

Summary of product, health and safety law relating to Powered Gates and Doors

1 INTRODUCTION

All product and health/safety legislation is criminal law. Failure to meet the substantive duties in many cases brings liability for an unlimited fine or maximum 2 years imprisonment for individuals. Corporate and individual manslaughter is also a possibility (in recent years there have been several manslaughter charges laid, heard, and at least one conviction, alongside several successful convictions under health and safety law).

2 LEGISLATION

This legislation is divided into two areas, product law which applies just once on first place on market (or if not placed on the market, when machinery is first put into service), and health and safety law, to protect those affected by work activities which imposes ongoing duties on those responsible for work activity.

2.1 PRODUCT SUPPLY

The [Supply of Machinery \(Safety\) Regulations 2008](#) (SMR08), which implement the current [Machinery Directive 2006/42/EC](#), continue fundamentally the same legal regime on supply of machinery originating in the UK in 1992 (mandatory from 1995), and arising from the original 1989 European Machinery Directive. The definition of [machinery](#) is very wide: only those gates wholly operated by manual effort are excluded.

Under UK law the [Responsible Person](#) must design and construct safe machinery, meeting the essential health and safety requirements ([EHSRs](#)) of all relevant Directives which when placed in the market (or first put into service, if not placed on the market) must also have met various administrative requirements. These include [CE marking](#) and being accompanied by a [Declaration of Conformity](#) (DoC) and [Instructions](#) in English (for the UK). A [Technical File](#) showing how the product meets the requirements of the Directive must be prepared and retained for at least 10 years. It need not be a single physical file, but it must be prepared before the product is placed on the market/first put into service, and made available on demand to the relevant authorities within a reasonable time. It need not be disclosed to the customer.

The DoC which has defined content must indicate who is responsible for the design, construction and placing of the product on the market, and on what basis (eg which standards the product meets).

The Responsible Person as defined may be the original manufacturer (for a complete factory-made machine), an importer who places the product on the EU market, an installer who creates a new machine [in-situ](#), or even the site owner/occupier who constructs a machine for his own use (eg powers up existing manually operated gates). Where very extensive [modifications](#) are made to an existing powered gate, amounting to a 'new' machine, the person undertaking this may become the Responsible Person. However, most repairs and minor modifications only amount to maintenance and do not require re-CE marking, etc.

[Enforcement of SMR08 is shared between HSE](#) (and HSENI in Northern Ireland) for products for use at work and local Trading Standards (Local Authorities in Northern Ireland) where not for use at work (eg private domestic gates). Common areas, such as yards, car parks and approach roads of commercial and residential complexes where there is a landlord or managing agent will mostly fall to HSE/HSENI as workplaces, or as an environment where activities in connection with work are undertaken.

The duties under SMR08 are one-off, and the only current retrospective power HSE has for workplace doors and gates, or enforceable duty, rests on Designers, Manufacturers, Importers or Suppliers under Section 6(1)d of the Health and Safety at Work etc Act 1974 (HSWA): to provide information so far as reasonably

practicable about significant new risks which come to light (it is the duty of the recipient to then take account of that new information in meeting their legal obligations).

It should be noted that the pre-existing general product supply obligation on designers, manufacturers, importers or suppliers of articles (and substances) for use at work under [Section 6 of the 1974 Act](#) continues to apply alongside SMR08. However, as European product law takes precedence in setting the level of safety, for machinery the requirements of SMR08 define the level of compliance under Section 6.

2.2 HEALTH & SAFETY AT WORK

Workplace health and safety law includes HSWA (the 1974 Act). Section 2 imposes very broad duties for the health, safety and welfare of employees. Section 3 imposes broad duties for the health and safety of non-employed persons, be they other's employees, visitors, or the public, arising out of the way the employer or self-employed person conducts their undertaking, so includes landlords, managing agents, contractors and even those who provide consultancy/advice services as part of a work activity.

Private householders are not dutyholders under the 1974 Act, so although the supply of a powered gate to a domestic setting is subjected to product law, and anyone 'working' on the product is subject to health and safety law, there are no ongoing duties for safety or maintenance on the domestic owner under health and safety law. However, there may be responsibilities as a result of civil contract, eg insurance conditions, and private householders may have a civil liability for loss or injury in relation to their powered gate.

