

LEAGUE CRICKET CONFERENCE LEGAL UPDATE

Spring 2009

This quarter we examine some Regulations introduced over the course of this decade and seek to explain how they may affect cricket clubs owning their own ground. They also portray a worrying trend to weigh down sports club in an avalanche of bureaucracy and procedure which distracts from their main pursuits

The Rating (Empty Properties) Act 2007 came into force on the 1st April 2008 and governs the liability of owners of empty commercial properties to pay full business rates.

Empty Commercial Property will be liable to pay Business Rates after they have been empty for three months, provided the owner has occupied the premises for at least 6 weeks in the current billing period. However, Cricket Clubs who are registered as a Community Amateur Sports Club (CASC) will be subject to 100% relief for empty buildings

The Construction (Design and Management) Regulations 2007 came into force on the 6th April 2007 and will affect Cricket Clubs who are undertaking large scale building works at their Ground.

Construction Works which come within these Regulations are those which will last

* for more than 30 working days or

* for more than 500 person days

Such works must be

1. notified to the Government Health and Safety Executive prior to the works being commenced,
2. a Health and Safety Co-ordinator must be appointed prior to the works being commenced. This person is responsible for giving the Club suitable advice and assistance in complying with these regulations, ensuring that health and safety requirements are met, working with the Contractors in the preparation of the Construction Phase Plans, ensure that contractors are each aware of their responsibilities relating to the construction phase to which they are involved.
3. a Health and Safety File must be prepared and updated on a regular basis. This file is a form of Risk Assessment and an Exercise in Due Diligence. It must be available for all contractors and sub contractors to inspect and contain all design features

A Contractor or Sub Contractor must not start work until he is satisfied that

1. the works have been notified to the Health and Safety Executive
2. a Health and Safety Co-ordinator has been appointed
3. has been given access to the Construction Plan for the phase of works

which they are involved in and is satisfied that they can carry out their works in accordance with the Plan- any departures must be advised to the Health and Safety Co-ordinator and the Construction Plan varied accordingly
At the end of the construction works, the club must retain the Health and Safety File securely for a period of at least SIX years as it may be needed in the event of litigation.

ENERGY PERFORMANCE OF BUILDINGS (CERTIFICATES AND INSPECTIONS) ENGLAND AND WALES REGULATIONS 2007

Energy Performance Certificates (EPCs)

This came into force in October 2008 and requires an Energy Performance Certificate (EPC), not more than 10 years old, for the following type of buildings

“a roofed construction having walls for which energy is used to condition the indoor climate”. This would cover buildings, which have fixed heating or mechanical ventilation or air-conditioning (see below on additional new rules for air conditioning)

It does not cover buildings that have only hot water or electric lighting nor temporary buildings with a planned use of only two years or less. It remains to be seen how far this will effect cricket clubs, but it is this writer’s judgment that only the very big establishments will require an EPC (costs around £200.00)

The sale or letting of such premises will require a further EPC that is not more than 12 months old at the first point of marketing.

Air Conditioning

Again, only the very big establishment clubs, who have air conditioning in their pavilions, need to be aware of new rules on air-conditioning that came in on 4th January 2009. All systems with wattage of over 250KW will require an inspection within 5 years and every five years thereafter, whilst smaller KW systems will require like inspections from January 2011.

Display Energy Certificates (DECs)

Additional regulations of Display Energy Certificates (DECS) which came into force on 1st October 2008 do not apply to private member clubs. However clubs who hire facilities that include buildings from Schools, Local Authorities or other Public Bodies and buildings have a total useful floor area of over 1000 square meters, should ensure that a DEC is prominently placed

Control of Asbestos at Work Regulations 2006

These came into force on 1st October 2006, and applies to all “non domestic premises”. It imposes a duty on a user of non domestic premises who either have control of such premises or is obliged to repair such premises under a contract or tenancy to periodically carry out an assessment to check whether

the premises are affected by Asbestos.

The assessment must be made after taking into account the age of the building, its original building plans (if available) and be a thorough inspection of all accessible parts. The assessment has a dual function

1. Is there evidence of an asbestos presence in the premises?
2. If yes, to identify the parts of the premises affected, establish the condition of located asbestos and the steps which should be reasonably taken to minimize risk of ill health to other users of the building

Where asbestos is found its location should be documented and made known to the emergency services and any person liable to disturb it. It should be regularly monitored and either be properly maintained or using competent authorized contractors be removed

Regulatory Reform (Fire Safety) Order 2005

Three years on from its introduction, there is much confusion on what is an adequate Fire Risk Assessment that should be carried out. For Cricket Clubs, with "control" of its pavilion and other buildings or any tents or marquees the following '5 Step Guidance' should be followed in its compilation

Step 1; Identify Health Hazards within your Premises by thorough Inspection

Consider sources of Ignition, fuel and oxygen

Step 2; Who might be at risk if a Fire occurs?

