fail-type questions for ISO 14001:2015 or other standards. In other cases, companies will be required to answer additional questions to explain what control measures they have put in place to prevent similar incidents from happening in the future. Depending on how critical the work is and how relevant the fines are to the client, the client may be wary of working with poor-performing companies. For instance, if a waste management company is continually fined for waste management breaches, it might find that it may be unsuccessful in winning future work. It is also likely that clients will call in the senior management to performance manage or cease existing contracts.

Regulators are beginning to look at ways to increase public visibility of performance data and use behavioural insights to encourage people to 'do the right thing'. Creating better visibility and transparency around an organisation's performance will allow their supply chain to make informed decisions and change social norms.

| EFFECTS OF ENFORCEMENT ACTION | |
|---|---|
| Commercial | Loss of business |
| Industrial relations | Workforce concerns such as retaining and attracting employees |
| Reputational | Customer perception, other stakeholders, corporate reporting, ethical investors' concerns |
| Environmental impacts | Workforce concerns, site contamination, pollution incidents |
| Operational | Loss of production, accidents and injuries, business continuity, additional management time |
| Individual liability | Corporate manslaughter, director's liability and dismissal |
| Financial | Fines and increase in insurance premiums, cost of putting something right |
| Loss of social license to operate | Community unrest and inability to carry out operations |

### Civil sanctions

The Regulatory Enforcement and Sanctions Act 2008 give the Environment Agency a range of new powers to impose civil or (non-criminal) sanctions. These sanctions depend on the circumstances of the offence. The majority of civil sanctions applied to date have been enforcement undertaking, volunteered under the producer responsibility legislation.[53]

The Environment Agency enforcement and sanctions policy[54] sets out the Environment Agency's approach to enforcement, including the range of civil sanctions available for use. The policy paper[55] 'Annex 1: RES Act – the Environment Agency's approach to applying civil sanctions and accepting enforcement undertakings was updated in May 2018.

Civil sanctions offer a proportionate alternative to criminal sanctions. They have been broadly welcomed in some industries, such as the oil and gas industry with the introduction of the Offshore Environmental Civil Sanctions Regulations 2018.[56]

**Individual liability and directors' duties**

An important aspect of enforcement and prosecution is the individual liability that is often associated with many pollution offences. For example, s. 41(1) of the Environmental Permitting Regulations 2016, No. 1154 (EPR 2016) provides that if '... an offence committed under the regulations by a body corporate is proved (a) to have been committed with the consent or connivance of an officer, or (b) to be attributable to any neglect on the part of an officer, then the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.'

The consequence of these provisions are profound. The courts are getting tough on corporations and imposing huge fines. Punishment for individuals can be up to five years in prison for some environmental offences. Moreover, the scope of individual liability is wide with the definition of 'officer' under s. 41(3), EPR 2016 including: 'a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity'.

Finally, company directors have the added obligations of a statutory duty of trust (a fiduciary duty) and duty of care; with the duty of trust requiring a director to act with honesty, integrity and fairness for the benefit of company shareholders. These obligations are brought into sharp focus for sustainability by s. 172 of the Companies Act 2006 which requires a director to act in the way he or she considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. In doing so a director must have regard to, among other things: '(a) the likely consequences of any decision in the long term', and ... '(d) the impact of the company's operations on the community and the environment'.

### Section 172 of the Companies Act

A director of a company is required under the provision of s. 172 of the Companies Act 2006 to promote the success of the company for the benefit of its members as a whole. In doing so, one of the requirements that it will need to take into account is the impact of the company's operations on the community and the environment. This provision is known as the 'enhanced shareholder value'. A board should provide information in its strategic report to enable shareholders to assess how directors have performed their duties.

At the time of publication, the Financial Reporting Council (FRC) has closed its consultation for proposed revisions to the UK Corporate Governance Code which is applicable to all listed companies. It has proposed that secondary legislation will be introduced in relation to section 172 requiring 'all companies of a significant size (private as well as public) to explain how their directors comply with the requirements of section 172 of the Companies Act 2006, with regard to employee interests and to foster relationships with suppliers, customers and others'.

This will place a stronger duty on directors to ensure greater transparency in relation to human rights and environmental impacts that could affect the company.

## Environmental fines and turnover

The Sentencing Council Guidelines came into effect in 2014. Their adoption has had a direct impact on the turnover of organisations, with the median fine for an environmental offence increasing from £12,500 in 2014 to £21,500 in 2015, and the mean fine increased from £39,250 in 2014 to £70,600 in 2015.[57]

At the top end of the scale, in 2016, Thames Water became the first company to receive a record-breaking fine of £1 million under the new regime. This was followed by Yorkshire Water and Powerday Plc, who both also received a fine of £1m or above.[58]

In February 2016, Southern Water broke new boundaries as it was handed a fine of £2m following an incident at its Margate wastewater treatment station led to raw sewerage being discharged on the Kent Coastline.

Despite having already received a first record fine, Thames Water was in court again in 2017 and was handed a fine of more than £20 million. In light of such recidivism, the courts recognise that the fine must be large enough and punitive enough to bring the appropriate message home to directors and shareholders alike. The aim of these fines is to punish, deter and remove financial gain.

The Sentencing Guidelines therefore help ensure that companies not only focus on environmental compliance, but also to guard against reoffending post-prosecution to prevent further damage to their reputation.

## Penalties for successful prosecution
Environmental Permitting (England & Wales) Regulations

Organisations:
Indictment – Unlimited fine
Summary – £50,000 fine

Individual:
Indictment – Unlimited fine and/or five years' custodial sentence
Summary – £50,000 fine and/or six months' custodial sentence

# 1.3 Human Rights law

## i) Types of human rights legislation

**Key human rights treaties**

The Universal Declaration of Human Rights, 1948, is seen as a foundation for modern human rights.[59] The protection of human rights has historically been the remit of governments. The growth in the influence of multinational organisations, together with the increasing complexity of their relationships with other stakeholders means that organisations have the ability to impact both positively and negatively on human rights, particularly across their supply chains.

International human rights laws regulate the relations between states and individuals. Where governments do not hold organisations accountable for their actions, a governance gap has arisen.

Currently, there is no international treaty governing the actions of organisations in terms of their impact on human rights. The lack of organisations' accountability has given rise to a call for a treaty to be developed governing business and human rights, and particularly the actions of multinational companies. Partly in response to this, the UN Human Rights Council has adopted resolution 26/9 to develop a legally binding instrument to regulate transnational corporations and other business enterprises with respect to human rights.[60]

The standard to protect human rights is found in the so-called International Bill of Rights[61] which comprises:

- the Universal Declaration of Human Rights;
- the International Covenant on Economic, Social and Cultural Rights; and
- the International Covenant on Civil and Political Rights.

The Governing Body of the International Labour Organization (ILO)[62] identified eight conventions as fundamental to the rights of human beings at work, irrespective of development of individual member states.

These eight conventions[63] are:
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);

1. Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
2. Forced Labour Convention, 1930 (No. 29);
3. Abolition of Forced Labour Convention, 1957 (No. 105);
4. Minimum Age Convention, 1973 (No. 138);
5. Worst Forms of Child Labour Convention, 1999 (No. 182);
6. Equal Remuneration Convention, 1951 (No. 100); and
7. Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Since 1919, the ILO has maintained and developed a system of international labour standards. Various human rights recognised in the declaration and covenants and other international human rights instruments are implemented through international labour standards, including core labour standards.

For organisations, the ILO Declaration on Fundamental Principles and Rights to Work[64] adopted in 1998 commits member states and therefore organisations to respect and promote principles and rights in four categories. These categories are:

• freedom of association and the effective recognition of the right of collective bargaining;
• the elimination of forced or compulsory labour;
• the abolition of child labour; and
• the elimination of discrimination in respect of employment and occupation.

Notwithstanding the fact that there is no international treaty covering business and human rights, a voluntary human rights framework has been developed to provide guidance to states and governments known as the United Nations Guiding Principles on Business and Human Rights.[65]

A number of countries across the globe are beginning to pass domestic legislation requiring companies to disclose the steps they are taking to tackle modern slavery and forced labour. This is ever more important as recent reports by the Chartered Institute of Buildings reveal that modern slavery breaches occur both abroad and in the UK.[66]

**Legislation in the US and elsewhere requiring organisations to disclose the efforts they are taking to address modern slavery**

| US: California Transparency in Supply Chains Act 2010 (CTSA) | The CTSA only applies to retail sellers and manufacturers if they do business in the state of California and have annual worldwide gross receipts exceeding US$100,000.[67] Companies have to disclose on their websites 'efforts to eradicate slavery and human trafficking from [their] direct supply chain for tangible goods offered for sale'[68] |
|---|---|
| US: Federal Acquisition Regulation | An Executive Order (13627), signed by Barack Obama in 2012, required the Federal Acquisition Regulation to be amended. The amendments include regulations applicable to all contracts (such as the prohibition to use misleading practices for the recruitment of employees, using recruiters that do not comply with local labour laws, charging employees recruitment fees, or providing housing that fails to meet host country housing and safety standards), and regulations applicable to contracts where the portion performed outside the US exceeds $500,000 (contractors must develop a compliance plan applicable to the portions of a contract performed outside the United States; and submit a certification to the Contracting Officer on an annual basis stating that a compliance plan has been implemented) |

| US: Frank Dodd Act – s. 1502 | S. 1502 includes a requirement that companies using gold, tin, tungsten and tantalum make efforts to determine if those materials came from the Democratic Republic of Congo (DRC) or an adjoining country. If they did, organisations have to carry out a due diligence review of their supply chain to determine whether their mineral purchases are funding armed groups in eastern DRC. The US Securities and Exchange Commission (SEC) issued the final rule implementing section 1502 in August 2012[69] |
|---|---|
| US: Burma Responsible Investment Reporting Requirements | Introduced in 2012 by the Office of Foreign Assets Control[70] reporting requirements were placed on companies making new investments exceeding US$50,000 in Burma. This required information on due diligence procedures with respect to human rights/reporting rights |

Other parts of the globe are also beginning to consider implementing a Modern Slavery Act similar to the UK. The Australian parliament has published a report called 'Hidden in Plain Sight', setting out recommendations for the provisions to be included in proposed legislation on modern slavery.[71] Hong Kong is also considering implementing a modern slavery act.[72] However, in a decision made in June 2018, the Hong Kong government is not supporting this proposed Bill.[73]

**Voluntary frameworks on human rights and business**

**UN Guiding Principles on Business and Human Rights (UNGPs)**

One of the key voluntary frameworks governing human rights and business is the UN Guiding Principles on Business and Human Rights (UNGPs). This framework was unanimously endorsed by the UN Human Rights Council in 2011. The UNGPs establish that businesses have a 'duty to respect human rights' and explains the responsibilities of such organisations.[74]

The UNGPs emphasise the importance of transparency and communication, both for states and for companies in principles 3 and 21. These requirements recognise that reporting is a key element on how companies address and mitigate human rights, including modern slavery impacts.

The UNGPs set out a number of ways in which organisations should 'know and show' that they respect human rights, including:

1. adopting a human rights policy;[75]

2. carrying out due diligence to identify, prevent, mitigate and account for how organisations address any human rights impacts associated with their activities or business relationships; and

3. having processes to enable remediation of any impacts where appropriate.

Whilst the UNGPs are not legally binding, they are internationally recognised as 'the key global normative framework for business and human rights'.[76] They also emphasise that the interaction between governments and such organisations can be mutually reinforcing. Since 2011, hundreds of organisations have used the UNGPs to benchmark their corporate social responsibility (CSR) policies and approach to managing their human rights impacts.

Some organisations expect each part of the supply chain to do the same. See Section 5 for further information on standards and compliance assessment for environmental and social issues.

### Human rights legislation

A government's duty to protect human rights is reflected though the country's laws and regulations. Organisations are required to comply with all applicable laws and to respect human rights. Increasingly there are EU and national regulations that require mandatory reporting by organisations on their environmental and social impacts (see the table opposite for examples).

The requirement for an organisation to demonstrate the existence of due diligence procedures in place to minimise the risk of products being sourced illegally or unethically is growing, particularly in relation to human rights. Legislation requiring organisations to have due diligence procedures in place to cover both human rights and environmental impacts in supply chains is increasing, for example, the EU Regulation that governs environmental sourcing is the EU Timber Regulation (EUTR) that prohibits the placement of illegally harvested timber and products on the EU market.[78] This is similar to the EU Conflict Minerals Regulations,[79] 2017, which lay down supply chain due diligence obligations for EU importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.

These regulations demonstrate that organisations now have obligations covering their supply chains, potentially making the company at the top of the chain legally accountable for breaches.

**Examples of EU legislation requiring companies to report on human rights issues**

| | |
|---|---|
| European Non-Financial Reporting Directive (NFRD) 2014/95/EU | Applies to certain large public entities with more than 500 employees. Undertakings subject to the NFRD have to report on human rights.[80] They also have to refer to the voluntary frameworks that they are relying on, for example the UNGPs[81] |
| French Vigilance Law No. 2017-399, 2017 on the Duty of Care of Parent Companies and Ordering Companies | The law applies to France's largest companies – those registered in France with either: (a) more than 5,000 employees working for the company and its direct or indirect French-registered subsidiaries, or (b) more than 10,000 employees working for the company and in its direct or indirect subsidiaries globally. It requires that companies meeting these criteria develop and enact annual 'vigilance plans' that detail the steps they will take to detect risk and prevent serious violations with respect to human rights and fundamental freedoms[82] |
| Dutch Child Labour Due Diligence Law (Wet Zorgplicht Kinderarbeid)[83] | The law requires companies to examine whether child labour occurs in their production chain. If that is the case, they should develop a plan of action to combat child labour and draw up a declaration about their investigation and plan of action. That statement will be recorded in a public register by a yet to be designated public authority. The law will be effective from January 2020 |
| EU Conflict Minerals[84] Regulation 2017/821 EU | Regulations setting out supply chain due diligence obligations for importers of tin, tantalum, tungsten, their ores and gold originating from conflict affected and high-risk areas. The regulation is due to be implemented by 2020 |

**The relevant legal framework that governs human rights and organisations in the UK**

The Human Rights Act 1998[85] ensures that individuals in the UK have a remedy for breach of human rights. These rights are protected by the European Convention on Human Rights (ECHR), which came into force in 1953. The act applies to all public authorities and other bodies performing public functions, whether public or private organisations performing public functions. Public authorities can include local authorities, schools if publicly funded, courts and tribunals.

The UK has also created or endorsed a number of principles and enacted legislation that motivate different aspects of good corporate behaviour.[86] These include: the Declaration on Fundamental Principles and Rights at Work;[87]

- the OECD Guidelines for Multinational Enterprises;[88]
- the UK Bribery Act 2010;[89]
- the UK Corporate Governance Code;[90]
- s. 172 of the Companies Act 2006[91] places a duty on the director of a company to promote the success of the company. Under the Act, most companies have to prepare a stand-alone directors' report to help inform the members of the company, and help them assess how directors have performed their duty under s. 172.[92]

The legal framework governing human rights in the UK also includes employment regulation that requires companies not to discriminate against employees on grounds of sex, race, sexual orientation and religious belief and environmental regulations. The Health and Safety Work Act 1974 and the Data Protection Act 1998 (being revised by the EU General Data Protection Regulation[93]) are examples of legislation that applies to organisations to ensure the protection of human rights and privacy in the organisation's context.

In order to try and address labour abuse in the UK, the Gangmasters and Labour Abuse Authority[94] was set up as a Non-Departmental Public Body (NDPB) to licence organisations that provide workers in the fresh produce supply chain and horticulture industry. The Gangmasters Licensing Act 2005[95] sets out the requirements for labour providers operating in the regulated sectors.

In addition to legislation covering organisations, the UK government has published a National Action Plan[96] to give effect to the UNGPs.

**National Action Plans (NAP)**

The UK was also the first country to implement a National Action Plan to give effect to the UNGPs. The NAP: Good Organisations: Implementing the UN Guiding Principles on Organisations and Human Rights sets out the UK's vision even though devolved administrations are entitled to develop their own action plans or strategies in support of the plan. It embodies the UK's commitment to protect human rights with the aim of helping UK companies understand and manage human rights.

**Examples of UK legislation requiring companies to report on human rights issues**

| UK Modern Slavery Act | The UK Modern Slavery Act requires all commercial organisations that sell goods or provide services in the UK with a turnover of £36 million or above, to publish an annual slavery and human trafficking statement setting out the steps it has taken to tackle modern slavery in its organisation and supply chains.[97] |
|---|---|

## ii) Identifying applicable legislation: sources of information for human rights law

Various sources of information are used by organisations to identify and assess human rights legal requirements. Organisations are required to respect the rights of individuals within their organisations and supply chains. They also have to comply with national legislation that requires them to report on human rights or social issues.

The first step for an organisation is to understand how its operations impact on the human rights of individuals. This may involve undertaking a 'human rights mapping' exercise. The second aspect of compliance is identifying what legislation applies to the organisation within the jurisdictions where it operates.

**Sources of information on human rights and modern slavery issues in the UK**

Government departments and public sector bodies:
The Home Office

- The Welsh Assembly[98]

- Scottish Parliament

- UK National Contact Point – Department of International Trade

- Department for International Development

- Department for Business, Energy and Industrial Strategy

- Equality and Human Rights Commission

- Gang Master and Labour Abuse Authority

- Health and Safety Executive

- Anti-Slavery Commissioner

- Financial Reporting Council

**Trade associations, NGOs and member organisations**

Government departments and public sector bodies:
Trade associations relevant to organisations. For example, the Toy Association, IPIECA (oil and gas industry association)

- Stronger Together

- Ethical Trading Initiative

- SEDEX

- Sustainability Supply Chain School

- Joint Parliamentary Committee on Human Rights

- A list of anti-slavery NGOs is also available here: bit.ly/2xwr9ou[99]

## iii) The purpose of human rights regulation

The purpose of human rights legislation is to protect individuals from discrimination and promote the respect of individuals. Human rights are rights and freedoms that belong to all individuals regardless of their nationality and citizenship.[100]

The regulatory framework governing organisations and the protection of human rights consists of a mixture of regulations ensuring that employees are protected from health and safety, discrimination, ensuring equality and regulation governing how companies have to report on the impact on human rights in their organisation and its supply chains. Mandatory legislation that requires organisations to be more transparent about how they are addressing human rights or combatting modern slavery in their supply chains is growing, for example, the California Transparency in Supply Chains Act, 2012, and the UK Modern Slavery Act, 2015. Not only has there been a growth in mandatory and voluntary reporting instruments that cover how organisations report on their human rights impacts, but legislation governing how organisations treat their employees has also grown in the UK, for example the Equality Act, 2010.

In certain regions, the absence of a strong regulatory framework means that organisations have taken it upon themselves to uphold human rights (including decent labour standards) and have put together several initiatives that seek to plug regulatory gaps by supporting best practices in their sector. The Business and Human Rights Resource Centre, a non-profit organisation that acts as the global hub for resources and guidance by business in this field, has laid out in the table below some of the efforts made in this regard within the construction industry in the UAE.

**FOCUS ON THE UAE:** In the face of regulatory gaps, how are engineering and construction companies tackling human rights risks in their operations and supply chains?

By some estimates, the Middle East's construction sector is the largest and fastest-growing in the world. In 2017, 44% of new contract awards[101] in the Gulf were awarded to projects in the United Arab Emirates (UAE).

Employment in the construction industry globally is characterised by low wages and precarious working conditions. Aspects of the business model contribute to widespread violations of labour rights, be it the tendering process, which puts downward pressure on workers' wages and encourages other high-risk cost-saving measures; the many layers of subcontracting that reduce supply chain transparency and corporate accountability for abuse; and the project-based 'boom and bust' cycle that invites companies to rely on external suppliers of temporary labour.

These risks are exacerbated in the UAE by the dominance of migrant workers in the construction labour force. It is estimated that migrant workers in the country account for 88% of the population, and form over 90% of the private sector. Migrant workers are recruited and employed under the visa sponsorship system, known as 'kafala' (Arabic for sponsorship), which ties migrant workers' immigration and legal residency to an individual sponsor throughout the contract period, in such a way that a migrant worker cannot typically enter the country, resign from a job, transfer employment, nor – in some cases – leave the country without first obtaining explicit permission from the employer.

Despite introducing new rules that ease restrictions on migrant workers' freedom of movement, reports[102] continue to surface of serious rights violations, including exploitative recruitment, late payment of wages, wage discrimination, passport confiscation, unsafe working conditions and substandard living conditions. The lack of avenues for workers to raise grievances, prohibitions on the right to freedom of association, and gaps in law enforcement all exacerbate these issues.

In 2015, the UAE government launched the Taqdeer Award[103] to encourage a race to the top on worker welfare in the country's construction sector. It is designed to reward construction contractors that demonstrate strong labour practices and gives them priority for government projects.

Despite the reported risks, the Business and Human Rights Resource Centre's 2016 survey of construction companies[104] in the UAE and Qatar indicated that the industry lags behind other sectors in understanding and implementing the UN Guiding Principles on Business and Human Rights and adopting the policies and practices necessary to prevent, mitigate and remedy abuses.

Through our research, we have identified a handful of companies with operations in the UAE that are reportedly taking meaningful steps to improve human rights due diligence and adopt procedures to provide safe and decent conditions for migrant construction workers. For example:

1.  The Middle East Executive Board of Multiplex, a UK-headquartered construction company, ratified a Welfare Policy Statement and accompanying Welfare Principles in October 2016. These outline the company's approach in key risks areas ranging from employment standards to living conditions and grievances and labour disputes. Multiplex is also a founding member of Building Responsibly,[105] a group of leading engineering and construction companies working to promote the rights and welfare of workers across the industry.[106]

2.  Another UK-headquartered company, Laing O'Rourke, has expressed public support for the Modern Slavery Act, acknowledging the responsibility of business leaders to confront modern slavery in their supply chains and translating this commitment at the operational level.[107]

3.  The UAE conglomerate Al Naboodah Group Enterprises (ANGE), which encompasses Al Naboodah Construction Group, received a 'Sustainable Business Model' award at the Gulf Sustainability and CSR Awards in early 2018. This followed the company's hosting of a supply chain conference for 150 of its suppliers and business partners to discuss best practices in sustainable and ethical supply chain management and disseminate the company's newly issued code of conduct and supply chain charter.[108]

The growing attention to human rights in the construction sector has spurred several initiatives that support construction companies grappling with labour issues. The UK Building Research Establishment (BRE) and Building Responsibly are taking the lead on introducing labour standards for the industry with the launch of the Ethical Labour Sourcing Standard (BRE) and Building Responsibly principles (due to be launched in June 2018).[109] Also in the UK, Stronger Together and the Chartered Institute of Building have a programme[110] on tackling modern slavery in construction supply chains as does the Supply Chain Sustainability School[111] and a newly launched 'modern slavery risk mitigation and continuous improvement programme' set up by Ardea International in partnership with Action Sustainability. There are also opportunities for construction firms to participate in cross-sector initiatives on key issue areas, such as the Leadership Group for Responsible Recruitment[112] convened by the Institute for Human Rights and Business.

For more information on construction risks in the UAE and steps construction companies should take to ensure safe and decent working conditions for their workforce, see 'A Human Rights Primer for Business: Understanding Risks to Construction Workers in the Middle East'.[113] For more on modern slavery reporting, you can reference our case studies on leading practice.[114]

*(Mariam Bhacker, Gulf programme manager, Business & Human Rights Resource Centre)*

**Duties and powers of regulators relating to human rights**

While the Secretary of State is responsible for bringing an injunction against an organisation that has failed to comply with the requirements of section 54 of the Modern Slavery Act 2015, its function is not to 'police' business on whether they are complying with the act on a day-to-day basis. The legislation sets out guidance on the steps that organisations should take to tackle modern slavery and report on this in their annual slavery and human trafficking statement. This is supplemented by Government guidance.

**Home Office advice on how business should approach compliance with the Modern Slavery Act**

All businesses need to stay vigilant and take a risk-based approach to preventing these crimes. Different businesses will need to approach this issue in different ways, but we would encourage businesses to work together and with NGOs to apply best practice.

As a starting point, the government recommends organisations take measures in these six areas of activity to help prevent modern slavery:

1. organisational structure and supply chains
2. organisational policies
3. assessing and managing risk
4. due diligence
5. performance indicators
6. training.