Where the site at which a powered gate or door is within a *workplace* as defined by the [Workplace \(Health, Safety and Welfare\) Regulations 1992](#) (WHSW92) there are responsibilities on employers and other persons who have some control of the workplace to maintain equipment, devices and systems at that workplace (Regulation 5). The definition of workplace is very wide and can include outdoor areas such as yards, car parks and non-public roadways. Additionally, under Regulation 18 there are basic duties for safety to prevent harm from doors and gates. The duty to maintain for safety is absolute and continuous (like that under PUWER: but most powered doors and gates are not considered 'work equipment' under PUWER).

3 EXCLUSIONS & QUALIFICATIONS

3.1 In relation to manufacture and supply, there is a defence of due diligence by virtue of Regulation 23 of the Supply of Machinery (Safety) Regulations 2008. Additionally, although all relevant essential health and safety requirements (EHSRs) applicable to the product must be applied, where it is not possible to fully meet the mandatory objectives they set, they must be approached to the '*state of the art*'. State of the art may be defined by relevant European [standards](#), especially where they are '*harmonised*' (see below).

3.2 Certain machinery is excluded from the scope of SMR08, but these exemptions are quite limited and will probably not apply to powered gates. For example, even the exclusion applying to 'machinery specially designed and constructed for military or police purposes' will not normally apply. Where it is ordinary machinery used by the armed forces or by the police but which is not specially designed for defence purposes or for the purpose of maintaining order, it remains subject to the Machinery Directive.

3.3 The principle duties under the 1974 Act (Sections 2, 3 and 6, as above) are all subject to 'so far as is reasonably practicable' (SFARP) which is often looked at as a balance between the level of harm that may result against the level of effort needed to avoid that harm (greater effort being necessary to manage higher risk, which may be considered as a combination of both severity and probability of that harm).

3.3 Health and safety Regulations such as WHSW92 as relevant statutory provisions of HSWA are normally viewed with the HSWA concept of SFARP in the background. They also often have limited exemptions for certain activities. Principally for the Workplace Regulations the Secretary for State for Defence may issue a certificate of exemption for home or visiting forces for some or all of the provisions in the interests of national security. However, the MOD has for quite some time now had a policy of normally complying with domestic health and safety law for all activities other than active service, where the military imperative takes precedence.

4 ROLE OF STANDARDS

Standards have been written at International and European level to support the design and construction of [powered gates and doors](#). Those written specifically for the Machinery Directive may as harmonised standards when followed in full confer a '*presumption of conformity*' (eg EN 60335-2-95 and EN 60335-2-103, alongside the general requirements part EN 60335-1, currently provide safety requirements for complete household garage doors and gates, although may not yet fully represent the 'state of the art').

EN 12453, in conjunction with EN 13241-1 (which was primarily written to support other CE marking legislation - the Construction Products Directive/Regulation) and EN 12635, used to be harmonised under the Machinery Directive. However, they are not, so currently even if followed in full they do not confer a presumption of conformity as this status was removed in 2015 by Decision of the European Commission following a Formal Objection to these standards made by the UK under Article 10 of the Machinery Directive (as a result of a detailed examination of the suite of standards - part of the lines of enquiry undertaken during two fatal incident investigations involving children and powered gates in 2010).

5 CONCLUSION

Many of the standards relevant to powered doors and gates are currently under revision although not yet of sufficient quality to entirely satisfy the EHSRs of the Directive, so they do not yet fully define what is known as the 'state of the art' for these products. But they may currently be the best we have - if used and applied with care and discernment, to help meet the safety objectives of the Machinery Directive/SMR08.

This means that at present designers, manufacturers and installers constructing and supplying doors and gates cannot rely solely on the existing standards, but must individually:

- **assess the hazards** from their product, including its environment of and intended use,
- **design and construct the product to manage the risks** arising, so as to meet the health and safety objectives of all relevant EHSRs of the Machinery Directive (2006/42/EC, as detailed in Annex I),
- follow the **principles for safety** in EHSR 1.1.2: firstly to avoid or reduce hazards by design; then provide protection to the extent achievable to the 'state of the art'; and only then warn of residual risk,
- fully justify their decisions with comprehensive evidence in a **technical file** for each product, which must be retained for 10 years, and made available to the authorities on request (Annex VII),
- prepare and provide comprehensive use and maintenance **instructions**, including specific safety checks,
- provide detailed installation instructions, and install the product correctly so that it will be safe,
- prepare a **Declaration of Conformity** for each individual product, providing it to each user (Annex II),
- and apply the **CE marking** (which must include name/address of the responsible person, Annex III),
- and **only then place the product on the market, or first put it into service.**

And those who own, operate, manage, assess, work on or have to some extent control over powered doors and gates must [ensure their continued safety](#) by regularly checking and maintaining them.