The aim must be to ensure that in the event of a fire, people in the premises can reach a place of safety as quickly as possible- Have Fire Evacuation Procedures in place, clear Fire Exit signs displayed and ensure that the exits are not blocked. Consider the type of person who uses your premises- not all may be as athletic or nimble to react quickly.

Step 3; Evaluation of a Potential Fire Hazard and Minimise its risk

What is the likelihood of fire occurring on your premises?

What is the risk to people in your premises if a fire occurs?

What steps can be taken to remove or minimize the fire hazard?

What steps can be taken to ensure people can leave the premises more quickly?

What additional fire pre-cautions can be taken? i.e greater number of fire extinguishers, better displayed fire exit signage- display on Club Notice Board of Fire Exit Procedures

Step 4; Keep a Record of both the Assessment and steps taken in Pursuance

This should be documented by the Club Officers and publicize the Assessment and the Emergency Procedures to all users of the Premises. It is colloquially termed "Record, Plan, Instruct, Inform Train" 'RPIT'

Step 5 Review the Assessment periodically

It is suggested that this is done at least once a year and that this be made an

Agenda Item on a Club's Management Minutes to ensure that it is not airbrushed

The Fire Authorities remain responsible for enforcing compliance with these regs. In the event of fire, it will carry out investigations where poor fire safety management is discovered. This can lead to a formal Notice being served requiring remedial steps to be taken. They possess an ultimate power to prevent use of all or part of the premises, subject to a Right of Appeal to a Magistrates Court

GOOD PRACTICE

1.Clubs should send a copy of their Fire Risk Assessment to their Insurers. If you do not and an Insurance Claim is submitted due to fire on your premises, an Insurance Company may argue that you have not as an Insured, taken all reasonable steps.

2. where there is only one entrance and exit point, take extra precautions in terms of having fire resistance walls, keeping the areas and the approaches clear and install an automatic fire detector system. The Regs also state that the "travel distance" should not normally be more than 18 meters and where there is a high chance of fire in the premises or fire spreading quickly this distance should be 12 meters or less

3.Where there is more than one exit the travel distance should not be more than 45 meters (reducing to 25 meters where there is a high chance of fire in the premises or fire spreading quickly)

4.Clubs cannot rely on their own old Fire Certificates.

Food Hygiene Regulations (England) 2006

This sits alongside the introduction of EU Hygiene Rules into English Law and regulates the "Food Business". Its effect on Cricket Clubs with tea facilities is "A Food Business" is defined as "an undertaking whether for profit or not and whether public or private, carrying out any stage of production, processing and distribution of food".

" A Food Business Operator" is the legal person responsible for ensuring that the requirements are followed"- the Club Officers.

A Food Business Operator must ensure that the Food Business is registered with their Local Authority. Application can be made ON LINE.

The Local Authority is required to follow 'the HACCP Principle'- Health Analysis and Critical Control Points" and have the legal power to carry out inspections of premises without prior notice for purposes of either sampling or in response to a food complaint. It is a criminal offence to obstruct a Local Authority inspection.

An inspection can include the premises where food is prepared, the equipment used, staff training records, the practices and procedures on food

safety. Following an inspection, the Local Authority will prepare a Report recording issues which the Club needs to address. In addition there are two types of Statutory Notice which a Club can face

* An Improvement Notice- where the LA Officer has "reasonable grounds" for believing the Club is failing to comply with the Regulations. This will specify the contravention, the steps that need to be taken, and the time period to comply. There is a Right of Appeal against this Notice

* Emergency Prohibition Orders- where the LA Officer has reasonable grounds for believing there is "an imminent risk of injury to health"

due to the condition of a piece of furniture, a handling process, or the premises as a whole, he/she can apply to the Magistrates Court within three days for an Emergency Prohibition Order. The Order has the effect of prohibiting the continued use of equipment, a handling process or the premises as a whole. The Order must be placed on the premises and will remain until in the reasonable opinion of the LA Officer, the reasons for the Order have been satisfactorily addressed by the Club

The frequency of LA inspections is based on the nature of the Food Business and the calculated risk to the Consumer of Food.

A Grey Area in Food Production- What about the Club who has the teas prepared by its members in their own homes and brought to the Club to dish- Can the person's homes be the subject of inspection?

A number of Local Authorities across the country have said that they have this power, but it has not as yet been tested. One Club in North Somerset had an approach from the Local Authority on this very issue, before the latter backed down. Domestic preparation, handling or storage of food for "private domestic consumption" are exempt from the Registration Rules

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