All organisations are encouraged to report as detailed a picture as possible of the steps they have taken to address and remedy modern slavery in these areas, and their effectiveness, by publishing an annual slavery and human trafficking statement. Commercial organisations are legally obliged to publish a statement if they supply goods or services; carry on a business or part of a business in the UK and have an annual turnover of £36m or more. This means it can apply to organisations based abroad if they carry on part of their business in the UK. If your business falls in scope, you must ensure your statements fulfil the following criteria:

Statements must be approved by the board of directors (or equivalent management body) and signed by a director (or equivalent).

7. If the organisation has a website, statements must be published on that website and a link to the statement must be placed in a prominent place on that website's homepage.

8. If the organisation does not have a website, it must provide a copy of the statement to anyone who makes a written request for one within 30 days.

The government recommends that organisations publish their statement as soon as reasonably practicable after the end of their financial year. In practice, it expects organisations to publish their statement within six months of the organisation's financial year end. Organisations may wish to publish these statements at the same time as they publish other annual accounts. The government has published 'Transparency in supply chains – a practical guide'[115] to help organisations comply with the Modern Slavery Act.

## iv) Principal human rights regulators

While there is no single act that governs organisations and their impact on human rights, there are a number of regulations that seek to protect the human rights of individuals in the context of an organisation's operations and its supply chains.

The UK Employment Act 1996 governs the relationship between the employer and the employee. Most employment law is categorised as civil or private law meaning it is enforced as a result of one party (the claimant) suing another (the respondent).

**Principle regulators pertaining to organisations and human rights**

| | |
|---|---|
| **Equality Commission** | This is the regulatory body responsible for reforming the Equality Act 2010. Their duties include 'reducing inequality, eliminating discrimination and promoting and protecting human rights'. They have a range of powers that include providing advice and guidance, publishing information and undertaking research. |
| **Secretary of State** | Section 54 of the Modern Slavery Act is enforceable by the Secretary of State for the Home office. The criminal enforcement against individuals accused of the crime of human trafficking is dealt with by the police. |
| **Police** | Human trafficking and modern slavery offences are tried by the courts on the basis of police evidence. The Home Office has devolved power to local authorities to determine the priorities of the police. The Police and Crime Commissioners (PCC) are responsible for delivering community and policing safety in their local communities. |
| **Financial Reporting Council (FRC)** | The FRC is the regulator responsible for promoting high-quality corporate governance and reporting to foster investment. The FRC Conduct Committee's role is to investigate cases where it appears that the reporting requirements have not been followed.[116] The FRC has the power to ask directors to explain apparent departures from reporting requirements. Failing voluntary action, the Conduct Committee[117] can exercise its powers to secure the revision of account through a court order. The FRC also governs environmental reporting. |
| **Gangmasters and Labour Abuse Authority (GLAA)** | The GLAA regulates organisations who provide workers to the fresh produce supply chain and horticulture industry. They ensure that labour providers meet the GLAA licensing standards. |
| **UK Serious Fraud Office (SFO)** | The SFO both investigates and prosecutes cases concerning fraud. |
| **National Crime Agency (NCA)** | The NCA leads the UK's response to bribery and corruption. |
| **Health and Safety Executive (HSE)** | The HSE is responsible for regulating and enforcing health and safety. |

**Other bodies relevant to handling disputes on organisations and human rights**

| ACAS | Provides free and impartial advice and information to employers and employees on all aspects of the workplace |
|---|---|
| Anti-Slavery Commissioner | The UK has created an Anti-Slavery Commissioner who works to spearhead the UK's response to modern slavery. |
| National Contact Points (NCPs) | The NCPs are mechanisms put in place by the OECD to further the effectiveness of the OECD guidelines. They contribute to the resolution of disputes alleging non-observance of the guidelines. |

## v) The approach to human rights regulation

The principles and approach to modern environmental regulation (as described in previous sections of the guidance) also apply to human rights law (p39).

### GLAA approach to breaches of human rights

The Gangmasters Labour and Abuse Authority (GLAA) investigates labour market offences, as defined in section 3(3) of the Immigration Act 2016. These include the Gangmasters (Licensing) Act 2004, Employment Agencies Act 1973, National Minimum Wages Act 1999, and Modern Slavery Act 2015. The authority has jurisdiction in England and Wales, where it has been empowered to use police powers from the Police and Criminal Evidence Act 1984.

While it now has a responsibility for the investigation of labour exploitation offences irrespective of the industry in which workers are employed, it continues to discharge a regulatory licensing regime for those companies that provide workers into the agricultural, shellfish and processing and packaging industries throughout the UK. If the GLAA identifies non-compliance in industrial sectors licensed by the GLAA, it will consider revocation of a company's licence. Where the actions of a licence holder also constitute criminal offences, it will carry out a criminal investigation. The GLAA powers of enforcement now also applies outside the licensed sectors. Where offences

are proven, the GLAA will take a proportionate approach to sanctioning such offences. It may refer the case to the Crown Prosecution Service to consider prosecution. In other cases, it may consider that the use of an alternative sanction is appropriate. Under the Immigration Act 2016, it may offer a labour market enforcement undertaking (LMEU). A LMEU seeks agreement of the offender to improve compliance and remedy non-compliances. If they do not do so, the GLAA can seek a Labour Market Enforcement Order (LMEO) from a Magistrates Court, to enforce the grounds of the undertaking. If the LMEO is ultimately not complied with, prosecution for a breach of the order may be required.

Under section 54 of the Modern Slavery Act, any business that has a turnover in excess of £36 million a year is required to produce a statement of what they have done to identify and prevent modern slavery in their supply chains. Companies should exercise due diligence to ensure that they do not inadvertently allow forced labour to flourish. If modern slavery is identified, companies should report it to the GLAA or to the police.

The law does not sanction companies for not producing a statement on slavery in their supply chains, or where the company's proposed actions do not appear to exercise due diligence. However, if modern slavery was identified in the supply chain of such a company, the GLAA would advise it on how to exercise greater due diligence in future. Investigations into modern slavery consider whether the company incited a person to commit an offence, or aid, abet, counsel or procure such an offence. These are classed as labour market offences, as defined in section 3(3)(k)&(l) of the Immigration Act 2016.

*(Darryl Dixon, Director of Strategy, Gangmasters and Labour Abuse Authority)*

## vi) Regulatory definitions on human rights matters

**Equality:** The Equality and Human Rights Commission defines equality as ensuring that every individual has an equal opportunity to make the most of their lives and talents, and believing that no one should have poorer life chances because of where, what or to whom they were born, what they believe, or whether they have a disability. Equality recognises that historically, certain groups of people with particular characteristics in terms of race, disability, sex and sexuality, have experienced discrimination.[118]

**Human rights impact assessment (HRIA):** The Business and Human Rights Resource Centre defines Human rights impact assessment as 'a process for identifying, understanding, assessing and addressing the adverse effects of programmes, projects and activities on the human rights enjoyment of workers, communities, consumers or other rights-holders'.[119]

**Human rights due diligence:** According to the UN Guiding Principles Reporting Framework, human rights due diligence is: 'An ongoing risk management process... in order to identify, prevent, mitigate and account for how [a company] addresses its adverse human rights impacts. It includes four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed.'[120]

**Ethical audit:** defined as a 'neutral, third party verifiable process to understand, measure, report on and help improve an organisation's social and environmental performance'.[121]

## vii) Regulatory rules on human rights matters

There are limited instances where a licence or permit is required to ensure that an organisation is complying with laws that monitor the protection of human rights. One example where a licence is required is under the Gangmasters (Licensing) Act 2005,[122] which governs the protection of employees from labour abuse. The GLA Act requires that no person can act as gangmaster without a license describing the activities authorised by the regulator. In the event of a breach of the act, the license can be revoked.

In recent years there has been the acknowledgement that organisations should have a 'social license to operate'. The concept of an informal 'social' licence is where organisations earn the ongoing approval from the local community and other stakeholders to operate. It will compromise the perceptions of the stakeholders or community of the legitimacy of the project. Sometimes, despite an organisation having a valid permit to undertake its operations, it may not have the 'social licence to operate' which will impact on it being able to carry out its operations.

## viii) Compliance assessment on human rights monitoring

The purpose of human rights compliance assessment monitoring (externally and internally) is to:

- check compliance of organisations with legal requirements, including directly applied regulations or other legal obligations that are applicable to relevant human rights impacts; and

- monitor the impact of the organisation on human rights to determine whether further action is required by the organisation to prevent human rights abuses, or in the event that human rights abuses are identified to establish appropriate forms of remedy.

There may also be different regulatory requirements monitoring human rights impacts, depending on the jurisdictions that the organisation operates in. For example, the Equality Act requires organisations with employees to demonstrate that it understands the requirements of the act and complies with them by the creating policies and procedures. If the same organisation has complex supply chains, it will have to understand how its activities impact the human rights of individuals in its supply chain. This includes understanding the requirements of domestic legislation in each country or region where it operates, in order to ensure that proper systems are in place to detect any potential abuses and ensure compliance.

**How is compliance with the Modern Slavery Act demonstrated?**

Section 54 (the Transparency in Supply Chains clause) of the UK Modern Slavery Act[123] requires that any commercial organisation that produces goods or services in the UK, and has a global turnover of £36 million or above, has to produce an annual modern slavery and human trafficking statement.

**What is required?**
Commercial organisations have to publish an annual slavery and human trafficking statement.

**Who approves the statement?**
The board of directors (or equivalent in partnerships) must approve the statement which also has to be signed by a director.

**What steps must be taken?**
While an organisation can state that it is taking no steps to address modern slavery and can be compliant under the provisions of the act, section 54 requires that companies should include information on the steps they are taking to combat modern slavery in their organisation and supply chains. Section 54(5) sets out the areas the statement should cover.

**Publication of the statement**
It is a legal requirement that the statement is published on the website and that a link is placed in a prominent place on the home page of the company's website.

**PwC CASE STUDY: Complying with the Modern Slavery Act (2015)**

As a responsible business, PwC seeks not only to subscribe to the letter of the law, but to do business in a way that respects everyone. In anticipation of the Modern Slavery Act, in the summer of 2015 we conducted a piece of stakeholder engagement to understand from our clients, suppliers, government and human rights experts what their expectations of us were and what best practice looked like. It was clear from this exercise that, even though as a professional services firm we're not in a sector typically associated with modern slavery risks, our stakeholders still expected us to have a robust programme in place.

Our own employees were considered low risk for modern slavery issues, so our main focus has been on our supply chain. We purchase fewer materials than businesses in many other sectors. However, we still spend more than £650m with suppliers each year so we strive to influence our sustainability impacts beyond our direct operations, where we can. Our main procurement is primarily associated with services delivered to us in our offices (such as security, maintenance, cleaning, catering and 'welcome' services) and products such as laptops, stationery and promotional materials.

To identify risks associated with our supply chain, we used the outputs from the stakeholder engagement exercise, conducted targeted research on key suppliers, interviewed relevant industry bodies and undertook a comprehensive review of human rights and modern slavery reports. This information allowed us to identify the modern slavery risk hotspots in our supply chain, which were identified in the production of IT goods, food, support staff uniforms and promotional merchandise. Support staff that work in our offices were considered relatively lower risk, but were also recognised as a vulnerable group.

**IT**
*Our business relies on technology ranging from laptops
and smartphones to equipment used in data centres.*

**Food**
*Many of our large offices offer in-house catering to our workforce.*

**Support Staff Uniforms**
*There are around 700 people who work on our sites
to deliver support services and wear uniforms*

**Promotional Merchandise**
*We produce promotional items which are used at client events and for
other marketing purposes. Although not a high-profile area for human
rights violations these products carry our brand and so potentially carry an
increased reputational risk.*

To prioritise our efforts in each hotspot area we considered our spend
(an indicator of our influence to impact change) and the geography of
production (typically an indicator of the level of risk). We're now working
in collaboration with our tier one suppliers to get further clarification and
assurances of the recruitment and working practices at the manufacturing
sites where the main goods we buy are produced in each category. We've
also established an escalation protocol so we can work with relevant
suppliers to address issues that may arise and ensure appropriate remediation
is provided to victim(s), should there be any. This may require us to activate
our right to conduct audits, which is included in our contracts, and,
ultimately, if we felt that our supplier's response was unsatisfactory, we would
consider terminating the contract.

Accountability for human rights and modern slavery resides with our head of
corporate purpose. Human rights and modern slavery is discussed annually
by the executive board to help set direction for the programme in the coming
year. To see PwC's latest Human Rights and Modern Slavery statement see
www.pwc.co.uk/humanrights.

*(Phil Case, Director, Responsible Investment and Sustainability,
PricewaterhouseCoopers)*

**DHL CASE STUDY:** Management systems and cross-border compliance with modern slavery legislation

Deutsche Post DHL Group is the parent company of DHL Supply Chain, with more than €60 billion in revenue in 2017. This makes it the largest postal services provider in Europe. The global business is organised into four divisions: post – e-commerce – parcel express; global forwarding and freight, and supply chain.

Deutsche Post DHL Group maintains two codes of conduct, one for the group's operations which is monitored by the compliance team and available in more than 20 languages, and another for suppliers, available in more than 25 languages; forming the basis for supplier relations and looks to ensure that suppliers abide by the group's standards and values. Together, the codes of conduct constitute the policy with regard to respecting human rights. The group has thus refrained from formulating a separate human rights policy.

The key pillars of the group code of conduct are respect, tolerance, honesty and candour as well as willingness to assume social responsibility. The guidelines apply to all employees, irrespective of their place in the group's hierarchy, and to divisions. The supplier code of conduct obliges suppliers to adhere to ethical and ecological standards. Child and forced labour are prohibited, and salaries as well as working times must comply with national laws and regulations.

Both codes are guided by the principles of the United Nations Global Compact and principles of the 1998 International Labour Organization Declaration on Fundamental Principles and Rights at Work' in accordance with national law and practice. The group has also made a public commitment to fundamental charters and initiatives such as the

Universal Declaration on Human Rights and the OECD Guidelines for Multinational Enterprises.

A number of training modules on both codes are available. For example, the Employee Relations (ER) certified module 'Building Great Employee relations', an internal certification process, focuses on employees with management responsibilities. Among other things, it highlights the challenges involved in complying with global standards and accepted local practices.

Compliance checks are carried out on a random basis on suppliers and cases of non-compliant behaviour, if not addressed, will result in further action, including the termination of the business relationship between Deutsche Post DHL and the supplier.

In the UK, for the purposes of complying with section 54(1) of the UK Modern Slavery Act 2015, DHL Supply Chain along with other divisions issues an annual modern slavery statement which highlights the structure and application of these codes of conduct. The latest statement for the financial year ending April 2017 is available on our website.[124]

In France, the Corporate Duty of Vigilance Law came into force on March 28, 2017. This law covers large limited liability companies that meet the criteria including: foreign companies headquartered outside France, with French subsidiaries, as long as they employ at least 10,000 employees worldwide, including through direct and indirect subsidiaries. This law applies to Deutsche Post DHL Group. Generally, the French law requires companies to establish and effectively implement due diligence measures to identify and prevent human rights violations and environmental damages in connection with their operations. This is also required by the German National Action Plan. To fulfil these

requirements, the group has implemented a management system in line with its goal to effectively implement the human rights policy across the group and to comply with the requirements of the UN Guiding Principles on Business and Human Rights. One component of the management system is periodic country-level ER Reviews (formerly ER Due Diligence).

The group conducts regular country-level Employee Relations Assessments as part of the ER due diligence process. These help DHL to raise awareness for the importance of good employee relations and anticipate future trends, especially in emerging economies, gain insight into employee relations in the respective countries and identify challenges in this area, and help local management address them with the right tools and processes.

For further information on Deutsche Post DHL ER reviews, please see the Group's Corporate Responsibility Report published on 7 March 2018.

*(Kirit Patel, Environment Manager, DHL Supply Chain)*

## ix) Human rights monitoring

Monitoring of potential abuses of human rights by organisations and modern slavery is generally carried out through internal processes of organisations themselves.

In instances where an organisation's activities have breached the human rights of an individual, reporting the incident may be required by regulation. If a negative impact has been identified, the organisation should consider ensuring that it has appropriate internal reporting processes and mechanisms in place on how the breach will be remedied. Examples of these are grievance mechanisms and whistleblowing policies.

Some organisations also monitor potential human rights abuses by implementing ethical audits carried out by third parties. Human rights abuses are not generally policed by the regulators unless there is a licence involved, such as one issued by the GLAA or in relation to health and safety issues.

The FRC monitors information included on environmental and human rights information in the strategic report of companies published under the Company Act 2006 requirements. The Equality and Human Rights Commission[125] aim to help organisations to ensure they fulfil their requirements under the Equality Act and provide guidance to organisations to do this.

The GLAA does monitor the conditions of the licenses granted to gangmasters.

The Home Office is not actively monitoring the publication of organisations' statements made in response to the Modern Slavery Act. The government is not taking enforcement action against organisations for failure to publish statements. The Anti-Slavery Commissioner has written to 25 FTSE100 companies whose statements were not compliant with the Act.[126]

However, NGOs and the media are scrutinising the negative impacts of business on human rights and also the modern slavery statements of organisations to benchmarking performance. For example, the Corporate Human Rights Benchmark[127] ranks 98 of the world's largest publicly traded companies, operating in three at-risk sectors. The Business and Human Rights Resource Centre publishes a modern slavery

registry[128] which captures all the statements that have been published to date. The TISC report also captures the modern slavery statements of organisations.

If a company is breaching OECD Guidelines, a complaint can be made to the National Contact Point (NCP) in countries where they are set up.[129] The main role of the NCPs is to ensure the effectiveness of the OECD Guidelines.

### Reporting under the Modern Slavery Act: TechUK insight

Businesses in the tech sector have increasingly had to get used to non-financial reporting and it is not a new concept for those in the environmental space, but the flexible approach to complying with the Modern Slavery Act has caused challenges for firms: companies more used to tick boxes, measures to check against and prescriptive requirements, have frequently struggled particularly in understanding what a good statement under the act looks like.

TechUK undertook a review of statements from companies in the tech sector to start a conversation on what best practice looks like and to understand some of the challenges companies faced in complying.

In our view, the best statements had:

- metrics to illustrate progress and compliance, for example, the number of staff trained, audits carried out, calls to whistleblowing line and suppliers vetted;

- examples and case studies of non-compliance and how these were resolved;

- details of corporate governance structures and reporting methods, even if the company believes it is at a low risk of having incidences of modern slavery in its operations;

- details of how risk assessments are carried out;

- details of whistleblowing mechanisms and how they have been used;

- defined internal governance structures and discussion on the responsibilities that have been assigned to staff, directors and board members;

- assessments of both downstream (towards end of life and disposal) as well as upstream (towards raw materials) suppliers and contractors.

But challenges remain. These include: identifying the best metrics and key performance indicators to monitor progress; a clear understanding of the sphere of responsibility, particularly for companies operating unique business models; identifying effective partners in-region to gather better intelligence on factories; and, in some cases, in recognising that low-risk operations does not mean there is no risk.

The full paper is available on our website.[130]

*(Susanne Baker, Head of Programme, Environment and Compliance, techUK)*

There have been a number of reports that have researched the impact of the modern slavery act on various sectors. These include:
CORE Coalition: 'Risk Averse'[131]

• All that glitters is not gold: shining a light on supply chain disclosure in the UK jewellery industry[132]

• Modern Slavery Statement: one year on[133]

• First year of FTSE 100 Reports under the UK Modern Slavery Act: towards elimination?[134]

• Sancroft-Tussell Report: Eliminating Modern Slavery in public procurement.[135]

## x) Human rights law enforcement actions

While there are not many laws that legislate for criminal sanctions to be brought for the abuse of human rights by business actions, there is some legislation with penalties that are enforceable by the courts for breach. For example, health and safety regulations, employment legislation and for human trafficking offences under the Modern Slavery Act. Civil claims and negative reputational impacts may serve as penalties for organisations found guilty of abusing human rights.

A company may lose its license to operate (for example, under the Gangmasters Licensing Act), or be exposed to legal liability for civil claims such as in the so-called 'Happy Eggs' case, or an unspecified fine if the Secretary of State takes action against a company that has failed to disclose its modern slavery statement under the provisions of the Modern Slavery Act. The' Happy Eggs'[136] case involving the enslavement of Lithuanian men, led to a civil claim by the victims and payment of £1 million in compensation and legal costs.

Reputational risk is a growing concern for major companies as evidenced by the negative publicity surrounding Sports Direct and the subsequent loss in share value linked to media reports about its weak governance structure and the human trafficking cases.

## Section Two
# Environmental management systems (EMS), management systems and legal compliance

This section addresses what an EMS is and the value of an EMS in addressing environmental and human rights compliance. While some smaller companies may not feel that an EMS is something they could adopt, the principles that are set out in this part of the Guide can be readily adopted by any organisation.

## 2.1 What is an EMS?

An EMS is defined as 'that part of an organisation's management system used to develop and implement its environmental policy and manage its environmental aspects' (ISO 14001:2015).

### i) The value of management systems for addressing human rights compliance

While an EMS addresses environmental aspects and impacts, there are other management systems and standards that can be used by an organisation to address both social and environmental aspects. One of these is ISO 20121,[137] the international standard for sustainable events.

**Examples of other ISO standards addressing human rights and social issues are:**

- ISO 26000: provides guidance to all types of organisations on the underlying principles of social responsibility;

- ISO 20400:[138] covers sustainable procurement. The standard is applicable to any organisation, of any size, to explain sustainable procurement, implement and improve procurement practices within organisations. IEMA has produced a guide to support using the standard: 'Delivering Sustainable Outcomes through Supply Chains using ISO 20400'.[139]

- In April 2018, the Building Research Establishment (BRE) launched the Ethical Labour Sourcing Standard. The online tool is an opportunity for organisations to go a step further than the Modern Slavery Act by committing to adopting the principles of ethical labour sourcing in relation to their products and services, and to actively identify and eradicate the exploitation of vulnerable workers over time.[140]

**Companies can use the framework of ISO 14001 to help them to:**

- identify legal requirements** that affect their organisation and develop a strategy to achieve compliance; and

- demonstrate compliance.

This approach is evidenced by the findings in the IEMA survey where organisations are managing legal compliance using their ISO management system.

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** ISO 14001 (2015) uses the term 'compliance obligations', which is defined as legal requirements that an organisation has to comply with and other requirements that an organisation has to or chooses to comply with. In this guide, we're focusing on legal requirements established by laws and regulations, and excluding contractual requirements or voluntary codes.

## ii) Types of EMS

Regulators require the implementation of a Management System or an EMS to manage risks and establish environmental control measures. There are a number of approaches in use in the UK. Assessments of the value of an EMS start with the degree of conformance to a recognised standard such as ISO 14001:2015, BS 8555 or a scheme such as EMAS. Judgements on each case may then be based on the degree of conformance and whether this delivers regulatory requirements including legal compliance. Independent checks can be made via accredited certification, inspection and verification assessments to ensure that the system meets the requirements of the standard/scheme.

**In-house EMS:** many companies choose to design and implement an EMS to their own specification. An in-house EMS may be as effective as any other, but the main drawback for regulators is that it is more difficult to assess the effectiveness of such an EMS in the absence of a standard approach, including assessment criteria.

ISO 14001:2015 specifies the different elements of an EMS and how they relate to one another based on a methodology known as Plan-Do-Check-Act. As we will further explore in section 3.4, ISO 14001:2015 is based on Annex SL – the high-level structure (HLS) that brings a common framework to all management systems standards.[141] Based on Annex SL, the diagram shows how the clauses of the new HLS could also be applied to the Plan-Do-Check-Act cycle. The cycle itself can be applied to all processes and to the environmental management system as a whole.[142]

The overall aim of the standard is to support environmental protection and prevention of pollution in balance with socio-economic needs. In common with all management systems, the standard provides a means for continual improvement of performance.

Conformity against the requirements of ISO 14001:2015 can be demonstrated through self-declaration, accredited certification or by other independent means.
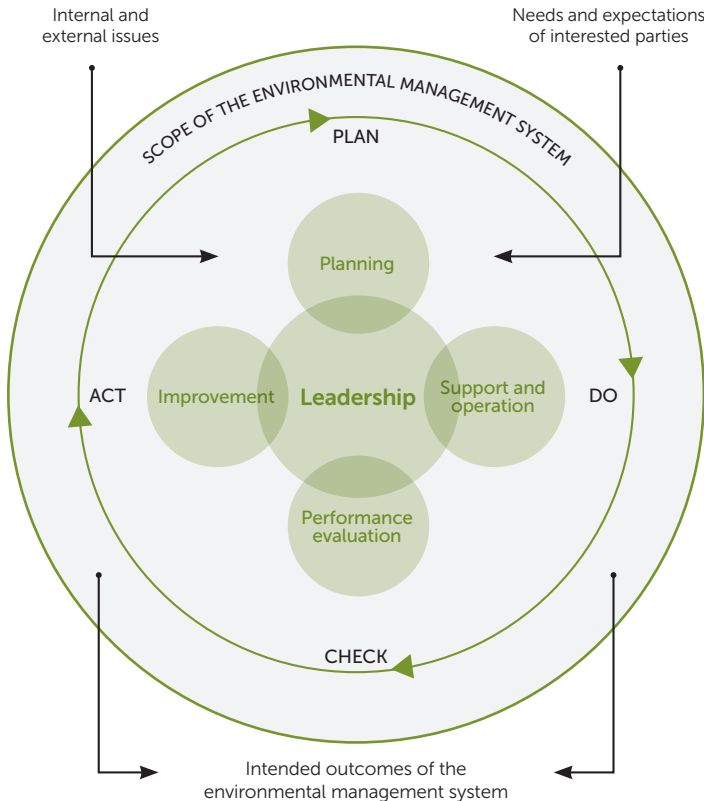


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BS 8555: 2016 is a British Standard which:
provides guidance to organisations on environmental management and the use of environmental performance indicators;

- describes a six-phase, incremental approach to implementing an EMS using environmental performance evaluation;

- is suitable for any organisation, particularly small and medium-sized enterprises, to implement an EMS – for example to ISO 14001 standard;

- may be used to demonstrate improved environmental performance to customers and stakeholders; and

- allows organisations to proceed at their own pace up to full implementation of an EMS, which may then be certified to ISO 14001 or registered under EMAS.

There are several schemes for accredited inspection of conformance to any chosen phase of BS 8555. Some of these include the Seren[143] and Green Dragon[144] schemes.

**Eco-Management and Audit Scheme (EMAS):** The Eco-Management and Audit Scheme (EC, 2009) is a registration scheme, not simply a standard. It is a voluntary initiative designed to improve organisations' environmental performance. Further information about EMAS, including guidance and how to register, may be found at www.emas.org.uk.

ISO 20400:2017 (ISO, 2017) is an international standard providing guidance on sustainable procurement and is applicable to any organisation. The standard has been created to assist organisations involved in, or impacted by, procurement decisions and processes to meet their sustainability responsibilities by providing an understanding of what sustainable procurement is.

## 2.2 Key deliverables for an effective EMS

Regulators need to be convinced that an operator's EMS is an effective tool for managing legal compliance. Effectiveness is judged by:

- **Risk assessments:** is the EMS well designed and fit for purpose?

- **Appropriate measures:** does the EMS outline procedures that adequately mitigate the risks from the operation?

- **Performance:** does the EMS result in fewer permit breaches and improved compliance with legal requirements?

- **Evaluation:** is the EMS routinely reviewed and part of a continuous improvement cycle?

To address their concerns, regulators have identified key deliverables for an effective EMS in relation to legal compliance. These are:

- policy commitment to legal compliance and improving environmental performance;

- identification of legal and other environmental requirements mapped against operational activities, services and products;

- routine evaluation of legal compliance to identify and remedy non-compliances through appropriate corrective and preventive actions;

- staff awareness, competencies and training required for managing legal compliance;

- operational controls and emergency preparedness to meet legal requirements;

- monitoring, audits and management review to check and make appropriate changes to controls, systems and procedures;

- communication, identifying key stakeholders in relation to compliance and outlining agreed communication responsibilities and procedures;

- horizon scanning and identifying potential future risks and global trends, outlining mitigation such as climate change adaptation;

- delivery of improvements where these have been identified or required by the regulator – note that this deliverable is incorporated in the above points.

## SAINT-GOBAIN CASE STUDY:
### Compliance processes and the EU Timber Regulation, 2013

Saint-Gobain UK & Ireland (Saint-Gobain) comprises 34 businesses. It is one of 14 worldwide Delegations[145] that extend from the Saint-Gobain central group, which is headquartered in Paris. In the UK and Ireland, Saint-Gobain operate in three sectors: Construction Products (including gypsum, insulation, mortar, ductile pipes and fittings), Innovative Materials (including flat glass and high-performance materials), and Building Distribution (including general builders and plumbers merchants and a wide variety of specialist materials distributors).

The business spans the UK and Ireland and can be seen in two ways: as a large industrial and manufacturing network with 45 manufacturing sites that serve the construction sector, principally, but also the automotive, industrial, energy, agriculture and healthcare sectors; a large retail network spanning more than 1,100 retail locations, which supplies more than 400,000 general and specialist building materials. This expansive position gives Saint-Gobain the capability to effect real change through its commitments. It operates its business with the highest levels of responsibility underpinned by strong values communicated in its Principles of Conduct and Action[146] and it aims to use this position to help shape the industry so that it is recognised as responsible, innovative and low-carbon.

Employees at every level in the Saint-Gobain Group are individually responsible for applying these principles of conduct and action in their daily actions, behaviours and interactions. Each management level (company, business unit, Delegation or Sector) carries its own responsibility for ensuring that these principles are applied. The general management of the group will implement awareness and training programmes in order to promote these principles across the group. It will decide on appropriate methods to verify compliance.

This level of dedication to work beyond compliance is reflected in Saint-Gobain's Building Distribution Sector's approach to the EU Timber Regulation. The business has a wide range of guidance and system documents in place to help ensure compliance both internally and across its supply chain. These include:

- a management system process and guidance document which is designed to provide information on the EU Timber Regulation (2013) regulation,[147] and guidance to enable Saint-Gobain businesses to be compliant with the expectation of the UK enforcement agency (currently the Office for Product Safety and Standards);

- a risk rating tool for how Saint-Gobain assesses the risk of timber species and countries of origin is a live database that is maintained by the SG Head Office Responsible Purchasing Team in Paris. It assesses both country and species risk and makes recommendations on mitigation. There is space on the document for action plans to be specified where necessary. The buyer enters species trade and botanical name along with the country of harvest and the tool will return a separate risk rating for both species and country of harvest;

- a brief policy overview (or legal register) which is put together for buyers to ensure they are knowledgeable on the subject of the EU Timber Regulation.

To supplement these documents and internal processes, Saint-Gobain in the UK and Ireland have also made good use of membership networks. This includes the Timber Trade Federation[148] and WWF Global Forest and Trade Network[149] to which the business reports on an annual basis its volumes, species, country of origin and certification of all timber products that Saint-Gobain Building Distribution UK and Ireland (SGBD) have sourced the previous year. This information is also fed back to its headquarters in Paris and used as part of their reporting to the Carbon Disclosure Project.[150] Finally, all suppliers are expected to complete the responsible sourcing supplier assessment[151] every two years. This also covers other corporate social responsibility, legal and wider environment health and safety criteria.

For an example of Saint-Gobain's legal register covering the EU Timber Regulations, see section 3.3.

*(Allen Gorringe, Environment Director, Saint-Gobain UK & Ireland)*

## i) The criteria for deliverables

The tables below set out criteria for each key deliverable applicable to any EMS with cross-references to the relevant sections or clauses of ISO 14001:2015, BS 8555 and EMAS. Regulators believe that an EMS that delivers in these areas will be effective in managing compliance with environmental legal requirements.

**Key deliverable: policy commitment to legal compliance**
(Please note that in parallel to this deliverable, all relevant laws and regulations, as highlighted under section 1 of this Guide, should be appropriately identified by maintaining a register of legal requirements)

**Applicable standards and schemes:**
- ISO 14001:2015: clause 5.2 environmental policy.
- BS 8555:2016:[152] phase 1 (stage 4) process for developing an environmental policy phase 3 (stage 4). Finalise the environmental policy.
- EMAS Regulation: annex II EMS requirements (as for ISO 14001); annex II (B) 2 legal compliance; annex IV environmental reporting (B) environmental statement.

- There is a policy commitment from top management to identify and comply with all relevant legal requirements relating to the environment.

- The policy is implemented via organisational structures and responsibilities to ensure that:

1. all relevant environmental legal requirements are met;

2. there are adequate resources to ensure compliance; and

3. progress is monitored.

- A company board member or director has ultimate responsibility for environmental policy and performance including compliance with environmental legal requirements. The policy provides information on environmental legal requirements and how they will be met.

- Whilst ISO 14001:2015 does not apply to human rights compliance, any organisation developing a commitment to legal compliance should include a policy commitment from top management to prevent negative human rights impacts or modern slavery occurring in their operations or supply chains. ISO 20121 sustainable event standard incorporates reference to social issues and also requires organisations to publicly commit to upholding legal and other sustainability requirements in their policies.

### Key deliverable: evaluation of compliance with legal requirements

### Applicable standards and schemes:

- ISO 14001:2015: clause 9.1.2 evaluation of compliance.
- BS 8555:2016: phase 2 ensures compliance (all stages).
- EMAS: article 6, clauses 1, 4, 5, 6 compliance with, and breaches of, environmental legal requirements; article 13 (2) (c) registration of organisations; article 15 suspension or deletion of organisations from the register annex 2 (A) EMS requirements (as for ISO 14001).

- An organisation should establish a process to evaluate compliance of relevant environmental and human rights legislation.
  This should include, or reference, monitoring and audits carried out under the key deliverable entitled monitoring, audit and management review in the box opposite.

- ISO 14001:2015 requires an organisation to determine how often it will evaluate compliance, and that action will be taken if needed. This principle should be applied to any management system that includes an evaluation of compliance.

- The organisation should maintain knowledge and understanding of its compliance status. In particular, a legal requirement may require robust evidence that the organisation checks its level of compliance with all specific permit, licence, authorisation and consent conditions. This should take place at a frequency related to the risk and potential consequence of non-compliance, but at least annually. In relation to human rights issues, evidence of compliance usually entails having the appropriate and relevant policies in place, including due diligence systems and ensuring that any legislative and reporting requirements are properly met by annual updates. The process for evaluating compliance with human rights and business regulations should include ensuring that negative impacts are monitored and addressed.

- The process should capture how any breaches of permit, licence, authorisation or consent conditions are reported to the regulator in accordance with specified requirements.

- The process of evaluation should also ensure that responsibilities and processes have been defined for dealing with non-compliances, including:

a. handling, investigating and reporting incidents of actual or potential non-compliance (near misses) with operating procedures or emission limits;
b. handling, investigating, communicating and reporting environmental complaints;
c. taking suitable action to mitigate any environmental impacts; and
d. initiating, completing and following-up corrective and preventive action.

- The organisation should also demonstrate how it communicates openly with environmental regulators about incidents of actual or potential non-compliance, complaints and the actions it has taken in response, and about proposed changes to its operations.

**Key deliverable: staff awareness, competencies and training**

**Applicable standards and schemes:**

- ISO 14001:2015: clause 7.2 competence; clause 7.3 awareness.
- BS 8555:2016: phase 1 (stage 5) develop awareness; phase 2 (stage 3) manage compliance, phase 4 (stage 4) competence management; phase 1 (stage 5) develop awareness and competence; phase 4 (stage 5) awareness raising.
- EMAS: annex 2 (A) EMS requirements (as for ISO 14001).

ISO 14001:2015 requires that those who are assigned to determine and evaluate compliance obligations must ensure the person is competent on the basis of appropriate education, training or experience.

The organisation must ensure that all staff and contractors are aware of the impacts of their activities on the environment and the importance of following processes relating to compliance with environmental legal requirements.

- All relevant management and operational staff, including contractors and those responsible for purchasing equipment and materials, receive adequate training in their responsibilities, understanding and awareness with regard to:

a. environmental permits and other applicable environmental legal requirements;
b. operational control procedures;
c. all potential environmental effects from operation under normal, abnormal, start-up and shut-down circumstances;
d. identifying and reporting deviations from permit requirements and other applicable environmental legal requirements; and
e. actions to prevent accidental emissions and actions to be taken when accidental emissions occur.

- There is robust evidence of implementation of training and regular review of requirements.

In relation to ensuring compliance with human rights legislation, the organisation should also ensure that all staff and contractors receive adequate training in their responsibilities to understand human rights impacts to ensure that there is no negative impact on human rights. There should also be robust evidence of implementation of training and regular reviews of requirements.

- The organisation defines and documents the competencies (skills, experience and qualifications) necessary for key posts and:

a. maintains records of training needs and training received;
b. ensures that competencies and training needs are regularly assessed and reviewed to ensure that duties are carried out effectively and in legal compliance;
c. applies relevant industry standards or codes of practice for training (for example, WAMITAB[153]) and assesses the degree of staff conformance; and
d. applies requirements (a) to (c) to contractors and other people working for and on behalf of the organisation, and to those purchasing equipment and materials.

**Key deliverable: operational controls and emergency preparedness for environmental compliance**

**Applicable standards and schemes:**
- ISO 14001:2015: clause 8.1 operational planning and control, 8.2 emergency preparedness and response.
- BS 8555:2016: phase 4 (stage 1) planning and controlling operational processes; phase 4 (stage 2) value chain controls.
- EMAS: annex 2 (A) EMS requirements (as for ISO 14001).

**Key deliverable: operational controls and emergency preparedness for environmental compliance**

**Applicable standards and schemes:**
- ISO 14001:2015: clause 8.1 operational planning and control, 8.2 emergency preparedness and response.
- BS 8555:2016: phase 4 (stage 1) planning and controlling operational processes; phase 4 (stage 2) value chain controls.
- EMAS: annex 2 (A) EMS requirements (as for ISO 14001).

- Operational controls and emergency preparedness and response procedures exist to support compliance with legal and other requirements including legal compliance limits, monitoring and reporting protocols. The controls and procedures cover:

a. normal and abnormal operations (shut-down, start-up, different shift operations, and hand-over), and reasonably foreseeable incidents;
b. operation of computer controls, maintenance, change and related testing;
c. plant, product and process design, including material selection; and
d. drainage and utilities, storage facilities and capacities, and material identification and labelling as shown on site plans.

- Operational control procedures are communicated and, where appropriate, training is provided to suppliers and contractors. These are reflected in tender and contract documents for supply of goods and services.

- A preventative maintenance programme exists for all plant and equipment whose failure could lead to adverse impacts on the environment, which:

a. identifies equipment critical to environmental performance based on an assessment of risk to the environment;
b. prioritises items of plant for which preventative maintenance is needed;
c. ensures regular inspection of major non-productive items such as tanks, pipe-work, retaining walls, bunds, ducts and filters; and
d. reviews maintenance performance based upon records of equipment history.

- An accident and emergency management plan exists which:

a. assesses the potential for reasonably foreseeable accidents, emergencies and other failures, such as fires or explosion, which might lead to adverse environmental impacts;
b. identifies the likelihood and environmental consequences of such occurrences, including as a result of actions taken;
c. ensures that operational controls include preventative and mitigation measures, including provision and use of relevant equipment;
d. identifies actions to prevent accidents and minimise impacts on the environment such as lead covers or booms to prevent chemicals entering surface water drains;
e. informs relevant staff and third parties such as the local fire brigade of actions taken; and
f. reviews emergency procedures, particularly following an incident.

While the requirement to establish operational controls is primarily aimed at addressing environmental compliance, a management plan to address potential negative impacts to human rights operationally can follow the same process.

- The organisation regularly tests the accident and emergency management plan and makes procedural changes, where necessary.

**Key deliverable: monitoring, audit and management review**

**Applicable standards and schemes:**

- ISO 14001:2015 : clause 9.1 monitoring, measurement, analysis and evaluation (title only); clause 9.1.1 general; clause 10.2 nonconformity and corrective action; clause 9.3, management review.
- BS 8555:2016: phase 1 (stage 6) determine data requirements; phase 5 (stage 2) correct nonconformities, phase 5 (stage 3) management review.
- EMAS: article 20 clause 2 (h), annex II (A) EMS requirements (as for ISO 14001); annex III internal audit.

- The organisation has to determine what has to be monitored and measured. It also has to communicate relevant environmental performance as required by its compliance obligations. As part of the planning process, an organisation should determine at the outset how results will be evaluated, including indicators for monitoring progress towards achievement of environmental objectives that are measurable. This would include compliance with legal requirements for both environmental and human rights. The guidance set out below is useful for an organisation seeking to ensure compliance with environmental issues. Similar principles apply where organisations seek to respect human rights and combat the risk of modern slavery in supply chains. Internal or ethical audits may be undertaken to monitor compliance by suppliers.

- The organisation uses appropriate methods and techniques to:

a. monitor and record compliance with regulatory conditions, limitations and improvements;
b. comply with regulatory and recognised industry and technical standards;
c. ensure operations are carried out in accordance with control procedures and emission limits; and
d. assess the potential for uncontrolled releases of materials, products and wastes, for example, during tanker loading and off-loading.

- Monitoring and measuring equipment including data and results is fit for purpose, correctly calibrated and maintained in good working order. There are records to demonstrate that this is the case.

- The organisation reports regulatory parameters to regulators in accordance with specified requirements including format and detail, and retains records.

- Audits are carried out to ensure that legal compliance has been evaluated and that environmental improvements are delivering better performance; the results must be reported to top management. The audits check that there is:

a. effective evaluation and management of compliance with all environmental legal requirements, including specific requirements or detailed conditions set out in any permit, and operational procedures, licence, authorisation or consent; and
b. effective operational control of significant impacts, and that objectives and targets for improved performance have been met.

These requirements should also be met when assessing what has to be measured and monitored in respect of human rights impacts. Ethical audits should be evaluated in the same way.

- Senior management reviews the environmental and human rights performance of the organisation and takes action to ensure its legal and policy commitments are met in the light of:

a. legal and regulatory requirements, including enforcement, notices, warnings, both formal and informal;
b. discussions and reports from regulators regarding compliance and good practice;
c. policy commitments regarding performance against objectives and targets;
d. results of evaluations of compliance with all applicable legal requirements;
e. results from audits, for example, adequacy and timeliness of corrective and preventive actions;
f. concerns among relevant interested parties;
g. any necessary actions or changes that have been identified, implemented or planned for implementation; and
h. any remedial action that is required.

These requirements should also be met when assessing what has to be measured and monitored in respect of human rights impacts. Ethical audits should be evaluated in the same way.

- Senior management should also adopt this approach to reviewing performance with human rights laws and addressing modern slavery risk in supply chains.

## ii) Communication

The organisation must establish, implement and maintain procedures for internal and external communication. An organisation should deal proactively with environmental complaints or complaints arising from negative human rights and media enquiries with little or no intervention from the regulator. This is especially important during abnormal operation or an environmental incident. Communication processes should:

• identify key stakeholders with an interest in the legal compliance and performance of an operation, including the regulator, customers and the public; and

• ascertain communication and engagement requirements of relevant stakeholders; outlining appropriate methods and frequency of communication and engagement.

An organisation should ensure that it manages any negative impacts on human rights in the same way.

Information communicated internally or externally by an organisation must be reliable and obtained in a way consistent with the EMS. This is particularly important when reporting performance to regulators, for example as a condition of a permit or in accounting for GHG emissions as part of an emissions trading scheme. Internal assurance processes may be needed to ensure the reliability of data and information.

## iii) Evidence of communications are maintained

**Appropriate plans to manage future and changing risks to compliance**

Applicable standards and schemes: when determining environmental aspects, the organisation shall take into account:
a) 'change...' (ISO 14001:2015 clause 6.1.2 ). This is then referred to in clause 6.1.1 (risks and opportunities), which then leads to clause 6.1.4 (planning).
ISO 14001:2015 clause 6.1.2
A plan is in place for managing future risks to compliance which:

a. is based on horizon scanning and a risk-based assessment of future and changing risks to compliance, including for the long-term where transformative changes may be required to ensure compliance.
b. makes use of the best available evidence and is transparent about any assumptions;
c. sets out actions and/or decision points over appropriate timescales, taking into account the lifetime of assets, lead-in times and planning cycles;
d. makes appropriate use of tools and approaches for making decisions under uncertainty, such as 'robust decision-making', 'portfolio analysis', 'real options analysis' or 'adaptation pathways'.
e. These principles apply equally to managing negative human rights impacts.

## iv) Horizon scanning

An EMS should identify relevant future trends in environmental and human rights that have the potential to impact the organisation or operation. Issues it should consider include:

• resources: availability, efficiency, natural capital and circular economy;

• climate change: extreme weather, regional variations, sea levels and biodiversity;

• technology and data: increased use of technology and availability of data;

• society: public opinion, environmental awareness, demographic shifts and social media; and

• policy and politics: impacts of new legislation and regulations, changes in government and political direction.

An EMS should consider how any environmental or societal change may impact:

• the organisation or operation itself;
• the supply chain, both upstream and downstream;
• customers; and
• local community or the public.

An EMS should also consider how an organisation or operation may have future impacts on :

• the environment;
• supply chain;
• customers; and
• local community or the public.

When horizon scanning in relation to human rights, a management system should identify future human rights trends and mandatory reporting legislation that have the potential to impact the organisation and take action with reference to the key principles set out above.

IEMA's publication 'Future Megatrends: 'How to identify and integrate these into your environmental systems'[154] provides useful guidance on how to integrate future trends into a management system.

## 2.3 The value of an EMS to regulators

Managing legal compliance and improving environmental performance are fundamental requirements of an EMS. A robust EMS should lead to improved environmental performance, including better and more consistent legal compliance. While ISO 14001:2015 EMS is focused on environmental performance, there are other management approaches that will lead to improved performance on managing human rights impacts.

## i) Regulators support for EMS

Organisations must take responsibility for the environmental and human rights impacts of its activities. Continual management of environmental impacts requires a structured approach. EMSs provide a way for organisations to do this. In the same way, organisations should take responsibility for the negative impacts it can have on human rights. Organisations should also ensure that they are combatting modern slavery and human trafficking in their own organisations and supply chains. Creating processes and management systems that can address these impacts is a means for organisations to do this.

Regulators are supportive of accredited certification to ISO 14001:2015 as the basis for a systematic approach to managing environmental legal compliance, although this does not equate to regulatory compliance.

The regulatory interventions taken at any site will be informed by the observed standards of environmental protection and performance, including permit breaches, incidents and complaints from the public.

When regulators carry out assessments of compliance, information including records indicating implementation of any EMS are vital to demonstrate that an organisation is, or has been, in compliance. Maintaining EMS records is a general permit requirement, providing an objective audit trail for the regulator to make such assessments.

### Regulatory value of an EMS

**REGULATOR**

Compliance assessment

↓

Evidence of compliance (or non-compliance)

**OPERATOR**

Compliance management and assessment

↓

EMS (management and assurance of compliance)

↓

Evaluation and records
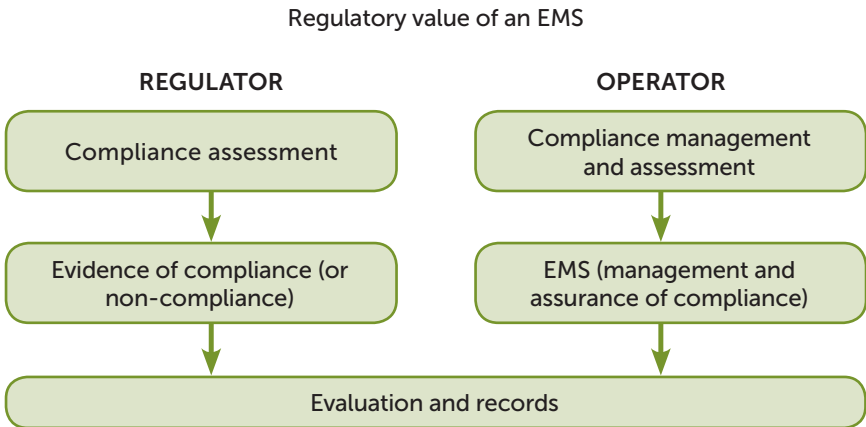
An operator's EMS and evidence of implementation is an integral element to examine during a regulator's inspection, as valid as other areas of assessment such as abatement equipment and storage areas. The EMS adds value to on-site regulatory assessments; for example by providing:

- evidence of continued compliance since the last visit;
- a focus for the subsequent tour of the premises

## ii) Regulators concerns and expectations

There is a wide variation in standards of EMS implementation and certification. In particular, there is often a lack of focus on maintaining and ensuring legal compliance and improving environmental performance. Regulators still have a number of unanswered questions in relation to EMS's for example:

- What are the benefits to implementing organisations and to regulators of establishing an EMS to standards such as BS 8555 and ISO 14001?

- Does an organisation with an EMS have better legal compliance and improved environmental performance than one without? Does accredited certification add regulatory value? The standards of environmental performance provided at a site with an EMS will be determined in part by the Certification Body.

Regulators are concerned at the lack of consistency in approach between certification bodies, and that during assessments not enough attention is paid to compliance with legislation. This is despite the existence of international standards and guidance for accreditation. Certification and inspection bodies, trade associations and UK Accreditation Service should address this concern.

# Section Three Guidance for organisations – establishing good practice

## 3.1 Introduction

This chapter describes best practice in managing an organisation's performance with respect to legal compliance. The underlying theme is the introduction of compliance thinking into all aspects of management including planning, operations management, performance monitoring and reporting and assurance processes. Legal compliance should be viewed as the benchmark from which an organisation can develop best practice.

An EMS framework such as those provided by ISO 14001:2015 and EMAS can be used as a tool in helping to achieve such best practice. ISO 20400:2017 and ISO 26000 can also be used as tools to help organisations operate beyond legal compliance requirements to establish good practice in relation to social issues, including managing impact on human rights and addressing modern slavery. The management of legal compliance should be seen as being part of a process to continually improve the EMS and enhance performance rather than the implementation of discrete system elements. This process needs to cover:

- the identification and analysis of legal and regulatory requirements (both current and forthcoming) that is both applicable to the organisation and significant to it;
- determining the frequency of compliance;
- the periodic evaluation of performance against those requirements;
- the implementation and operation of responsibilities, procedures and improvement programmes for ensuring that improvements are planned and achieved;
- the identification of controls to put in place;
- the maintenance of control; and
- maintaining the knowledge and understanding of its compliance status.

Furthermore, legal performance must often go beyond compliance whether this is going beyond the statistical criteria (limits) set by regulators or, in the case of human rights, going beyond the requirements of domestic legislation. For example, an organisation may decide to go beyond the domestic legal requirements of a country in which it is operating where legislation may permit children to work from an age below that set by the ILO. The organisation may decide to adhere to a code of conduct (the standard set by the parent company). A compliance-orientated organisation must also address other requirements, such as any risk that can just as significantly influence compliance.

## 3.2 The case for better compliance management

This section aims to help organisations determine how they can pursue best practice in compliance management. The application of best practice is not, however, a one-size-fits-all approach. It is essential that the business case is fully understood, and that compliance management is tailored to each organisation, albeit that the principles underlying best practice should always be the same.

### LINKLATERS – CASE STUDY:
**Managing global environmental compliance through an EMS**

Linklaters is a leading international law firm with lawyers in 29 offices across 20 countries, which advises on multi-jurisdictional projects and transactions. The legal advice that Linklaters extends to its clients on how to undertake business responsibly, also applies to the firm's global operations. Accordingly, it is one of only two international law firms that carries global ISO 14001:2015 certification across its entire operations.

Running a global EMS can be a rewarding process, although the compliance obligations present several challenges. This is because operational compliance related to the environment must all be accounted for within the 20 different jurisdictions that the firm operates in, whether issues concern energy, air, soil, water, waste or transport. This includes office locations where the firm exercises very limited operational control on the building, for example, the firm rents one floor in a 33-storey tower.

In addition, most of the firm's environmental representatives outside the UK are not experts in environmental management and compliance, with skills focused more around facilities or office management. The environment team based in London has often received feedback from representatives across the network that they did not have the knowledge to ensure compliance on environmental laws.

To overcome this, six years ago, the central environment team conducted a desk-based environmental compliance project, pulling together all the operationally relevant compliance obligations and best practice standards relevant to each jurisdiction. Following this, every environmental representative was then tasked with building a relationship to secure an in-house, local compliance expert, such as a legal associate, summer intern, trainee or researcher, to review the compliance obligations of each office and support the operations team members on how they should go about evaluating environmental compliance in line with ISO 14001.

An example of how the firm overcame this is found in the strength of the relationship between the firm's environment teams in the UK and Germany. Displaying a true commitment to the EMS, and the way in which premises are managed, the German environmental representative built relationships with staff and managed to secure the time of an associate lawyer based in Berlin to conduct a high-level review of the national compliance obligations, and the most important and relevant German environmental laws. Legislation containing all specific, general and 'soft' obligations, for example, to reduce the waste output as a way of demonstrating environmental awareness, was entered into the compliance obligations register as the associate worked with the environmental team.

When managing compliance across borders, language barriers and cultures, local expertise is essential, particularly if the central team is based in another country. And while it can sometimes be challenging to secure the expertise; running the expert review at designated times does enrich the knowledge of the environment and operational teams, ensuring that the EMS continually improves. In-house legal expertise is available in most large multi-national organisations, and the motivation to tackle environmental compliance could be 'sold' to these professionals as an opportunity to understand an area of the business they normally would not have any exposure to. What most professionals engaged in the process take away from this experience is that strong relationships and good communication across functions, borders and teams are the key to a successful EMS.

*(Leilani Weier, Global Senior Manager: Environmental Sustainability, H&S, Operations, Linklaters LLP)*

## i) Why is there a need to demonstrate compliance?

Reputable organisations in the UK and internationally should be in a position to demonstrate full compliance with all aspects of environmental and human rights or modern slavery legislation – this encompasses all legal requirements, some of which may be found in non-environmental statutes such as product or health and safety legislation, or non-human rights legislation such as the Criminal Finances Act, 2017.[155] Stakeholders such as the public and an organisation's shareholders, customers and workforce need to be confident that the organisation operates within the law and is not harming the environment or impacting on human rights negatively or contributing to modern slavery. There is little sympathy for organisations whose non-compliances are brought to light; magistrates and courts are coming under increasing criticism for not imposing sufficiently stringent penalties. There is also a need to remain compliant due to the gradual increase in fines that have been issued. This is the case under the UK Sentencing Guidelines. Companies that do not comply with the law will also find that they are likely to be unable to meet the pre-qualification requirements by clients if a prosecution exists. Non-compliance will also jeopardise the ongoing certification requirements for ISO 14001:2015 and EMAS.

It is increasingly important for organisations and brands to ensure that they protect their reputations from harm from the negative publicity arising from human rights abuses, such as the Rana Plaza[156] disaster in 2013. An organisation that takes proactive steps to respecting human rights is likely to enjoy less risk of legal liability and enjoy stakeholder engagement and a strong reputation. It is also likely to attract greater investor support as investors are increasingly interested in how companies comply with environmental, social and governance issues.

**WSP CASE STUDY**: Assessing environmental, social and specific human rights components on investments and projects

As a global consultancy, WSP provides support to clients across a very broad range of areas. One important and constantly evolving area of client demand involves the assessment of our clients' investments, from investments in businesses and their operations, or in specific projects, often with developmental goals. Our assessments usually include a broad range of coverage, including the range of environmental, social, health, safety and labour issue areas, often under the banner of environment, social and governance (ESG).

The issue areas covered are broad, with subject areas including pollution exposure and control, occupational health and safety, community safety, labour standards, land use and ownership through to assessing the economic benefits and risks associated with projects and investments. This also progresses into assessment of key human rights coverage areas.

From a general compliance assessment perspective, there is an additional challenge from the evaluation and adoption of global standards and best international practices, while also ensuring compliance with local standards and legal requirements. There is frequently a challenge in relation to conflicting requirements, and it becomes important to find a common approach which delivers core commitments within relevant ESG standards and investor policy requirements, without breaching local regulation.

These assessments are not focused entirely on compliance. For example, evaluation of the potential to improve the sustainability outcomes of the investment is usually a key part of the scope. However, compliance from a safeguarding perspective remains a clear central area of coverage. Coverage of environmental, safety and social components is based on a detailed and mature set of international good practice or minimum standards guidelines. In particular, the social aspects are well defined, but also have a clear alignment with accepted human rights coverage areas, as defined within the Universal Declaration of Human Rights.

Coverage of these human rights areas in ESG assessments required by clients is relatively binary. Audit scope can vary on an investment or location specific basis, but in general there are clear areas where human rights and ESG standards, such as those defined by the World Bank or IFC or the Equator Principles Standards, are very closely aligned. Coverage such as equality, anti-discrimination, freedom from slavery or forced labour, as well as land and property ownership, cultural participation and freedom of collective bargaining and union membership are all areas in which there is very close alignment. However, consideration of some other human rights areas, such as right to a fair individual legal process, the right to be assumed innocent until proven guilty, the right of equality through legal systems, or rights of remedy through competent tribunal are less common areas within ESG assessments.

The practical implementation of these compliance assessments does present some interesting challenges and there are many hidden areas. For example, many countries' legal systems allow, or indeed promote, the use of financial penalties being imposed on employees for breaches of their duties. While this practice could pose a direct risk of breach to human rights if the system is not fairly governed or lacks transparency, there can be important indirect considerations here too. For example, if financial penalties are imposed on an individual which effectively put them in a position where they cannot freely resign from employment, then the commitment to avoidance of forced labour practices could then also be threatened, breaching a clear ESG standard commitment as well as human rights.

There are also frequent challenges in relation to many other areas of ESG assessment coverage; for example, in relation to equality and gender components, where local regulatory coverage could drive different approaches and contradict accepted good international practices. There is also a common dilemma in relation to land ownership, where international ESG guidelines recognise the rights of informal land users or residential property holders without legal status, whereas local legislation may have strict requirement that these informal users' rights are not recognised.

Overall, the coverage of these ESG compliance assessments continues to evolve, requiring practitioners to broaden their skill sets and often work in teams with very broad competencies.

An ESG assessment is purely the start of a process, and the key challenge often remains in ensuring the full implementation of arrangements to safeguard expected standards and maximise the sustainability value of investments and development projects. Formal implementation systems are common, using legal covenants or more traditional management systems and plans. Considerations for effective implementation have to be very broad, with a more integrated and stakeholder-driven approach usually needed.

(Neal Barker, Director, WSP UK and Lead EHS, Sustainability and ESG Advisory Services)

## ii) Why is there sometimes a lack of focus on compliance?

For many organisations, achieving and demonstrating legal compliance is a difficult, time-consuming and continuous exercise that needs to be managed within the resources available. The sheer volume of rules covering protection of the environment and human rights can be daunting; acts of parliament; ever-changing regulations; individual permits, consents and licences; and European legislation. Moreover, within many pieces of environmental legislation there are likely to be several separate compliance requirements for an organisation. Each of these needs to be identified, screened for relevance, understood and acted upon before an organisation can satisfy itself that it has attempted to comply.

Unsurprisingly, many organisations do not achieve this level of compliance management, and this may be due to:

- insufficient resources allocated within the organisation to compliance management;

- failure to identify or understand how to conform to legal requirements;

- over-reliance on conformance with a management system that is not closely integrated with legal compliance; and

- low priority given within the organisation to compliance management; and

- failure of the person in charge of legal compliance to sufficiently implement legal requirements.

All of these issues can lead to either an inadequate EMS, or failure for it to be implemented effectively at an operational level.

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Questions organisations should ask themselves:[157]
What are the main areas of risk to the organisation?

- Does the organisation have a policy in place that includes a commitment to fulfil compliance obligations?

- Is the policy endorsed by senior management?

- How does it monitor compliance?

- Does your organisation have reporting procedures for potential breaches?

## iii) Why might an organisation wish to improve its compliance performance?

There are several motivating forces behind an organisation's desire to comply with environmental and human rights legislation. There is altruism and the concept of social responsibility where an organisation might believe compliance is the morally correct stance. There may be a desire to appear as an exemplar or role model and this may have the associated commercial benefits of attracting like-minded customers, or forcing competitors to respond. The Cabinet Office's 2017 Regulatory Futures Review, recommended that regulators should implement Earned Recognition and regulatory self-assurance to recognise and reward those performing at exemplar level, reducing the regulatory interventions at these sites, creating more incentives for an organisation to improve its performance. There are more neutral motivators such as the 'herd instinct' to comply because everyone else appears to be doing so, or just wanting to be reassured that the company is not going to get into trouble. However, there are also more negatively inspired motivations such as the desire to comply solely as a result of pressure from customers, employees or shareholders, or the fear of individual responsibility and criminal liability.

## iv) How do organisations check compliance?

In assessing environmental compliance levels, organisations may decide to rely solely upon regulatory inspection reports, complaints and occasionally commendations from members of the public or non-governmental organisations (NGOs) or unsolicited advice from employees. This has the advantage that compliance efforts are minimised and focused on areas of current concern. However, any view obtained through this passive approach may be completely unrepresentative of the organisation's true level of compliance. Therefore, it is in an organisation's interests to implement more active approaches to checking, such as internal and external evaluation and auditing or adopting a Plan-Do-Check-Act model. Auditing has the limitation that it may pick up problems only after they have occurred. As a result, organisations may decide to take further steps and develop management systems that integrate the achievement of compliance into the work programme; that is, plan to comply from the beginning rather than just checking afterwards.

IEMA members' compliance practices
In 2018, IEMA carried out a survey to provide a snapshot of the processes organisations are choosing to use in their compliance checks.

**Survey response:** Processes your organisation follows as part of its legal compliance checks. (Respondents could elect as many as apply.)
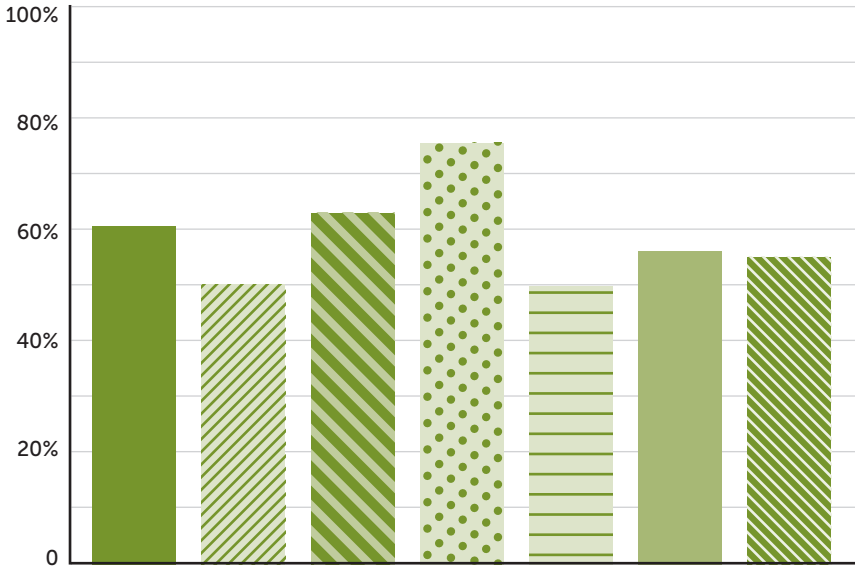


| | | |
|---|---|---|
| ■ | Systematically define all activities, products and services (aspects) of the organisation | **60.5%** |
| ▨ | Review each environmental or human rights aspect against legal requirements | **50.1%** |
| ▧ | Review the degree to which each of the organisation's activities, products and services are in compliance with these legal requirements | **62.9%** |
| ⠿ | Document relevant legislative requirements and their relevance, and identify how they are to be managed and controlled | **75.4%** |
| ▬ | Allocate clear roles and responsibilities for compliance with specific pieces of legislation | **49.7%** |
| ■ | Communicate how legal or other requirements are relevant to your specific site at all relevant levels | **56.1%** |
| ◪ | Include operational criteria within operating procedures and work instructions | **55.0%** |
| | **Number of survey participants** | **706** |

# 3.3 Establishing good compliance practice

There are four steps to establishing good compliance with both environmental and human rights laws.

### Steps to establish good compliance practice
There are four steps organisations should take to establish good compliance practice. This should be read in conjunction with the legal compliance checklist set out on page 140.

The steps are set out in the diagram below.

| Step A: Understand your organisation and gather information | → | Step B: Identify legislation of specific relevance to your organisation | → | Step C: Evaluate current compliance | → | Step D: Implement appropriate controls, monitor compliance and carry out remedial measures as necessary |
|---|---|---|---|---|---|---|
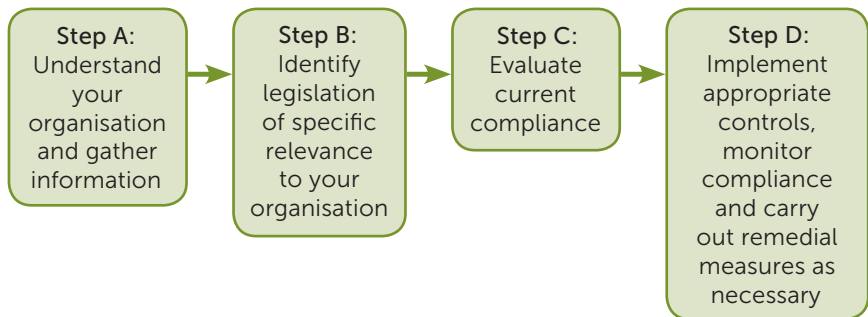
For each step there are key actions that an organisation should take.

### Step A: Understand your organisation and gather information
An organisation needs to:
1. know its activities, products and services and the regions where it operates;
2. gather information on environmental and human rights legislation.

### Step B: Identify legislation of specific relevance to your organisation
1. an organisation should firstly determine if the legislation is broadly applicable to it.
2. once the organisation has identified that the legislation is broadly applicable, it should review it to see if it is relevant to its activities, products and services.
3. list the legislation applicable to the organisation's activities, products and services.
4. identify changes in directives, legislation and regulation and whether the changes will affect the organisation.

**Step C: Evaluation of current compliance**

1. evaluate current compliance.
2. determine appropriate controls, for example, required training, creating and maintaining a legal register.

**Step D: Implement appropriate controls and monitor compliance**

1. ensure that control measures are put in place such as a legal register.
2. monitor compliance.
3. implement remedial action as required.

# A: Understand your organisation and gather information

## i) Know your activities, products and services

The starting point for organisations to identify legal and regulatory requirements that are relevant to it is to understand in detail its operations including all activities, products and services. Organisations should undertake a mapping exercise to identify how its operations impact on the environment and human rights.

The organisation can then focus on identifying legislation or regulations that affect their operations. To ensure that all operations are covered, the organisations should consider the process or activity flows and associated inputs and outputs.

## Process and activity flows in an organisation
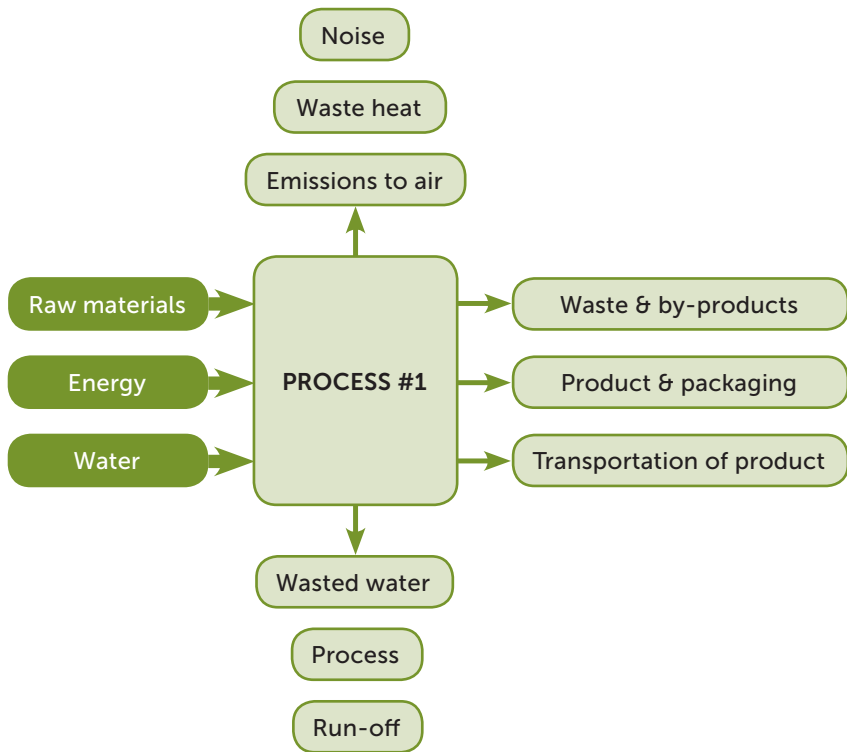
Noise

Waste heat

Emissions to air

Raw materials

Energy

PROCESS #1

Water

Waste & by-products

Product & packaging

Transportation of product

Wasted water

Process

Run-off

For each input or output, the organisation should consider broad categories of environmental impact as a starting point.

For each input or output, the organisation should consider broad categories of environmental impact as a starting point.

### Environmental impact categories

| | |
|---|---|
| **Emissions to air** | Emissions of smoke, dust, grit, gaseous air pollutants from industrial activities such as carbon dioxide, nitrous oxides and sulphur oxides, radiation sources and releases of odours from industrial processes |
| **Releases to water** | Releases to surface water, sewers and groundwater; storage of hazardous substances, such as oil and pesticides; and marine pollution |
| **Wastes** | Avoidance, recycling, reuse, transportation and disposal of solid and other wastes; packaging and hazardous and non-hazardous wastes |
| **Land** | Use and contamination of land (historic, current and future) |
| **Use of natural resources and raw materials** | Including water and energy use, and use of hazardous materials |
| **Nuisance issues** | Noise from industrial and construction sites, entertainment noise, vehicle, rail and aircraft noise; nuisance arising from vibration, odour, dust and visual appearance |
| **Travel and transport** | The NCA leads the UK's response to bribery and corruption. |
| **Biodiversity** | Impacts on- and off-site, protected habitats and species of flora and fauna; sites with recognised designation, such as Areas of Outstanding Natural Beauty, Sites of Special Scientific Interest, Special Areas of Conservation; local or regional biodiversity action plans |
| **Heritage** | Possible impacts if in a listed building or within a conservation area; possible impacts on ancient monuments and archaeological areas |

The systematic identification of activities, products and services of the organisation that can impact on the environment (also known as environmental aspects) as required by ISO 14001, BS 8555 and EMAS, is the first step to be taken when developing an EMS. If an organisation is not using a certifiable standard as its framework, it should still undertake a systematic identification of environmental and human rights aspects and impacts. Examples of aspects and impacts are shown below.

**Examples of environmental aspects and impacts**

|  | Environmental aspects | Environmental impacts |
|---|---|---|
| Definition | An environmental aspect is the activity the organisation carries out which causes an environmental impact. ISO 14001 defines impact as an 'element of an organisation's activities, products or services that can interact with the environment' such as electricity consumption for lighting, equipment and plant. | Environmental impacts are caused by the activities of the organisation. ISO 14001 defines an impact as 'any change to the environment, whether adverse or beneficial, wholly or partly resulting from an organisation's environmental aspects.' |
| Example 1 | Electricity consumption for lighting, equipment and plant | • Depletion of a non-renewable natural resource (such as coal, oil or gas consumed in a power plant)<br>• Release of atmospheric emissions ($CO_2$, SOx, NOx) due to combustion of coal, oil and gas at a power plant which contributes to global warming, acid rain and poorer air quality |
| Example 2 | Disposal of hazardous wastes to landfill | • Use of landfill space and landfill impacts such as leachate and methane generation<br>• A potential impact is incorrect disposal through lack of control by contractors |

ISO 14001 does not address human rights aspects or impacts other than the reference to the fact that social issues may be a relevant consideration when trying to determine the internal or external issues that might be relevant to an organisation.

**Examples of human rights aspects and impacts**

| | Human rights aspects | Human rights impacts |
|---|---|---|
| Definition | There is no definition of a human rights aspect in ISO 14001:2015 | Human rights impacts are not defined in ISO 14001:2015<br><br>The impact on human rights of individuals caused by the activities of the organisation |
| Example 1 | Employees are not treated fairly | • Right to equal treatment breached<br><br>• May lead to forced labour<br><br>• Potential impact – reputational damage, breach of employment legislation |

## ii) Gather information on environmental and human rights

When all of the activities of the organisation are clearly understood and have been documented, it is possible to consider the legislative requirements associated with each environmental and human rights or social aspects.

There are a number of useful sources of information on environmental and human rights regulation – see the tables in section 1.2 and 1.3 (pp30 – 61) for further information.

Additional guidance is often provided by support organisations to help understand how any regulation applies to an organisation. However, it is an organisation's responsibility to understand the specific implications of each piece of legislation; ignorance is no defence in a court of law.

# B: Identify legislation of specific relevance to your organisation

## i) Is the legislation applicable to our organisation?

Following the development of a list (or 'register') of aspects and impacts, the organisation should seek to identify which of these is governed by legislative or other requirements.

Some regulations have broad thresholds which govern whether or not organisations are covered by the legislation. Summary guidance is usually given which describes how an organisation can determine if it falls within the criteria. Frequently, it is the organisation's responsibility to demonstrate that it falls outside the criteria. The organisation should record its findings and review them when any changes are made that may alter its position.

In the absence of legislation governing organisations' impacts on human rights, an organisation should consider whether it should adopt a voluntary framework to ensure that it is demonstrating the steps it is taking to ensure that it is not breaching human rights, such as the committing to the UN Guiding Principles, or becoming a member of the UN Global Compact.

**Examples of legislative thresholds**

- **Producer Responsibility Obligations (Packaging Waste) Regulations 2007 SI 871/2007**
  If you manufacture, convert, pack or fill, sell or import more than 50 tonnes of packaging or packaging material per year, and have an annual turnover of more than £2 million, you must register with your environmental regulator or a registered compliance scheme and must achieve targets for recycling or recovering waste.

- **Control of Major Accident Hazards Regulations 2015**
  If your organisation handles, produces, uses, stores or introduces, on any site, any of the dangerous substances listed in the regulations in quantities equal to or exceeding the threshold quantity specified, then you will need to comply with this legislation.

  As a guide, dangerous substances include, but are not limited to, those that are considered toxic, oxidising, explosive or flammable. You will need to carefully check the regulations to identify specific dangerous substances and for details of the relevant thresholds.

  Operators of sites with the greatest hazards (top tier sites) will be subject to stricter controls than those with less hazard (lower tier sites). The threshold quantities vary depending on the particular dangerous substance, and you will need to check the regulations to establish in which category your site belongs.

- **Modern Slavery Act 2015**
  If your organisation is incorporated in the UK and sells goods or services, with a global turnover of £36 million of above these regulations apply. An organisation is required to publish an annual slavery and human trafficking statement. The statement has to be published on the organisation's website with a prominent link from the home page. The statement must be approved by the board of directors (or equivalent) and signed by a director.[158]

## ii) For an organisation's activities, products and services

Having identified the broad applicability of the legislation to the organisation, each piece of environmental and human rights legislation should be reviewed to identify the specific elements that are relevant. This information should then be interpreted and disseminated to those with specific responsibilities within the organisation. This stage is important because it identifies:

- the key issues to be addressed;

- those who are responsible for carrying out actions; and

- the appropriateness of any operating controls in place and whether they meet legal requirements; and

- if the method statements/controls meet legal requirements.

Some environmental legislation specifies that a permit is required to authorise the discharge of substances to air, water and land, for example, the Environmental Permitting Regulations, 2010.

The permit will specify: the type of emissions that are permitted; the quantity which can be discharged; and the rate and times at which discharges are permitted. The permit may impose conditions which need to be met on the site in relation to operational criteria; planned preventive maintenance, and monitoring and reporting. Each of these requirements should be interpreted accurately and their relevance documented and communicated to those in positions of responsibility.

In some cases, the legal requirement will specify duties, which must be

interpreted and implemented by the organisation, for example, the responsibilities in the Duty of Care Regulations, 1991. In order to ensure that the relevance of this legislation is clear, an organisation needs to be specific in its interpretation both at a corporate and at a site level. The specific relevance of this legislation would include consideration of:

- the types of waste this relate to;
- the sites where these types of waste are produced;
- the manner in which types of waste are stored;
- the volume and frequency of waste disposal;
- the kind of licences required;
- who is responsible for verifying the licences; and
- how waste transfer notes are kept, by whom, and for how long.

Specific information at this level of detail should be provided to transpose high-level legal requirements into practical, relevant, site-specific information for those in positions of responsibility.

In respect of determining whether the organisation has to comply with human rights legislation, it is essential that the organisation firstly understands how its operations impact on the human rights of others. Once it understands its impacts, the organisation should consider what legislation applies to its operations, including its supply chain.

It is likely that there will be more than one function in an organisation that will have to ensure that the organisation complies with the requirement of various laws relating to the protection of human rights of individuals. This might be a compliance function that lies with the general counsel within an organisation or financial director, whereas a sustainability manager may play a bigger role in managing compliance with the Modern Slavery Act.

## iii) Identify changes in directives, legislation and regulations

It is important for any organisation to be aware of future changes to legislative requirements in order to predict the potential impact on the organisation, and to implement plans to comply with new requirements efficiently and proactively. The changes may be embodied in new legal instruments or in alterations to existing legislation, regulations and guidance.

Significant amounts of management time and cost can be saved by being aware of future legislative requirements and being able to prepare managers and staff for forthcoming changes in working practices or operational criteria.

An indication of forthcoming legislative requirements can be found within each of the key sources identified in the tables in section 1.2 (p30). When researching future legislation, it is important to consider the following:

- Does your organisation fall within the scope of a European directive or regulation, or national legislation or regulations or associated guidance?
- What are the key areas of your organisations that will be affected?
- Who are the key individuals within the organisations who will be responsible for implementing changes?
- What are the cost implications of the new requirements?
- What are the associated threats and opportunities for the organisations?
- When are the proposed changes likely to come into force?
- Are there any planned future changes to the organisation, its activities, products and services that are affected by the new requirements?

## iv) Documentation of legislative requirements

Clear, accurate documentation in an easily accessible, readable format is essential to ensure staff engagement in legislative compliance. When documenting specific legislative requirements it is important to:

- be specific about the parts of the organisation that the requirement relates to, for example, identify installations, processes and departments; or in the case of human rights, those parts of the organisation or supply chain where it is possible that negative impacts on human rights can occur;

- be specific about how the legal requirements relate to each operational unit;

- define who is responsible for ensuring legal compliance for each requirement;

- define clearly any operational controls in place, for example, procedures and physical control measures;

- define clearly the operational limits for processes (where relevant), for example, pH levels of discharges should be maintained between five and nine at all times;

- define what information, at what frequency, will be required to evaluate and ensure ongoing legal compliance; and

- keep legal jargon to a minimum.

Distilling legislation down to its specific requirements and providing practical guidance at an operational level are key components of any EMS or a management systems. Identifying operational limits or performance criteria within which plant or equipment should be operated, or within which plans or programmes should be developed will provide clear, pragmatic direction for managers and their staff.

Once the specific relevance of each piece of legislation is understood, this should be communicated effectively to those with key roles and responsibilities. It is good practice to document the legislative requirements and to emphasise the key relevance of each requirement within a legislation register. While there is no specific requirement within ISO 14001:2015 for such a register, the standard specifies that the organisation shall: 'establish and maintain a procedure

to identify and have access to legal and other requirements to which the organisation subscribes related to its environmental aspects.' Section 6.1.1.4 of ISO 14004:2016[159] states that the organisation should maintain documented information of its compliance obligations, which could be in the form of a register or list. The register or list could include:
— the origin of the compliance obligation, an overview of the compliance obligation, and how the compliance obligation relates to the organisation.

Phase 2, stage 1 of the guidance in BS 8555 on identifying relevant legal requirements, states that the criteria which must be met before moving onto the successive phases includes 'robust evidence that relevant legislation has been identified'.

EMAS goes slightly further than either of the above standards by specifying that the organisation must demonstrate that they have:

• identified and know the implications to the organisation of all relevant environmental legislation;

• provided for legal compliance with environmental legislation; and

• established procedures that enable the organisation to meet these requirements on an ongoing basis.

An example page from a legal register is shown in the Legal Registers section (p119-121).

# C: Evaluate current compliance and determine appropriate controls

## i) Evaluate current compliance

To establish actual performance against legislative requirements it is important that the organisation is aware at all times of its compliance status. This means that an organisation should implement systems that not only maintain compliance, but also highlight when compliance has been breached, activating appropriate response measures to address the issue and resolve it. This approach should be used to meet both environmental compliance and human rights.

Frequently, the scope of the internal audit process within an EMS is not adequate to demonstrate that compliance is being evaluated periodically. Where authorisation or permit limits are imposed, an organisation needs to check if there is a risk of breaching conditions, and if improvements are required. By undertaking a thorough, legislatively focused compliance review, it may become apparent that certain sites or processes do not have appropriate licences, permits or authorisations, which needs to be addressed with the appropriate regulator. A thorough investigation of human rights legislation and how it may apply to an organisation should also be undertaken. It may highlight legislation gaps, such as failing to have the correct policies in place to address equality or diversity or a failure to report on steps being taken to address modern slavery or forced labour.

There may be legislative requirements which are not controlled by permit conditions, such as waste management and the Duty of Care requirements, or ensuring that the human rights of individuals are protected by having the correct policies and grievance mechanisms in place. These will need to be checked periodically. Key questions to ask to help evaluate compliance in relation to waste management would be questions such as: 'Is it known if transfer notes are held for each waste stream on site? Who holds them and where? Is it known if waste carrier licences and waste management licences are held on site for each waste stream? Is it known if the waste disposal point is appropriate to take the particular waste in question?' A question to ask to evaluate compliance on human rights issues is 'Do we ensure that everyone is treated fairly, without any forms of discrimination?'

An organisation needs to demonstrate that it has reviewed its compliance status in a systematic manner and continues to review it on a regular basis.

The process of compliance evaluation should be combined with the assessment of significant environmental and human rights aspects at the planning stage of EMS development. Compliance status against legal requirements and the risk of non-compliance, for example, the release of a substance into the environment, or failure to address human rights requirements could result in a breach should be included within the assessment of significance. Anything less would seriously compromise the effectiveness of subsequent significance-rating calculations and ultimately the focus of the entire EMS.

By identifying those areas with the greatest risk of release or breach of legislation, the identification and assessment of significance will serve to prioritise the activities, products and services carrying the greatest risk; therefore, these are the areas which need to be managed formally through the implementation of suitable control measures.

The 2018 IEMA survey found that one third of companies monitor their compliance on a monthly basis, and that they check for changes in legislation at the same time.

## Frequency of evaluations of legal compliance[160]
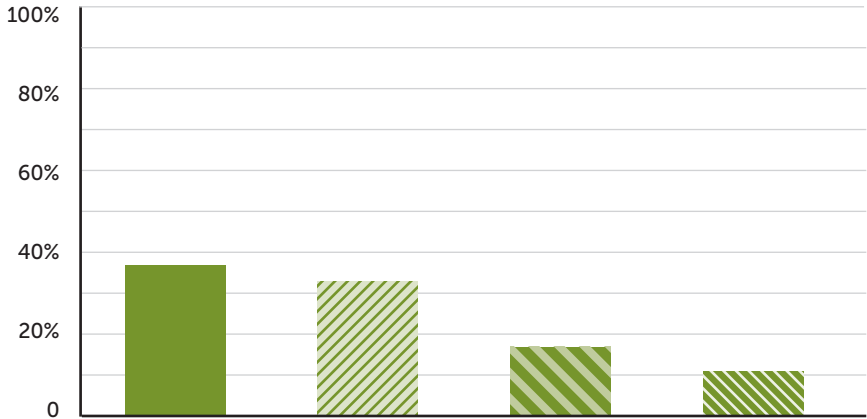
| | |
|---|---|
| Once a month | **37.3%** |
| Once a quarter | **33.8%** |
| Once a year | **17.1%** |
| Never | **11.8%** |
| **Number of survey participants** | **474** |

## Frequency of checks for legislative changes[161]
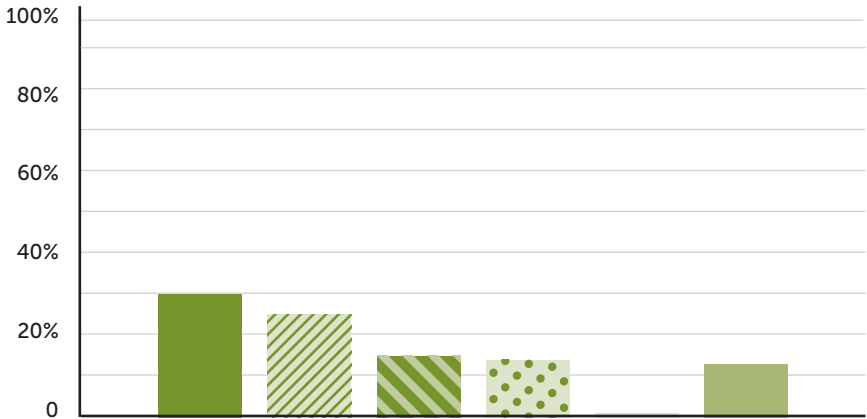


| | | |
|---|---|---|
| ■ | Once a month | **30.4%** |
| ▨ | Once a quarter | **25.1%** |
| ◨ | Every 6 months | **15.8%** |
| ⬚ | Once a year | **14.6%** |
| ▬ | Never | **1.1%** |
| ■ | Other (I don't know) | **13.1%** |
| | **Number of survey participants** | **474** |

**Checklist for gaps in the legal compliance process**

Organisations can use these questions to help identify gaps in managing their legal compliance and how to demonstrate legal compliance[162]

| Check | Yes | No | Not sure | Comments |
|---|---|---|---|---|
| Does your organisation understand the external and internal issues relevant to the organisation's purpose? | | | | |
| Does your organisation understand the scope of its EMS/procurement operations? | | | | |
| Identify where the organisation operates. Are there countries in which the management system scope applies the minimum social, environmental and economic laws? | | | | |
| Does the organisation know how to apply best practice requirements where there are no minimum economic, social or environmental laws? | | | | |
| Does the organisation have someone internal that has the necessary competence to ensure legal compliance? | | | | |
| If the organisation does not have someone with the necessary skills to manage legal compliance, does it have the resources to train someone or engage with a third-party expert? Demonstrating legal compliance | | | | |

| Check | Yes | No | Not sure | Comments |
|---|---|---|---|---|
| Has the organisation identified current legal obligations that apply to the organisation's operations? | | | | |
| Has the organisation identified key interested parties? | | | | |
| Has the organisation created a legal register that will capture all the key compliance obligations? | | | | |
| Has the organisation committed to upholding and complying with all compliance obligations? | | | | |
| Is the organisation able to demonstrate compliance by producing evidence? For example, a record on waste transfer invoices? | | | | |
| Does the organisation have a system to evaluate compliance on an ongoing basis? | | | | |
| Does the organisation document and maintain evidence of evaluation of compliance? | | | | |

## ii) Determine appropriate controls

For the activities, products and services identified as requiring control, the organisation needs to clearly define appropriate measures to ensure compliance is maintained.

**Control measures for environmental compliance**

| | |
|---|---|
| **Objectives, targets and management programme** | Forward plan to secure improved performance where poor compliance has been identified. The objectives, targets and management programme should identify key actions with specified timescales and identified responsibilities |
| **Policies** | Identify the need to strengthen or develop corporate policies in relation to compliance and performance issues |
| **Operational procedures** | Identify key procedures that will be required to specify clearly the necessary operating techniques, processes and criteria. Operating procedures should identify key roles and responsibilities for maintaining and implementing procedures |
| **Work instructions** | In some cases detailed work instructions with step-by-step instructions may be required |
| **Physical controls** | Practical measures may be required to meet legislative requirements, such as new oil storage tanks and bunds. Capital expenditure needs should be identified and incorporated within budgets and organisational plans |
| **Communication and training needs** | Effective communication and training requires changes to procedures and work instructions at all levels within the organisation |
| **Evaluation, audit and review** | Establishment of evaluation, audit and review programme to provide assurance that control measures are being implemented, effective and remain relevant |

Regulators expect to see organisations delivering consistent and continuing compliance. This requires a structured approach, and EMSs provide a way for organisations to do this.

The Environment Agency considers legal compliance and good environmental performance to be fundamental. The table below identifies some do's and don'ts in this regard.

**Identification of legal requirements – do's and don'ts**

| Do | Don't |
|---|---|
| • Systematically define all activities, products and services (aspects) of the organisation | • Assume that legislation does not apply – investigate and demonstrate |
| • Review each environmental aspect against legal requirements. Review each human rights aspect | • Assume that individuals within your organisation understand how environmental legislation applies to their role or human rights legislation applies |
| • Check in detail the thresholds for compliance with legal requirements against your activities, products and services | • Assume that as you have never had any breaches in legislation, that you are not currently in breach or will not be in future |
| • Document relevant legislative requirements, and their relevance, and identify how they are to be managed and controlled | • Provide ambiguous information |
| • Allocate clear roles and responsibilities for compliance with specific pieces of legislation | • Forget to consider planned changes |
| • Communicate how legal or other requirements are relevant to your specific site at all relevant levels | • Forget to consider normal, abnormal (planned but irregular) and emergency conditions |
| • Include operational criteria within operating procedures and work instructions | • Assume that the regulator will tell you about all legislation and regulations |
| • Provide training where relevant | |
| • Update legislative requirements and the legal register on a regular basis (every six months at least) | |
| • Routinely evaluate effectiveness and implementation of the EMS | |

# D: Implementing appropriate controls and monitoring compliance

## i) Internal compliance assurance

**Systems and procedures for ensuring on-going compliance and improvement**

With regard to ensuring on-going compliance and improvement for both environmental and human rights compliance, some good practice points are as follows:

- make sure that the responsibilities for delivering compliance are clearly understood and assigned;
- make sure that the person who has responsibilities for delivering compliance has the correct levels of competency
- make sure that individuals have adequate resources, not only to comply with legislation but also to conduct regular reviews and evaluations of the state of compliance;
- establish a competency framework to identify whether individuals have the relevant skills and qualities necessary to enable them to fulfil their responsibilities;
- use the competency framework to understand and prioritise training needs;
- regularly highlight compliance issues with staff at all levels, by using presentations, posters and toolbox talks;
- review compliance on a regular basis; and
- communicate with regulators at the planning and implementation stage.

Management of legal compliance needs to be incorporated into normal organisation activities. This means that responsibilities for the identification of relevant issues and delivery of compliance need to be clearly defined. This will help to ensure that adequate resources are available to support these activities.

## ii) Creating legal registers

**What is a legal register?**

Many organisations use a legal register as a documented output from a process where an organisation aims to demonstrate compliance with legislation applicable to their business.[163]

A legal register can also be used to identify and mitigate risks, and to find opportunities to create efficiencies.

It should be compiled by someone who has the ability to analyse legislation and understand how it applies to the organisation.

See note below on how an EMS can integrate human rights legislation.

**How can the organisation ensure compliance through developing a legal register?**

1. Create a legal register (see an example in the next table). This register should contain a list of legislation, other requirements and future legislation that applies to the organisation. The register should only cover those laws that apply to the scope of the management system. Under ISO 20121, there is a clause stipulating that where national law does not provide for minimum environmental, social or economic safeguards then an organisation should accept that the rule of law is mandatory and adapt best practice principles, thereby adopting an approach to go beyond compliance.

2. Ensure that a legal audit is built into your audit schedule. The findings of the audit should be fed into the annual EMS management review.

3. Where necessary, get expert legal advice on issues such as producer responsibility for packaging waste, Waste Electrical and Electronic Equipment and batteries, energy management and human rights compliance.

4. Keep the legal register updated.

**Example layout of a legal register**

| Legislation (determine the jurisdiction) | Regulatory Authority |
|---|---|
| Description of the legislation (including the weblink for the identified legislation) | |
| Specific legislative compliance obligations | |
| Relevance to our organisation | |
| Non-compliance implications including sanctions, penalties and fines | |
| Responsible person(s) | |
| Evidence of compliance (required licenses, data and records) | |
| Compliance status | |
| Review of non-compliance – set out the date | |

**Example legal register: Modern Slavery Act,2015**

| Legislation | Regulatory authority |
|---|---|
| UK Modern Slavery Act, 2015 Source: http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted | Secretary of State |

**Description of the legislation**

The UK legislation requires commercial organisations, providing goods or services in the UK with a global turnover of £36 million or more to produce an annual slavery and trafficking statement

**Specific legislative compliance obligations**
The statement must be approved by the board of directors and signed by a director.

The statement must be published on the home page of the company's website

Specific statutory codes of conduct that apply or 'other requirements'

**Relevance to our organisation**

For example 'We provide goods in the UK and have a turnover of more than £36 million

**Non-compliance implications including sanctions, penalties and fines**

**Responsible person(s)** The chief executive

**Evidence of compliance (required licenses, data and records)**

Statement is signed by a director and is approved by the board of directors.

Statement is published annually on the website with a prominent link to the home page and reviewed and updated annually

**Review of non-compliance**

Set out the date

**European Timber Regulation, 2013 overview**

(This is likely to remain applicable in the UK post Brexit as it has been enshrined into UK law.)

In 2003, as a response to the global threat of illegal logging, the EU developed its Forest Law Enforcement, Governance and Trade (FLEGT) action plan. It introduced a series of measures designed to exclude illegal timber from markets, improve the supply of legal timber and to increase the demand for wood products from legal sources. Two of the main elements to come out of this were Voluntary Partnership Agreements (VPA) and the European Timber Regulation (EUTR) which was developed and came into force in March 2013. VPAs are legally binding trade agreements with timber-exporting countries outside the EU that are designed to help prevent illegally logged timber being placed onto the EU market. Those countries that have signed and ratified a VPA agreement with the EU following a rigorous third-party assessment process are deemed to be a guaranteed legal source for all the timber products covered in the scope of their agreement. The EUTR is a piece of legislation that is designed to prevent illegally logged timber entering the EU with the onus on the importer to ensure they have a robust due diligence process in place in order that they can comply with this.

**Products affected in Saint-Gobain Building Distribution (SGBD) (not exhaustive)**

Not all timber products are within the scope of the EUTR – the definitive list is available on both the UK government[164] and European Commission[165] websites. Products covered are solid timber, panel products, doors, frames, barrels, packaging products when bought in in their own right, fuel wood and pulp and paper. Packaging is not included when it is imported as protection to another imported product, nor are some bamboo products, recycled timber, printed brochures and books or certain types of furniture.

However, even in instances where it is not legally required, the EUTR process should be applied by SGBD to all products containing timber as part of our Responsible Sourcing process.

### Actions for SGBD

Responsibility for compliance with the EUTR differs depending on whether SGBD is responsible for placing the timber on the EU market for the first time or not. The process also depends on whether SGBD are classed as an importer (operator) or a player further along the supply chain (trader).

Failure to comply with the EUTR is a criminal offence and can lead to fines and imprisonment along with the seizure of the timber in question. The organisation responsible for policing this policy in the UK is the National Measurement and Regulation Office. It has actively carried out investigations into certain high-risk supply chains and has issued remedial notices to companies failing to meet requirements. Investigations will also be triggered by whistle blowers and consumer complaints.

### Obligations for operators

- To collect information on products they are importing: species; country of origin; volume involved; supplier and evidence to support the legality of the product.

- All suppliers must sign and return the SGBD EUTR declaration form.

- All timber suppliers must also receive a copy of the SGBD timber policy and acknowledge that they are compliant.

- A risk assessment must be carried out to determine the likelihood of the timber originating from an illegal source. SGBD central office has created an online risk assessment tool that is to be used for this. If the risk is assessed as anything other than negligible then mitigation must be carried out (for full process see the SGBD EUTR procedures document). If adequate mitigation cannot be put into place the products must not be purchased. A PDF copy of the form along with all information collected and any mitigation required must be held on file for at least seven years.

- Over and above this, SGBD will not deal with species and countries as detailed on the Timber Policy leaflet 2017,[166] or any species listed as critically endangered on the IUCN Red List.

## Obligations for traders

- Legally the obligation for traders extends only to record keeping – who the product was purchased from and sold to in order to allow traceability along the supply chain.

- However, due to the high profile of the Saint-Gobain brand, further due diligence must be carried out.

- All suppliers must sign our supplier charter, EUTR declaration and timber policy.

- Suppliers must be able to demonstrate evidence of a due diligence process where they import products and be able to confirm species and country of origin on request.

- All products must be supplied with chain of custody certification (unless otherwise agreed with a relevant category manager and responsible sourcing manager).

- Suppliers must guarantee not to supply products from a country that SGBD has chosen not to deal with and as detailed on the timber policy.

- In the event of any doubt, a product must not be purchased.

## iii) Reviewing the status of compliance

Organisations should establish arrangements for regularly reviewing the status of compliance with relevant legal obligations. This includes the review of both existing and new legislation. This periodic review should consider a variety of indicators of compliance for each relevant item of legislation. Such indicators might include some or all of the following:

- comparison of discharges against consent limits;
- audit findings – internal or external and relating to ethical issues;
- regulator findings;
- environmental incidents or complaints;
- incidents of human rights abuse or complaints;
- progress against the environmental management and human rights programme;
- results of the environmental monitoring programme;
- results from grievance mechanisms or whistleblowing;
- risk assessments, ethical audits; and
- reviews of changes in legislation.

Again, a record of the reviews should be kept demonstrating that consideration has been given to all relevant legal obligations as well as recording the outcomes. A company may use a Red, Amber, Green (RAG)[167] system to evaluate the levels of compliance with identified legislation. Anywhere in a green band is usually considered acceptable and compliant.

## iv) Responding to changes and problems in legal compliance

An organisation should be ready to adapt its EMS to address new legislative requirements or to improve its delivery of compliance with existing obligations. Having identified a change in legislation or a problem in compliance, various elements of the EMS should be reviewed to ensure that they remain valid, including:

- significant environmental aspects, such as to reflect enhanced protection given to a particular environmental receptor;
- financial, operational and other organisational changes, such as investment in the provision of additional engineering controls;
- absence of the rule of law in countries;
- operations in countries where risk of negative human rights is greater;
- environmental and human rights objectives, targets and related management programmes;
- environmental roles and responsibilities;
- roles and responsibilities covering human rights issues, such as human resource managers and procurement;
- programmed audits and inspections; and
- existing communications mechanisms, such as to incorporate new reporting requirements.

## v) Implementing remedial action

Under the UNGPs, organisations need to ensure that they have appropriate processes in place to enable the remediation of any adverse human rights impacts they cause, or which they contribute to (Foundational Principle 15).[168] This may include grievance mechanisms, whistleblowing policies and dedicated phone lines for complaints by suppliers.

**HANSON UK CASE STUDY: Ensuring multi-site compliance**

Hanson UK is one of the largest suppliers of heavy building materials to the construction industry. Part of the Heidelberg Cement Group, which has leading global positions in aggregates, cement, concrete and heavy building products, Hanson UK produces aggregates (crushed rock, sand and gravel), ready-mixed concrete, asphalt and cement.

Our business is managed in five divisions – aggregates (Hanson Aggregates and Hanson Aggregates Marine), asphalt and contracting (Hanson Asphalt and Contracting), concrete (Hanson Concrete), cement (Hanson Cement) and supply chain. At the end of the 2016 financial year, Hanson UK had a total of 301 production operations, including but not limited to 45 quarries, 178 concrete plants, 36 asphalt plants and seven cement depots and wharves.

With such an extensive UK operation, Hanson has used an Integrated Management System (IMS) since 2012 to ensure that it complies with all its environmental and health and safety legal and regulatory obligations. The IMS incorporates the requirements of all the certification marking schemes that the organisation is accredited to, including but not limited to BES 6001 (Responsible Sourcing of Construction Products), ISO 50001 (Energy management) and ISO 14001:2015 (Environmental Management Systems) and OHSAS 18001 (Health and Safety).

We are committed to continually improving performance and our integrated management system processes and activities. We maintain a documented framework (management programme) for setting, implementing and reviewing objectives and targets to drive forward this improvement as set out in our sustainability policy. The improvement management programme applies to all levels in the business from UK corporate, through individual business lines to operational sites.

Within the IMS there are three separate types of procedure:

- 20 system procedures which provide all controls at the system level: including document control, and control of legal compliance;
- 66 corporate procedures which apply across all business lines, including waste management, environmental aspect and impact assessment, risk assessment, oil storage and working at height;
- Separate operating procedures which are mostly quality related and vary depending on the type of activities carried out at each of our 303 sites.

Many procedures include both guidance, to help staff understand the background and requirements, and forms that are to be completed at site level.

At the top or corporate management level, we have functional specialists who, as part of the review process, maintain the procedures and guidance to be up to date and ensure the IMS refers to the right legislation. The specialists also provide or arrange training resources to ensure that staff throughout the business are competent to comply with the IMS. The head of environment is responsible for ensuring that the IMS takes account of all relevant environmental laws or regulations that apply to our operations. At the site level, each site manager and supervisor within the operations chain has responsibility to ensure that the sites comply with the legal requirements set out in the IMS and flag up any training requirements that are needed for that site.

Our specialist staff track legal developments by several methods. We subscribe to legal tracking registers that provide regular updates on new legislation and also enable access to the legislation itself as well as summaries. Though we allow all staff to have access to the legislation itself, usually the key requirements of legislation as it applies to our activities are incorporated into the guidance documents for each procedure. Compliance with the IMS will also achieve compliance with the law.

Membership of sector associations (including the Mineral Products Association, The Construction Products Association, UK Green Building Council, the Supply Chain Sustainability School) and participation in specialist committees within them, also enables the tracking of developing policy and new legislation as well as changes to current legislation. Membership of professional organisations supports this legal awareness; the legal updates in the IEMA magazine Transform are a good example of this. In addition we have our own in-house legal team and the support of external solicitors when needed to interpret any difficult areas of legislation. Many of these external legal firms also issue briefings on new and changing legislation.

We ascertain the relevance of new and changing legislation to our business by all of the support mechanisms mentioned above but the sector associations are particularly useful in this respect.

Hanson UK, in its capacity as a Corporate Member of IEMA, is currently working with the institute on a tailored course to help Hanson staff better comply with the environmental and sustainability responsibilities of the business. The course builds on the standard version of the IEMA All Jobs Greener Suite, and is bolstered with business-specific and compliance-related skills training as relevant to the activities we carry out.

Structure of the IMS

The IMS is all electronic – it sits on the company intranet system, and all controlled documents sit in the central IMS.

Managers have access to the procedures, guidance and forms that provide the structure of the IMS. Each of the 303 operational sites has its own page on the intranet where site managers can store completed forms and site-specific documents – these can all be accessed by any employees, which enables cross learning, but only authorised staff on each site can edit the documents within a site page.

As well as statutory law, much legal compliance on our sites relates to compliance with site-specific permits. As part of the IMS, each site has an electronic site document file – the access to it sits within the site page and it contains all site-specific permits, surveys, Tree Preservation Orders. The documents can be accessed by anyone to read but they are uploaded by designated document controllers who have responsibility to make sure that the documents are up to date. The document controllers include:

- Site managers and environment advisors for environmental (air) permits (such as Local Air Pollution Prevention and Control (LAPPC[169]);

- estates surveyor for planning permissions and lease documents; and

- geologists for water-related permits (abstraction and discharge).

Issue, review and control of documents is controlled within IMS System Procedure (SP) SP014: Control of permits and site documentation.

The site manager appointed under the IMS has responsibility to ensure each site complies with legislation and permits. These responsibilities are defined under SP08: Responsibilities and roles.

A further procedure requires managers to carry out an annual review of legal compliance against a checklist, this includes permits and statutory legislation. The process for this is defined under SP010: Identification, implementation and compliance checking of legal and other requirements.

Internal incidents or breaches of permits are also required to be recorded and reported if and when they occur. This is done via a software system called Entropy – as well as providing a database of incidents and required improvement actions, the system automatically issues reports of all incidents to operations management and specialist staff as soon as they are entered on to the system. This means that support can be provided to site staff to enable the implementation of corrective actions as soon as possible. The process for this is defined under SP016: Reporting of accidents, incidents and regulatory visits.

Though the new ISO standard does allow a more process orientated approach, at the moment we believe that the use of the procedural approach already developed gives stronger control across a multi-site operation such as ours. To this end we are currently maintaining the established procedures. Over the next few years we will review opportunities to change the system and discuss such opportunities with our certifying organisations (QSRMC – CPC for ISO 14001 and 9001, and OHSAS 18001 and BES 6001 and Lucideon for ISO 50001). We operate a stand-alone Learning Management System (LMS) that records training requirements for job roles and individuals – some of these are mandatory, while others originate from our personal development review process.

*(Martin Crow, National Sustainability Manager at Hanson UK)*

## 3.4 How to integrate human rights law within an EMS

Traditionally, organisations have looked to ISO standards to manage their operational risks, with the common options being Management System Standards (MSS), such as ISO 14001:2015 for environmental risks, ISO 9001:2015 for quality management of goods and service delivery and ISO 45001:2015 for health and safety risks.

Increasingly, other risks such as mandatory reporting and human rights legislation is becoming a board-level concern, with organisations looking to maximise the existing investment in their current management system by using it has a platform for managing new and developing risks.

While there is no agreed international standard for managing human rights impacts, there is recognition that there are clear links that can be made with MSS, whether you use ISO 14001, ISO 9001 or ISO 45001. However, because these standards have similar intents but different structures, text and terminology, they are more difficult to implement together.

The development of MSS using the Annex SL approach makes it possible to consider the relevant links for human rights law to be considered as not only a compliance issue and risk and opportunity but as an expectation of customers and stakeholders.

Annex SL harmonises structure, text and terms and definitions, while leaving the standards developers with the flexibility to integrate their specific technical topics and requirements. Written primarily as a guide to those who draft the standards, the core of Annex SL consists of ten clauses that encompass a high-level structure, shared terms and definitions and actual shared clause titles and text.[170]

The Plan-Do-Check-Act approach is an integral part of the ISO 9001:2015 standard. Risks that may impact on objectives and results must be addressed by the management system. The Plan-Do-Check-Act approach can be used to manage processes and systems.

- **Plan:** set the objectives of the system and processes to deliver results (What to do and how to do it).

- **Do:** implement and control what was planned.

- **Check:** monitor and measure processes and results against policies, objectives and requirements, and report results.

- **Act:** take actions to improve the performance of processes.

To integrate human rights compliance and risk management within an MSS using the Plan-Do-Check-Act and annex SL approaches together, follow the steps that follow.

## PLAN
### Context of the organisation

Human rights legislation should be identified as external and internal issues (clause 4.1).

Interested parties and their needs and expectations should include human rights (clause 4.2 a + b) as well as those needs and expectations that become compliance obligations (clause 4.2 c).

Determining the scope of the environmental management system including human rights issues taking into account the above issues and the delivery of its products and services (clause 4.3).

### Leadership

Ensuring that the environmental policy and environmental objectives are established and are compatible with the strategic direction and the context of the organisation (clause 5 b). A human rights policy and objectives should be created that are compatible with this clause.

Supporting other relevant management roles to demonstrate their human rights leadership as it applies to their areas of responsibility (clause 5 i).

### Environmental policy

The policy should be appropriate to the purpose and context of the organisation, including the nature, scale and environmental impacts of its activities, products and services (clause 5.2 a) and include a commitment to fulfil its compliance obligations including human rights (clause 5.2 d).

### Organisational roles, responsibilities and authorities

The EMS should report on environmental performance and compliance status to senior management (clause 5.3 b). The same principle applies to managing human rights impacts.

**Planning**

Human rights should be used as one of the criteria for determining the risks and opportunities related to its environmental aspects (see 6.1.2), compliance obligations (see 6.1.3) and other issues and requirements, identified in 4.1 and 4.2.

Additionally, these risks and opportunities will need to be addressed to prevent or reduce undesired effects including human rights abuses. Documented information containing the risks and opportunities that need to be addressed, and the processes needed, give confidence that they are carried out as planned.

**Compliance obligations**

The organisation must determine and has access to the compliance obligations related to its environmental aspects. The organisation should ensure it also understands its compliance obligations with reference to human rights legislation and determine how these compliance obligations apply to the organisation. These compliance obligations also need to be taken into account when establishing, implementing, maintaining and continually improving its environmental management system, and be recorded in documented information.

## DO

**Competence**

Organisations should determine the necessary competence of person(s) doing work under its control and that they can apply the principles of the EMS, understand human rights issues and take action in relation to any non-compliance (clause 7.1 and 7.2).

**Operational planning and control**

The organisation shall ensure that outsourced processes are controlled or influenced with respect to human rights. The type and extent of control or influence to be applied to the processes should be defined within the EMS.

## CHECK

**Evaluation of compliance**

The organisation shall establish, implement and maintain the process needed to evaluate fulfilment of its compliance obligations including human rights legislation (clause 9.1.2).

It should be capable of determining the frequency that compliance will be evaluated, evaluate compliance and take action if needed, and maintain knowledge and understanding of its compliance status. It should make documented information available as evidence of the results of its compliance evaluation.

**Internal audit**

The internal audit process should be capable of monitoring the organisation's supply chain to ensure that the compliance status of contractors and supplier is audited in terms of relevant environmental and human rights legislation (clause 9.2).

**Management review**

The outcome of the internal audit and other required inputs, such as the status of compliance with including human rights laws within the organisation and its supply chains, should be reported to the senior management so that they are fully aware of any issues and can make informed decisions, especially on actions to improve performance.

## ACT

**Improvement**

Clause ten provides the final element of the PDCA cycle with the mechanism to ensure that the organisation is capable of continually improving the suitability, adequacy and effectiveness of the EMS to enhance its environmental and human rights performance. This may have to include the development of remedial action for any negative human rights impacts.

# 3.5 Three steps to greater confidence about compliance

Organisations may want to reassure themselves that the compliance levels they have managed to establish are ongoing. Internal compliance assurance is a series of further actions by which an organisation is able to demonstrate to itself and its stakeholders (including its regulators) that it is in compliance with its obligations under environmental legislation. This comprises:

**Step 1**   Checking the organisation's legal duties and obligations.

**Step 2**   Ensuring the identification of compliance tasks and their frequency, including:
a) calculating and prioritising the resources needed; and
b) optimising compliance tasks within the resources available.

**Step 3**   Ensuring that compliance tasks are delegated and supervised effectively, as well as monitoring, auditing and reporting.

**Step 1: Checking the organisation's legal duties and obligations**

When devising the assurance elements of an internal compliance system, it is important to ensure that its scope is sufficiently broad to cover all the aspects of environmental legislation that could affect the organisation. Not only is it necessary to identify each component of relevant legislation, but it is important to understand the scope of the requirements they may contain, whether it is a European regulation having direct effect, an act of parliament or devolved administration, a subordinate order or set of regulations, or a permit or licence issued by the relevant authority.

It is worth noting that not all environmental legal requirements are contained in overtly environmental legislation. Organisations, product and process legislation may also contain performance requirements that are expressed in a wide range of terms, including environmental considerations. This is also true of legislation covering human rights and modern slavery, such as legislation regulating health and safety breaches and the Criminal Finances Act, 2017.

The identification process will already have been undertaken once, in order to set up the compliance management system. However, during the assurance process, it is necessary to question the original scoping exercises in detail and take nothing at face value. Such a reassessment of the basic data must be undertaken by suitably experienced and competent personnel, who were not involved in the original setting up of the compliance management system. In this way, a compliance assurance checklist can be developed that will undoubtedly make assurance exercises more efficient, but reassessment will be required on a regular basis.

**Step 2: Identifying compliance tasks and their frequency**

Once it has been established exactly which parts of the environmental, human rights and legal frameworks have a direct effect on the organisation, the next stage is to ensure that the original determination was sufficiently detailed in its delineation of actions necessary to demonstrate compliance to the regulator where necessary.

**Are the compliance tasks identified to sufficient depth?** Legal obligations are varied and often complex and different approaches will be needed for different duties. For instance, in many cases such as a minor maintenance task on part of the plant that is not critical for safety or environmental performance, a regulator may be satisfied with a written record that the task has been performed. However, for compliance tasks where environmental or human rights risk factors are particularly important, a greater depth of evidence may be needed to show that:

- initial staff training has been carried out;
- active monitoring by management has been carried out to check that the correct procedures are being followed;
- written reviews of the effectiveness of the training and supervision processes have been carried out, with evidence of the implementation of improvements; and
- the issues have been considered at a sufficiently senior management level.

Essentially, where non-compliance could result in prosecution, it is sensible to gather compliance evidence routinely that will stand up to scrutiny in court. The aim should be to underpin each item on the organisation's legal duty checklist with a supporting schedule of discrete tasks that, together, fulfil the duty. Examples of such compliance tasks might include the provision of a risk assessment document, the physical installation and commissioning of pollution abatement equipment, or the preparation of a procedure for maintaining an accurate, auditable record of emissions data. Compliance tasks relating to the protection of human rights or combatting modern slavery include risk assessment, human rights policies, grievance mechanisms, and board minutes approving the modern slavery statement.

Are the compliance tasks of sufficient frequency? Internal compliance assurance should also ensure that tasks have been allocated to take place at the correct frequency. Some tasks need to be completed once only, such as an initial noise survey for an existing installation. More commonly, compliance tasks might be required regularly, perhaps monthly, quarterly or annually for the reporting of monitoring results, while others are required on an ad hoc basis, such as a risk assessment for the use of a new substance. In each case, the frequency of the task needs to be considered when making decisions about resources and delegating responsibilities.

### Step 2a: Calculating and prioritising resources

Preliminary calculations and prioritisation of resources for compliance work will undoubtedly have been carried out prior to any further auditing or assurance exercise. However, there are inevitably changes within organisations that can easily go unnoticed. As a result, internal compliance assurance can identify the new situations and provide refinements on the initial work.

When the tasks are identified, the time needed to perform each task can be estimated; these are then added together to provide an overall calculation of the total resource needed to achieve full compliance. However, this bottom-up approach is likely to arrive at a cumulative staff resource in excess of that available to the organisation for these types of tasks, and so a risk-based approach to compliance management is needed.

### A risk-based approach to compliance management
The number of individual legal duties and responsibilities on an organisation to protect the environment and preventing negative human rights impacts can be very large. Managers with responsibility for compliance are faced with the task of deciding how to allocate time and resources to achieve the best outcome for the organisation. Not all compliance tasks are equally important and there is not time to audit everything, so, it will normally be worthwhile conducting a risk assessment of the potential impacts of non-compliance against the factors listed overleaf.

**Factors to consider in the risk assessment process for environment and human rights**

**Level of inspection:** it makes sense to devote more effort into complying with the aspects of regulation that are seen as important by regulators and those which are checked or inspected regularly, taking into account past records for example failings, non-conformance

**Commercial consequences:** an important consideration is the degree to which a publicised non-compliance could result in the termination of contracts or the loss of organisations with safety – and environmentally-conscious customers

**Reputation:** could the non-compliance result in wider damage to the organisation's reputation? If so, how much marketing and stakeholder liaison effort would be needed to restore the situation? What impact will it have on investor confidence?

**Operations:** the potential non-compliance could result in enforcement action that would close production for a period. What contingency plans would be needed, and which parts of the plant are particularly vulnerable to non-compliance and enforcement action?

**Safety, human rights and environment:** is the non-compliance likely to result in an injury, or damage to the environment or to human rights of individuals? If so, would the consequences be significant in terms of compensation, mitigation and remediation requirements?

**Finances:** if the non-compliance could result in a financial penalty (including potential legal costs), how big would it be? In addition, would there be any indirect financial consequences, such as increased insurance premiums? Could a director be imprisoned as a result?

**Industrial relations:** certain non-compliances such as the failure to provide risk assessments or safe systems of work are likely to cause concern to trade union or staff safety representatives

A qualitative assessment of each potential non-compliance should be made against the factors described above and then compared with the current level of compliance. This will give an indication of where resources should be targeted and also from where the resources may be reallocated. For example, if substantial effort is being spent achieving high-levels of compliance against areas where the risks associated with non-compliance are low, then scope may exist to reprioritise to a higher risk area.

A good approach is to combine the bottom-up resource calculations with a top-down task prioritisation exercise, in which the compliance tasks are ranked in order of their risk-compliance assessment, with the highest-risk/lowest-compliance tasks first, through medium risks to the lowest-risk/highest-compliance tasks at the end.

### Step 2b: Optimising compliance tasks within the resources available

At some point in the list of priorities for compliance tasks, it may be that the total resource requirement exceeds that which is available, and a line needs to be drawn at that point. Internal compliance assurance exercises or audits can and should revisit the rationale behind such decisions where they have been made.

Compliance tasks falling below the line will therefore not be resourced unless decisions are taken to:

- increase the resources available for compliance tasks within the organisation;
- contract out certain compliance tasks; or
- aim to complete the compliance tasks above the line with a smaller resource.

An optimisation exercise seeking to combine these three principles will provide the information necessary for management to make informed decisions on where to draw the line on compliance. Internal compliance assurance should recheck the decision criteria regularly.

**Step 3: Ensuring that compliance tasks are delegated and supervised effectively**

**Delegation and management involvement:** the corporate body of the organisation retains legal responsibility for compliance, but the individual compliance tasks must be delegated to members of staff or to contractors. It is therefore essential to have clear lines of responsibility for the tasks themselves and supervision and auditing – see the table on models of responsibility in section 4 (p135). The involvement of senior management in achieving effective overall compliance assurance is important to ensure that those performing compliance tasks have sufficient delegated authority and the resources to do the job.

**Integration with existing management systems:** the initial compliance task identification exercise will provide a structured approach to compliance checking that may not have been present in the company before. New tasks may have been identified that had not previously been subject to management attention, and it may be tempting to set up a dedicated compliance management system specifically to keep compliance issues under control. However, it will probably be more efficient and effective to integrate compliance management within an existing management system, such as an EMS or maintenance system.

Whichever route to integration is chosen, the biggest benefit will be gained through implementation of a robust monitoring regime, including auditing carried out by specially trained auditors, as part of the internal compliance assurance process.

**Step 3a: Monitoring, auditing and reporting**

**Monitoring:** ongoing monitoring of internal performance indicators, raw material use and external emissions data can be useful, particularly if it is backed up with trend analysis to give an early indication of whether a non-compliance may be looming. It is important that monitoring is actively carried out and the data obtained is processed and managed effectively. This will avoid the organisation drifting into non-compliance while the opportunity exists to turn the situation around.

Ongoing monitoring should be backed up with regular auditing to confirm whether the management system is operating in the way it should, and that it supports the achievement and maintenance of compliance.

### Compliance auditor competencies

Compliance auditors have the advantage of a dedicated function. They will thus be able to consider in more detail the evidence provided by the organisation against specific legal requirements contained in permit conditions, regulations and sections within primary legislation. To form a meaningful judgement, the auditor must understand the legal terminology, but also the technicalities of the subject. This will require detailed knowledge of diverse technical areas such as:

- British, European and international standards including those used for monitoring equipment specifications, noise levels and pollutant emission levels;
- pollution control techniques;
- risk assessment methodologies; and
- major accident modelling.

The auditor also requires sufficient experience and judgement to be able to make an assessment against potentially subjective legal terminology such as 'best practicable means', 'as low as reasonably achievable', 'best available technique' and 'taking costs and benefits into account'.

EMS auditors should receive adequate training and have experience to be able to undertake an audit competently; they may also develop specialisms in particular industries or areas of legislation. In contrast, compliance auditors may need a different but complementary skill set. The breadth of knowledge required means that different areas of environmental compliance auditing within an organisation may need to be carried out by different individuals possessing the necessary skills and experience in each separate discipline.

In those areas where compliance auditing is seen as particularly important to an organisation, third-party auditing or verification may play an important additional role.

As a result the organisation needs to be aware of the competency requirements of not only its internal auditors, but also its third-party auditors. This will give increased confidence in the quality of the audit findings and maximise the value of the audit process.

**Limitations of internal auditing processes:** in the eyes of the law, the view of an internal auditor or third-party verifier is no more than an informed opinion of whether legal compliance has been achieved, as it is only the courts that are in a position to decide definitively one way or another. The same could also be said of the regulator's view.

However, when the opinions of the regulator and the regulated party differ, it is often the regulator that will have the advantage as they will usually have had far more experience in making compliance judgements, and may have a wide range of specialist opinion to draw upon to form a view. This means that an organisation needs to be very sure of its ground before formally challenging a regulator's view of non-compliance either through appeal or contesting a prosecution. On a more positive note, organisations should bear in mind that regulators are committed to transparency in their enforcement decisions so it should be possible to open a dialogue that will help to explain the particular reasoning that is considered important in a specific case, and make sure the regulator is aware of any mitigating factors.

**Reporting:** internal reporting is essential to 'close the loop' in terms of making sure that the necessary management information is fed back to decision-makers. Such reporting should be periodic to enable trend analysis to take place and to provide reassurance that the compliance management system is operating effectively. However, it should also be triggered by events or data that indicate non-compliance is likely or has occurred. This enables the management chain to take the appropriate mitigatory actions and helps to minimise the risks of non-compliance.

It is also important for the organisation to have a remediation scheme in place where instances of human rights abuse have been reported.

External reporting within annual reports or annual environmental reports should include information on compliance management as this is an important route by which external stakeholders can be made aware of the organisation's commitment to good corporate environmental performance.

## Summary

Understanding legal requirements and achieving compliance with environmental and human rights legislation is often difficult for organisations. Public and other stakeholders' expectations are high and the consequences of non-compliance can be serious. Increasingly, organisations have to consider the reputational impact of incidents relating to the abuse of human rights in their organisations (such as not paying the minimum wage as required by certain laws), or in their supply chains (such as uncovering child or forced labour in operations).

Internal compliance assurance is the means by which an organisation can demonstrate that it has met its legal obligations. It is a three-step process that:

- identifies the legal duties and responsibilities;
- determines what tasks are needed to comply and their frequency, optimised within the resources available; and
- sets up an effective system of delegation, supervision and auditing.

# Section Four Guidance for organisations – roles and responsibilities in on-going compliance and assurance

## 4.1 Systems and procedures for ensuring on-going compliance and improvement

Senior management is responsible for ensuring that suitable arrangements for compliance exist within an organisation. How this is achieved varies according to the size and nature of the organisation, and senior management should think carefully about which particular form of arrangements they require. The responsibilities may be split, with each senior manager seeking to establish local arrangements independent of other managers (model A). Alternatively, one senior manager may be given the responsibility to co-ordinate and manage compliance across the organisation (model B).

It is crucial that adequate resources and training is provided to those who will be responsible for managing compliance.

**Model A**

Board

Senior Manager 1 — Senior Manager 2 — Senior Manager 3

Environment Manager 1 — Environment Manager 2 — Environment Manager 3

**Model B**

Board

Senior Manager 1 — Senior Manager 2 — Senior Manager 3

Environment Manager 1 — Environment Manager 2 — Environment Manager 3
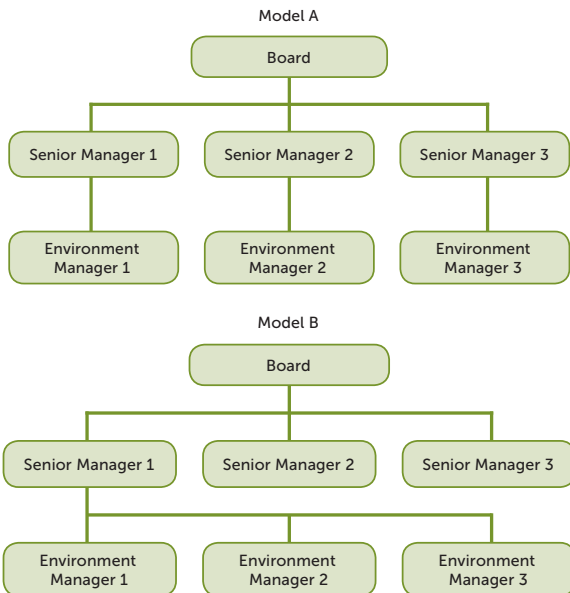
Multi-national organisations face a range of different obligations at each operational site. They may benefit from a local focus to the management arrangements (model A). In general however, such systems tend to be inefficient. They result in much duplication of effort within the management system with several individuals involved in identifying forthcoming obligations and developing solutions for compliance.

In comparison, model B establishes local responsibilities in each area, but with each individual reporting back to one single senior manager. This model offers greater opportunities for delivering effective and efficient management arrangements across the organisation and sharing best practice. In particular, this avoids the potential conflicts that exist with model A between the delivery of compliance assurance and the delivery of any operational goals.

Both models include the appointment of an individual within each area, named the environment manager or the human rights or ethical resourcing manager. These employees should have specific responsibility for ensuring that arrangements for environmental and human rights compliance are appropriate at the local level. Whether this is an integrated safety, health and environment (SHE) role or a stand-alone role is irrelevant at this stage. What is important is ensuring that an individual has the resources and competence to provide local advice and support on compliance issues. It is the role of this individual to communicate with managers and staff, to support their delivery of compliance and provide assurance that arrangements are adequate. This is clearly different to the role of local operational managers who have direct responsibility for ensuring that their activities comply with relevant legislation.

This is one of the most significant interfaces within any EMS and one where many systems will often fall down because the particular roles and responsibilities across this interface are not sufficiently clear, and the interface itself is not managed. Failure to understand this will result in lack of ownership of relevant issues at the coalface, with non-compliances arising from a lack of respect for and understanding of the requirements themselves.

This risk can be minimised in a number of ways. An organisation should ensure that the specific roles and responsibilities for compliance are described clearly within management arrangements. They should be communicated to relevant staff within the organisational structure, for example, through a simple table of roles and responsibilities.

**Example description of general responsibilities for environmental compliance within an EMS**

| Position | General responsibilities |
|---|---|
| Senior manager | • Provision of adequate resources to support environmental compliance |
| Environment manager | • Identification of relevant environmental legislation and other obligations<br>• Periodic reviews of compliance<br>• Production of annual management review<br>• Annual report on environmental performance |
| Plant manager | • Identification and management of local environmental aspects in accordance with the EMS requirements<br>• Compliance with relevant conditions of authorisation and permits |

**Example description of general responsibilities for human rights compliance within an EMS**

| Position | General responsibilities |
|---|---|
| Senior manager | • Provision of adequate resources to support human rights compliance |
| General counsel or compliance manager | • Identification of relevant human rights legislation and other obligations<br>• Periodic reviews of compliance<br>• Production of annual management review<br>• Annual report on human rights performance and steps taken to eradicate modern slavery |
| Ethical sourcing or CSR manager | • Identification and management of local human rights aspects in accordance with the EMS requirements<br>• Compliance with relevant conditions of authorisation and permits |

Small and medium enterprises will not necessarily have as many roles as this, often there is one senior director who may be responsible for all of these aspects.

To ensure that all obligations are covered, it is worth linking each obligation with the relevant responsible individual. For example, a plant manager may be required to take weekly samples of sludge, while a site manager may be required to report discharges to a regulator on a monthly basis.

This record of obligations can take the form of a legal obligations' register. This might simply be a checklist of specific conditions or limits relevant to a particular plant, detailing the particular staff responsible for ensuring local compliance, and the arrangements agreed between local management and the relevant environment manager. Such a register is also useful in demonstrating the adequacy of arrangements to external parties such as regulators or auditors.

The organisation should consider whether sufficient resources are available to deliver the responsibilities outlined. In particular, consideration should be given to the contingency or back-up arrangements in the event of any individuals not being available. Often within small organisations, the bulk of the environmental management activities are carried out by one individual. While this may be sufficient to deliver routine matters of environmental management, relying on any one individual for the delivery of legal compliance does present a risk. Even in larger organisations, failure to ensure that adequate resources exist to support compliance can lead to 'hero' management systems – entirely reliant on the activities of one or just a few individuals, and liable to grind to a halt in their absence. These principles apply equally to human rights compliance.

To avoid this, particular roles and responsibilities must be specified in job descriptions, and sufficient resources given to them in order to deliver. Roles and responsibilities should also be reviewed regularly as part of general performance management. While individuals might be keen to take on additional roles within a new system, failure to ensure that adequate time is given to allow such roles to be undertaken can put compliance at risk, undermine the effectiveness of the overall system itself, and result in regulatory action.

Clear commitment from senior management, demonstrated in the form of instructions to line management to either recruit additional staff or free up resources, is vital. By adopting an integrated approach to management activities, the particular resource demands of the EMS component can be minimised. For example, an existing health and safety officer may be able to integrate additional considerations of environmental issues into their current role relatively easily. However, care should be taken to ensure that an organisation does not assume that an employee has the required levels of competency in such situations.

An organisation should also think about the adequacy of resources when considering any specific initiatives or programmes of work to address the requirements of new legislation. Additional effort might be required to look specifically at the implications of new legislation, and to develop an appropriate strategy for implementation. This might include the development and delivery of training in addition to any changes to local procedures or instructions. Such activities will require additional time and effort and may detract from other responsibilities. They may also impact on other activities, for example plant operations might need to be suspended while engineering improvements are carried out. This principle is equally true when considering how the organisation should address human rights and modern slavery issues.

## 4.2 Competency

Many environmental permits and authorisations include the requirement for the activities to be undertaken by suitably competent staff. The relevant levels of competency for key positions and the demonstration that such levels are met should be a clear deliverable of an EMS.

To obtain and maintain a permit under the Environmental Permitting Regulations in England and Wales you must be considered a competent operator by the regulator.

Competency comprises of:

**Technical competency:** the operator has the right equipment and procedures to comply with the law and minimise risk to the environment.

**Environmental record:** assessment of an operator's previous compliance history, response to incidents and convictions for relevant offences.

**Financial competency:** the operator must have the finances to carry out the operation and comply with the permit.

Technical competency is primarily assessed through the EMS. However, if you operate a waste activity, you must also have appropriately qualified managers who are members of a government-approved technical competency scheme. Qualified managers must attend the site for a specified amount of time, and records of this and the operation's operating house must be kept.

It is useful to consider the competency framework of the organisation and IEMA's Sustainability Skills Map[171] as an adjunct to the mapped-out roles and responsibilities. The competency requirements of each role should be considered on the basis of the responsibilities assigned, as well as the particular requirements of legislation. Ensuring staff have the right levels of literacy on environment and human rights issues and are competent across a range of skills, as identified in IEMA's Sustainability Skills Map, will not only help manage an organisation's compliance status, but will also enable staff to reduce their environmental impact and deliver organisational efficiencies that will improve the company's bottom line.

IEMA skills map



Skills for Sustainable Leadership

Analytical Thinking

Problem Reframing & Resolution

Effective Communication

Leadership for Change

Technical Knowledge Across Environmental, Social and Economic Horizons

Issues & Principles

Policy, Regulation & Legislation

Core Knowledge

Fundamentals of Sustainability

Principles & Issues of Business Governance

Management & Assessment Tools

Innovative & Leading Practices

Delivering Sustainable Solutions

Relationship Development

Resiliance, Risk & Continual Improvement

Certification of competence

In some cases, understanding what level of competency is required is straightforward as it is already described within a permit or authorisation. For example, individuals can have an appropriate WAMITAB Operator Competence Scheme (WAMITAB, 2018) in order to be deemed competent to undertake waste management operations, or alternatively have MCERTS certification (Environment Agency, 2017) to undertake stack-emission monitoring.

This information can be used to establish criteria that recognise the different abilities and competencies of individuals in terms of the tasks and responsibilities for compliance.

These competency criteria can be compiled into a matrix, which should be used as a living document to inform subsequent training and development for staff, or to plan the resource implications of any changes in legislation or responses to compliance shortfalls.

# 4.3 Training and awareness

The different levels of competency, together with the defined roles and responsibilities for the EMS, can also be used to help identify relevant training needs within an organisation. In particular and for obvious reasons, efforts to improve competency should focus on meeting the external requirements that may have been specified as necessary for compliance. While clauses 7.2 and 7.3 of ISO 14001:2015 deal specifically with training on environmental issues, the principle is the same for ensuring that individuals who are managing human rights risk are properly trained. The Government's Guidance to the Modern Slavery Act: Transparency in Supply Chains[172] sets out specific requirements that a company should consider meeting in relation to training its staff on modern slavery and human trafficking issues.

Most individuals within organisations do not need to have high-levels of environmental competence, or a detailed understanding of human rights risk. Most training needs can be met internally at relatively low cost, employees do not all need to be able to quote chapter and verse from primary legislation. However, where internal expertise is lacking this should be recognised to ensure the appropriate levels of training are provided.

The table below provides some insight on a training project conducted by Kier Group in collaboration with Paul Pritchard of Iken Associates, an IEMA Fellow, which aimed to support the professional development of their sustainability specialists.

### Kier sustainability learning

Kier Group is a leading multinational property, residential, construction and services business which employs over 21,000 people and has operations in the UK, the Middle East, Australia and Hong Kong. The Group undertook a project in 2018 to support the professional development of their sustainability specialists; acknowledging the importance placed by the company on personal development and maintenance of professional standards (including chartered status). The guidance they have developed draws on the IEMA framework and Skills Map, underpinning the objectives of achieving Practitioner (PIEMA) and ultimately Full Member (MIEMA) and Chartered Environmentalist (CEnv) status.

The work undertaken reflected the key technical knowledge competence requirement 'Evaluate major policy and legislation in your field, describe their implications for organisations, products and services' listed in the IEMA Skills Map. Legal compliance also featured heavily in the competence 'Identify major and relevant tools, techniques, systems and practices that drive development of sustainable products and services and to create sustainable businesses'.

Kier specialists are accordingly expected to understand different types of policy instrument, types of law (common, civil or criminal), and also explain why Kier might want to move beyond baseline compliance.

They are also expected to be able to identify key legislation related to their role and any recent or forthcoming changes in legislation in both the environmental and wider sphere. How candidates use tools such as ActivComply[173] and SmartWaste[174] to identify and manage legal compliance is relevant in this context.

Using output from a workshop and survey, a manual was produced describing the pathway to PIEMA and MIEMA linking to the IEMA competencies and referencing appropriate current Kier training material and processes.

*(Paul Pritchard, senior associate at Iken Associates and IEMA Fellow)*

Organisations should use a wide range of mechanisms for training staff; targeting different staff with appropriate levels of training rather than simply seeking to make one size fit all. Workforce training programmes are available which provide staff with a baseline of environmental knowledge and skills tailored to their level of responsibility, for example IEMA's 'environmental sustainability skills for the workplace'[175] and 'environmental sustainability for managers'.

To maintain good levels of awareness, all staff should undergo refresher training at regular intervals, such as every three years, or every one to two years where the law is rapidly evolving. This does not have to involve significant time out of the office, more often, such courses can be provided as computer-based training packages available across an organisation's network – allowing individuals to complete these at a time convenient to themselves.

Toolbox talks can be used more flexibly, in particular to highlight any forthcoming changes to local obligations and arrangements. These are particularly effective where there are defined local responsibilities, such as a waste or energy

champion, and these individuals are involved directly in the preparation and delivery of such presentations.

Often these 'champions' are fundamental in ensuring the success of local ownership of environmental management arrangements. They provide key support to local facility management of the various significant environmental aspects, and provide focal points for communication on upcoming changes to relevant legislation from the local environment manager. The same is true of appointing a team across the organisation to manage and champion ethical issues. A single 'champion' at senior level is critical for ensuring that both environmental and human rights and modern slavery issues are addressed.

Involving local inspectors or regulators in local training or awareness sessions can provide a great opportunity for emphasising the importance of legal compliance, as well as strengthening the relationship between an organisation and regulator. They also provide a direct route for feedback from the shop floor to the regulator on the practicalities or otherwise of relevant obligations. This may not always be possible where organisations are quite small.

Organisations also benefit from providing a regular forum for discussing compliance issues – for example, having a routine agenda item on compliance at regular management meetings, and considering different topics at each meeting. Specific presentations could be given, say on the requirements of particular legal obligations such as oil storage regulations, or on business and human rights. This could describe the situations in which the regulations apply, the specific requirements of the regulations, timescales for implementation and any additional general pollution prevention guidance.

Where several individuals share compliance responsibilities, again regular meetings should be encouraged to share experiences of related issues. They provide a forum for considering the potential impact of forthcoming legislation, rather than having to establish any separate programmes of review or inspection across the organisation.

# 4.4 Communications to individuals within an organisation

Any changes in legislation or problems identified in the status of compliance should be communicated to the relevant individuals at the earliest opportunity. This can be routinely by ensuring that environmental compliance and compliance with human rights is considered at regular management meetings to allow planning for, and monitoring of, any action that may be required. The records of reviews of changes in legislation as well as periodic reviews of compliance are useful supporting documentation.

A record of the various notifications and progress of the review can also be compiled. Such a summary is not only useful in providing a record of the changes that have been considered, but also acts as a succinct report to senior management. This demonstrates that the organisation is maintaining an awareness of changes in relevant legislation as well as highlighting the likely costs and implications of changes, and seeks to ensure that adequate resources are available.

Likewise, a chart indicating the current implementation status is also useful where specific changes need to be made.

Where efforts to address new regulations involve the need for specific assessments or the development of formal applications for permits, consents or authorisations, careful thought should be given to both the internal and external process for the production and approval of any documentation. Setting out a clear process is useful, it allows project managers to understand what particular approvals are required, and gives confidence to the regulator that documentation is likely to be received in an appropriate state, having previously had input from competent individuals. Likewise, this process is important within an organisation as a means of ensuring that all risks are identified and suitably managed.

The level of review and approval of environmental documentation is likely to depend not only on the risk to the environment posed by any proposed new activity, but also on the level of stakeholder (including regulatory) interest. Both considerations should be built into the development of any due process. Specific levels of review and approval may be prescribed for different types of environmental documentation.

# 4.5 Communications with regulators

It is important to seek advice and guidance early on from the relevant regulator to discuss new legal obligations such as permit applications, not only to clarify the scope of the legislation, but to understand their expectations and to gain confidence. Managing communications throughout the lifetime of any legal obligations with regulators is vital. There should be mechanisms and procedures in place to facilitate communications between relevant staff and the regulator, key points from these conversations should be distilled and shared across the organisation. Records should be kept detailing observations, suggestions and requirements from the regulator. Records should also show that recommendations and requirements have been understood and implemented. Where specific actions are needed to address concerns or non-compliances, an action plan should be drawn up, which should form part of any overarching environmental management programme and used to inform and guide any reviews of the EMS.

# Section Five Compliance audit – certification, inspection and verification

## 5.1 Introduction

This guide has already explained the role of EMSs in assisting organisations to adopt a structured approach to the delivery of consistent and continuing management of their environmental impacts. An organisation may choose to establish and run an EMS without the involvement of any external body other than the regulator, but this section covers systems which are certified or verified by a third-party as being in accordance with a national or international standard or European regulation. Through external assessment, organisations can demonstrate successful implementation of are recognised technical standard or regulation.

This section explains certification, inspection and verification processes in general and, more specifically, the approach assessment bodies take to auditing an organisation's commitment to comply with legal requirements within the context of an EMS. This section also describes the role of the UK's national accreditation body (UKAS), in assessing the capability and competence of the certification and verification bodies to undertake this function.

**Relationship of assessment to legal compliance**

The main standards and regulation associated with third-party assessment are:

- ISO 14001:2015 – 'EMSs – Requirements with guidance for use';
- the EU Eco-Management and Audit Regulation (EMAS) 1221/2009; and
- schemes using 'BS 8555:2016 – EMSs – Guide to the phased implementation of an EMS including the use of environmental performance evaluation'.

**Relationship between ISO 14001, EMAS and legal requirements**

The ISO 14001:2004 standard has several clauses that impact on compliance with legal requirements. These are detailed in the European Cooperation for Accreditation document EA-7/04:2017 'Legal Compliance as a part of accredited ISO 14001:2015 certification'.[176]

## ISO 14001:2015 certification process

When selecting a Certification Body (CB), organisations should choose one that is accredited by UKAS or by another body recognised under the European Cooperation for Accreditation (EA) or International Accreditation Forum (IAF)[177] multi-lateral agreements – see www.iaf.nu or www.european-accreditation.org for accreditation bodies recognised under the multi-lateral agreements. UKAS-accredited EMS certification bodies are listed on the body's website www.ukas.com.

### Application

Once a CB has been selected, a formal application needs to be made to begin the certification process. CBs will wish to discuss the scope of the certification activities, the size and complexity of the organisation, environmental aspects and impacts, and applicable environmental legislation.

When an application has been received and reviewed by the CB, certification assessment is conducted in accordance with ISO/IEC 17021-1:2015 and consists of two stages:

**Stage 1 audit:** the purpose is to gain sufficient information to determine the organisation's readiness for stage 2 and to prepare for the stage 2 audit.

**Stage 2 audit:** the objective of the stage 2 audit is to ensure that all the requirements of the standard are being met in practice. Key issues are control, monitoring and improvement to ensure compliance with legal and other requirements.

The audit team (which may comprise one or more persons competent for the scope of the audit) examines matters relating to legal compliance in detail, including ensuring that the organisation has established, implemented and is maintaining a procedure for periodically evaluating its compliance. The team will inspect the results of the periodic evaluation of legal compliance. The CB will send the applicant a plan for the audit, which typically comprises:

- an opening meeting at which the audit team confirms the scope, objectives and criteria for the audit;

- the audit itself including a tour of the premises, interviews with staff at all levels, examination of documentary evidence and observation of tasks being carried out. It is at this stage that any deviation from procedures or the requirements of the standard is noted by the assessor. Non-conformances are discussed with the organisation which is given an opportunity to challenge or agree to them; and

- a closing meeting, during which the audit team presents a report on the assessment and summarises the agreed non-conformities.

Depending upon the nature of the non-conformities, the audit team recommends either certification or non-certification.

## 5.2 Non-conformities

Findings from an EMS certification assessment take various forms. They can vary from identification of potential opportunities for further improvement – minor concerns that nevertheless require attention but do not adversely affect the assessment outcome – through to findings that demonstrate that the standard or regulation against which the assessment is being conducted is not being adhered to in one or more key areas.

Such findings are made by obtaining and recording objective evidence during the course of the assessment. They are discussed with the organisation and should be subject to mutual agreement. At the final meeting of the assessment, the findings are summarised and presented to the organisation so that suitable actions can be taken.

In regard to initial certification, corrective action will be required before certification can be granted where findings demonstrate that one or more EMS requirements are not properly addressed, or if objective evidence raises significant doubts as to the capability of the EMS to achieve the policy and objectives of the organisation. Such findings or doubts could give rise to non-conformities. Depending upon their severity, corrective action may be by review of documentary evidence, or by a revisit or reassessment.

Other lesser findings are followed up at visits following certification. To ensure objectivity, the results of the audit are reviewed by the CB prior to acceptance. The CB will request further clarification if necessary and is entitled to raise further findings.

When an organisation is certified to the standard or regulation, surveillance assessments will take place on a regular basis (at least annually) to verify that requirements are still being met, that continual improvement is being achieved in line with the organisation's policy and objectives, and that regulatory compliance can be demonstrated. During these visits, similar findings to those in the initial audit may be raised and, depending upon their severity, a suitable period of time is agreed for receipt of a report on corrective actions. These are reviewed for acceptability, firstly by the auditor and then by the CB.

Serious non-conformities may merit a revisit to verify corrective actions. Should corrective actions not be received, or if assessment evidence demonstrates that the system is not being suitably maintained, the CB may apply various sanctions. These vary from special visits, to suspension of certification for a limited period, and ultimately to withdrawal of certification.

With regard to breaches of legal requirements, the action taken by the CB will depend upon the circumstances, including the response from the organisation and, where warranted or legally required, the regulator. An isolated minor incident identified and acted upon by the organisation is unlikely to affect an existing certification, nor will a more serious incident which is being addressed, and where the organisation has agreed suitable remedial action with the regulator. However, evidence of a serious legal breach, without suitable response from the organisation may ultimately lead to withdrawal of certification (see EA-7/04 for more details[178]).

During an assessment, a non-conformity may be identified which may have potential legal implications. This will be brought to the attention of the organisation and will be expected to be rectified promptly. If this is not done, then the sanctions described above may be imposed. Initial certification or verification should not be approved if a legal breach exists.

# 5.3 Assessment reporting

Audit reporting will be both verbal and written and may take different forms depending on who is receiving the report. Reporting is one of the key deliverables of audits and auditors should ensure that reports provide a positive contribution to the quality of service and, in the case of regulatory compliance, adds to an organisation's control and confidence.

## Recommendations

The role of the audit team is to evaluate the EMS design and implementation. Following a successful audit, the team will make a recommendation for certification to ISO 14001:2015, or registration to EMAS as appropriate. This recommendation forms part of the assessment report and is subject to independent scrutiny by the CB to ensure reliability and safety of the assessment conclusions and their viability.

Inspection, such as for BS 8555-related schemes, does not require an independent decision-making step, though some inspection bodies have this. Inspection implies that the organisation was compliant at a point in time, but there is no ongoing relationship between the inspection body and the organisation, and no three-year cycle as with certification.

For EMAS, the environmental statement is sent to the competent body who confirms with the regulatory bodies that they are satisfied with the performance of the organisation. If no concerns arise, then the organisation is awarded registration to the scheme.

**Certification decision:** the auditor's reports and any other relevant information is forwarded to the CB with a recommendation regarding certification. The report will be reviewed by an independent decision-maker who has not been involved in the audit, and if approved a certificate will be issued.

**Regular surveillance and re-certification:** annual surveillance visits are undertaken to ensure continued conformance with the standard and to confirm continual improvement in the performance generated by the EMS.

The surveillance audit ensures the functioning of procedures for the periodic evaluation and review of compliance with legal requirements.

CBs carry out a re-certification of the entire EMS every three years, ensuring that all the elements of the system are audited.

## ISO 14001:2015 certification process

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┌─────────────────────┐
│      Enquiry        │
└─────────────────────┘
          │
          ▼
┌─────────────────────┐
│     Application     │
└─────────────────────┘
          │
          ▼
┌─────────────────────┐
│    Stage 1 Audit    │
└─────────────────────┘
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          ▼
┌─────────────────────┐
│    Stage 2 Audit    │
└─────────────────────┘
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          │──────────────────────▶┌─────────────────────┐
          │                       │  Certification not  │
          │                       │   recommendation    │
          │                       └─────────────────────┘
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          │◀──────────────────────┌─────────────────────┐
          │                       │   Re-assessment     │
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│    Certification    │
│   recommendation    │
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          │
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│    Surveillance     │
└─────────────────────┘
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┌───────────────────────────────┐
│ Re-certification of the entire │
│ EMS takes place every three    │
│ years                          │
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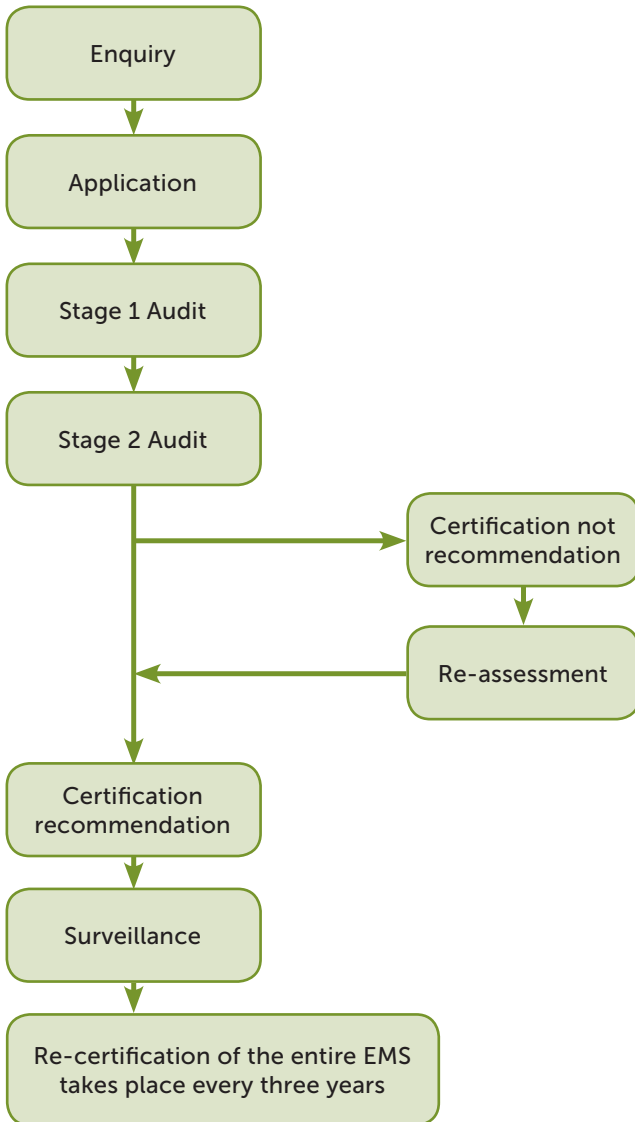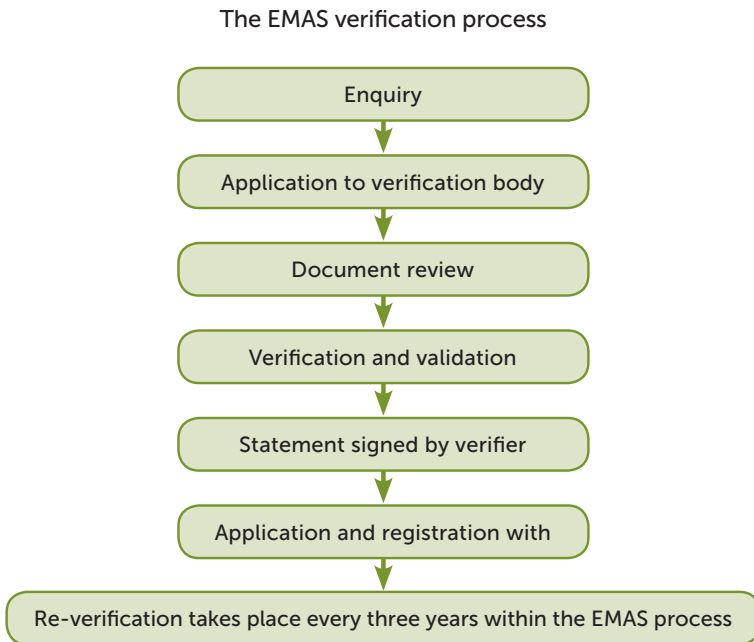
### Structure of verification and validation for EMAS

The process of verification of the EMAS management system is essentially similar to that for ISO 14001:2004 with the extra requirements in annex II of the EMAS Regulation. The main difference is the validation of the environmental statement, confirming the evidence for all the claims made. The applicant then registers with their competent body, which in the UK is IEMA. Every three years, the registered organisation is required to have the full EMS and audit programme and its implementation verified and the updated statement validated. Any updated information in the statement must be validated every 12 months. For small organisations, derogations may allow a four-year cycle or a two-year interval between updates.
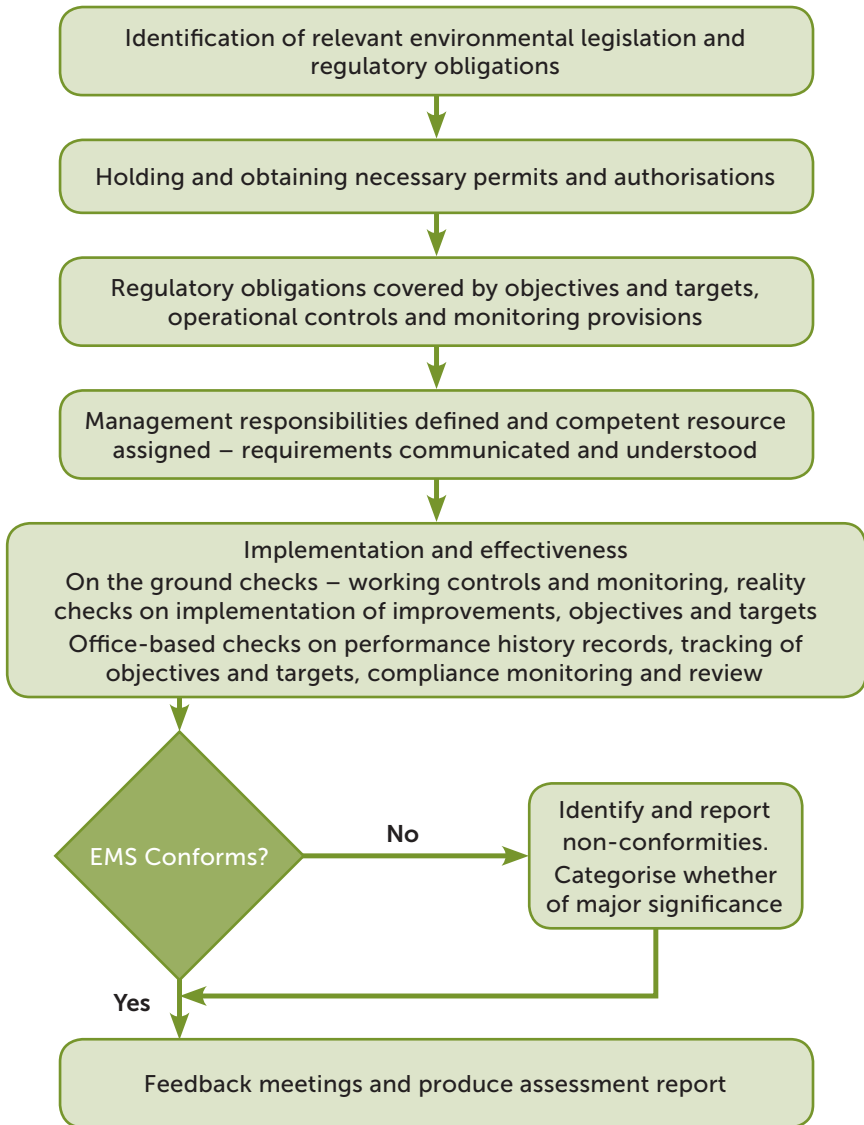
#### The EMAS verification process

Enquiry

↓

Application to verification body

↓

Document review

↓

Verification and validation

↓

Statement signed by verifier

↓

Application and registration with

↓

Re-verification takes place every three years within the EMAS process

**Inspection**

The inspection process is similar to that for certification, but there is no separate decision-making step. Inspection is an indication of the conformity situation at a particular point in time but there is no indication of continuing compliance.

# 5.4 Legal compliance assessment practice

Auditors have to determine how an organisation develops awareness of its legal requirements and regulatory obligations, and how the EMS assures ongoing compliance. EA-7/04 (Legal Compliance as a Part of Accredited ISO 14001:2015 Certification[179]) contains details of how a CB should audit legal compliance as part of an EMS audit, and the same principles apply to EMAS verification and inspection for BS 8555-related schemes.

**Assessment practice and legal compliance**

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┌─────────────────────────────────────────────────────┐
│   Identification of relevant environmental           │
│   legislation and regulatory obligations             │
└─────────────────────────────────────────────────────┘
                        ↓
┌─────────────────────────────────────────────────────┐
│   Holding and obtaining necessary permits and        │
│   authorisations                                     │
└─────────────────────────────────────────────────────┘
                        ↓
┌─────────────────────────────────────────────────────┐
│   Regulatory obligations covered by objectives and   │
│   targets, operational controls and monitoring       │
│   provisions                                         │
└─────────────────────────────────────────────────────┘
                        ↓
┌─────────────────────────────────────────────────────┐
│   Management responsibilities defined and competent  │
│   resource assigned – requirements communicated      │
│   and understood                                     │
└─────────────────────────────────────────────────────┘
                        ↓
┌─────────────────────────────────────────────────────┐
│   Implementation and effectiveness                   │
│   On the ground checks – working controls and        │
│   monitoring, reality checks on implementation of    │
│   improvements, objectives and targets               │
│   Office-based checks on performance history         │
│   records, tracking of objectives and targets,       │
│   compliance monitoring and review                   │
└─────────────────────────────────────────────────────┘
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EMS Conforms? — No → Identify and report non-conformities. Categorise whether of major significance

Yes

Feedback meetings and produce assessment report

### Accreditation

An organisation wishing to have third-party confirmation of their EMS, EMAS or BS 8555 implementation should use an accredited certification, verification or inspection body such as Seren[180] or Green Dragon,[181] collectively known as conformity assessment bodies[182] (CABs).

Accreditation bodies assess a CAB's ability to perform audits consistently, competently and impartially through a programme of regular visits to its offices, witnessed assessments at their client's sites, document reviews and other activities that may be necessary. The CAB is accredited for the scope based on their demonstrated competence. This accredited scope is publicly available on the CAB's accreditation schedule on the UKAS website.

CBs[183] may be accredited to perform EMS audits where they meet the criteria in ISO/IEC 17021-1:2015 and PD ISO/IEC TS 17021-2:2012 'Competence requirements for auditing and certification of environmental management systems'.

Similar processes are operated to accredit environmental verifiers to carry out verification under EMAS, including the validation of EMAS environmental statements. A UKAS supplement (available free at www.ukas.com) covers additional accreditation requirements for EMAS.

Inspection bodies for schemes using BS 8555:2016 are accredited using a different standard, ISO/IEC 17020:2012 'Conformity assessment – Requirements for the operation of various types of bodies performing inspection'.

UKAS is a not-for-profit company limited by guarantee. It is independent of government, and operates under a Memorandum of Understanding with the government through the Secretary of State for Business, Energy and Industrial Strategy (BEIS). UKAS was appointed as the national accreditation body by the Accreditation Regulations 2009 (SI No. 3155/2009) and the EU Regulation (EC) 765/2008.

The global accreditation system operates through regional blocks. In Europe, this is the European co-operation for Accreditation (EA). At the global level, accreditation is governed by the International Accreditation Forum (IAF). These organisations have established international arrangements based on the mutual recognition of certificates and reports issued by conformity assessment bodies (CAB) which facilitate trade and create a platform on which the principle of 'accredited once, accepted everywhere' is realised.

UKAS is a signatory to the EA MLA,[184] which is recognised at international level by ILAC[185] and IAF[186]. This means that a certificate accredited by UKAS is also recognised by the signatories to the IAF MLA. In this way, the EA MLA acts as an international passport to trade.

**Confidentiality:** accredited conformity assessment bodies are bound by the requirements under which they operate to maintain confidentiality.

# 5.5 Social systems compliance

Many environmental managers will inevitably become involved in supply chain management. This is where the life cycle consideration under ISO 14001:2015 can support human rights compliance. Environmental managers will have an awareness that the products and services provided and used by their business will have a supply chain, and therefore a potential for human exploitation in the form of slavery, discrimination, harassment or other form of abuse. Ultimately the end goal for social and ethical systems is to achieve sustainable procurement. Businesses already receive second-party audits (customer audits) to an ethical code or to the customers' own values. Many of these codes are based on the Ethical Trading Initiative, which in turn reflects United Nations (UN) and International Labour Organization (ILO) conventions.

Such ethical codes have one goal to prevent labour exploitation in whichever guise this may take. Environmental managers can undertake customer ethical audits however, it is typical that these are subcontracted out. Ethical audits involve many worker interviews, allowed by signing a data protection waiver. Such worker interviews require a high-level of empathy, listening skills and understanding body language. Sometimes very uncomfortable issues are discussed during the worker interviews such as discrimination, harassment and slavery – clearly this is not the same as checking clause compliance to ISO. Therefore, ISO systems managers may not have the required skills to react to abuses which is why Ethical and Social Systems Auditors require a great deal of training and an exam to be taken. However, environmental managers can be trained to perform the role of the ethical auditor.

An organisation should ask if its suppliers have already had an ethical or social systems audit. This could be to SEDEX,[187] RJC,[188] or customer codes. If so, the organisation could ask the auditor if it can share the results, including any non-conformances to human rights issues.

**Connecting the jigsaw of ISO to human rights – social systems compliance and ethical audits.**
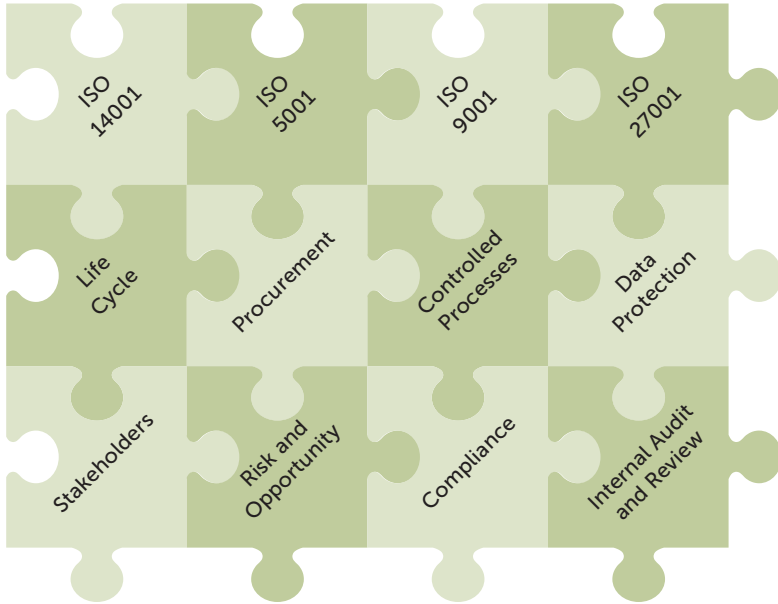


The board on which this jigsaw is placed is the underpinning ethical code, UN or ILO conventions. Many ISOs contain similar clauses and due to annex SL, all are based on risk management.

**Social systems standard**

SA8000 measures social performance in eight areas important to social accountability in workplaces, anchored by a management system element that drives continuous improvement in all areas of the standard. It is appreciated by brands and industry leaders for its rigorous approach to ensuring the highest quality of social compliance in their supply chains, all the while without sacrificing business interests.

The standard reflects labour provisions contained within the Universal Declaration of Human Rights and ILO conventions. It also respects, complements and supports national labour laws around the world, and currently helps secure ethical working conditions for two million workers, according to the Social Accountability Accreditation Services (SAAS).[189] There are a variety of handbooks that can be downloaded from the standard's website to support Environmental and Social Management Systems development.[190]

One of the main concerns with SA8000 is the amount of time it takes to become a Lead Auditor and then the high-level of focus on CPD, which comes at a high cost. There are only a handful of UK businesses which hold the standard – which could be a reflection of the investment that this standard requires.

Where a business does not hold SA8000 a more integrated approach as above using internal audits and second-party audits to compliance, risks and opportunities, life cycles, procurement to various ethical codes can achieve the same functionality without the additional costs of external certification.

**Holistic approach to managing social systems and environment according to ISO 26000**



In summary, environmental managers can use ISO 14001:2015 to manage human rights risks and opportunities through the supply chain, and in combination with other ISO systems, social systems, second-party audits and customer ethical codes. There is high satisfaction to be gained from proactively preventing labour exploitation and associated brand reputational risk management.

Relying upon strategies that integrate transparency and collaboration, some IEMA members and their organisations have been using platforms like SEDEX to work with other businesses to go above and beyond legal compliance for several years, even before the advent of the Modern Slavery Act, 2015. An example of such best practices is reflected in the work of the Co-operative Group.

**The Co-op – working beyond compliance to help tackle the issue of modern slavery**

Across the globe legislators are recognising the need to ensure all parts of society – government, private business and civic society – have a role to play in tackling the horror of slavery. The UK's Modern Slavery Act 2015 sets out responsibilities for businesses with a turnover of £36m to report annually on what steps they are taking to tackle the risk of slavery in their supply chains.

For some UK businesses these obligations – while new – have reflected the work they have done for many years through movements like the Ethical Trading Initiative (ETI) or Fairtrade. Certainly for the Co-op, the statements published for 2016 and 2017 reflected a business that has taken labour issues seriously for decades. Indeed, the birth of the Co-op in 1844 was a direct response to the exploitation of factory workers living in slum conditions in the towns and cities of the early industrial revolution.

We have at our very centre a commitment and ambition to treat all those in our business and supply chain to the highest standard. Businesses who are pioneers on this issue have in common a clear ambition underpinning all their actions.

Our approach to securing this is built around a strategy that has at its heart transparency and collaboration using platforms like SEDEX on which we aim to have all our suppliers and independent audits. We also work with other businesses through forums like Stronger Together (a multi-stakeholder business-led initiative aiming to reduce modern slavery[191]). and invest thousands of hours each year in building up the capability of our suppliers so they can do the right things when challenges arise.

Finally, transparently reporting what we are doing, what issues we have found and what we have done about them, has been central to the Co-op for over a decade. Our 2017 modern slavery statement will contain more detail than ever before, including the number of supplier checks we have carried out, and the training our suppliers and colleagues have undertaken.

We believe that providing this level of detail helps demonstrate how seriously we take the issue and that we are taking appropriate actions to tackle modern slavery; like other great UK businesses we believe that the glare of transparency drives the right behaviours and the right responses. We also believe that reporting in this way provides consumers with an important opportunity, if they wish, to make a conscious decision from where to buy goods and services.

However, we never lose sight of those affected by modern slavery – the people who fall victim to the criminals who exploit vulnerable and often desperate individuals for their own gain. As a business, we recognise that we have assets which if used well can help bring about change. So a key element of our approach is campaigning and advocacy on support for victims of modern slavery; using the asset of our brand and history to help victims. This is something our members and colleagues also feel very strongly about. They voted overwhelmingly in support of a motion at our 2017 AGM committing us to campaign for victims of modern slavery.

Moreover, we recognise that our biggest asset is providing employment, which can transform the recovery of rescued victims of slavery. The Co-op created the Bright Future programme to offer paid work placements leading to a non-competitive job interview in our stores and warehouses. The results have been transformative, with nearly 40 individuals having been on the programme, or waiting for a placement. The Co-op has now extended Bright Future – with the support of 15 charity partners and ten other UK businesses – so that any victim of slavery, anywhere in the country, can find a job and take back control of the life the traffickers stole.

Bright Future aims to help up to 300 victims of slavery by 2020 and is an example of how businesses can transform the recovery of the most exploited and vulnerable people in the communities we do business in.

*(Paul Gerrard, Policy and Campaigns Director, The Co-op)*

**Appendix A: Useful websites**

| | |
|---|---|
| UK Acts of Parliament | www.opsi.gov.uk/acts.htm |
| Association of Drainage Authorities | www.ada.org.uk |
| Better Regulation Task Force | www.brtf.gov.uk |
| British Standards Institution (BSI) | www.bsi-global.com |
| British Waterways | www.britishwaterways.co.uk |
| Organisations Links | www.organisationslink.gov.uk |
| Cadw | www.cadw.wales.gov.uk |
| Chartered Institution of Wastes Management | www.ciwm.co.uk |
| Chartered Institution of Water and Environmental Management | www.ciwem.org.uk/index.asp |
| Countryside Agency | www.countryside.gov.uk |
| Countryside Council for Wales | www.ccw.gov.uk |
| Department for Environment, Food and Rural Affairs | www.defra.gov.uk |
| Department of Trade and Industry | www.dti.gov.uk |
| Drinking Water Inspectorate | www.dwi.gov.uk |
| Eco-Management & Audit Scheme (EMAS) | www.emas.org.uk |
| English Heritage | www.english-heritage.org.uk |
| English Nature | www.english-nature.gov.uk |
| Environment Agency | www.environment-agency.gov.uk |
| Environment and Heritage Service Northern Ireland | www.ehsni.gov.uk |

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|---|---|
| Envirowise | www.envirowise.gov.uk |
| European Union | http://europa.eu.int/pol/env/index_en.htm |
| Health & Safety Executive | www.hse.gov.uk |
| Institute of Environmental Management and Assessment | www.iema.net |
| International Accreditation Forum (IAF) | www.iaf.nu |
| Marine Consents & Environment Unit | www.mceu.gov.uk |
| National Assembly for Wales | www.wales.gov.uk/index.htm |
| National Society for Clean Air | www.nsca.org.uk/pages/index.cfm |
| Netregs | www.netregs.gov.uk |
| Northern Ireland Assembly | www.niassembly.gov.uk |
| REMAS | http://remas.ewindows.eu.org/index.htm |
| Scottish Executive | www.scotland.gov.uk/Home |
| Scottish Environment Protection Agency (SEPA) | www.sepa.org.uk |
| Scottish Natural Heritage | www.snh.gov.uk |
| United Kingdom Accreditation Service (UKAS) | www.ukas.com |
| United Nations Environment Programme (global environmental conventions) | www.unep.org/DPDL/Law/Law_instruments/law_instruments_global.asp |

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