

## Guidance note for dutyholders and inspectors

### Lifting Operations and Lifting Equipment Regulations and Pressure Systems Safety Regulations

#### Carrying out thorough examination and testing of lifting and pressure equipment during the coronavirus outbreak

##### Introduction

An emerging consequence of the Corona virus pandemic (COVID-19) is the challenges faced by industry in meeting the requirements to complete statutory thorough examination and testing (TE&T) of plant and equipment to meet duties under the Lifting Operations and Lifting Equipment Regulations (LOLER) and Pressure Systems Safety Regulations (PSSR).

Difficulties in completing TE&T may arise due to four key issues:

- Reduced availability of engineers to complete TE&T due to sickness absence or self-isolation as a direct result of COVID-19
- Owners of plant and equipment (dutyholders) refusing access to premises for TE&T as they feel unable to accommodate visiting engineers while maintaining social distancing (SD) in the workplace.
- Refusal of engineers to enter a dutyholder's premises to carry out TE&T due to concerns over SD arrangements being adequate.
- Plant and equipment being unavailable for TE&T if a workplace or site is closed due to COVID-19 SD restrictions.

Effectively in these cases TE&T may not be taking place due to either unavailability of or unwillingness of competent persons to deliver the service, or due to dutyholders inability or unwillingness to give access to the equipment for testing.

TE&T is a critical component of a management process to ensure the safe operation of equipment whose failure through deterioration can create dangerous situations, physical harm and business disruption. The legislation applies across all industries that use lifting equipment, pressure systems and so on, and as such the risks posed should dutyholders deviate from the required TE&T regime, and the consequential reductions in the level of protection for the workforce and others, may have different consequences from one business to another.

HSE recognise that there may be some circumstances that will lead to equipment falling outside its time limits for TE&T, and therefore dutyholders being unable to comply with the law and having to take the equipment out of service if unable to operate it safely.

The statutory obligations remain in place and the following is intended to ensure that work plant and equipment remain safe to use and provides a framework for decision making if TE&T requirements cannot be met. This guidance is intended primarily to help dutyholders and the inspection bodies maintain the overarching scheme of

thorough examination and testing. It then sets out a risk-based approach to be applied when all attempts to ensure TE&T have been exhausted.

### **Overarching position**

The statutory obligation to ensure that work plant and equipment is maintained and is safe to use remains in place and the use of TE&T continues to be a fundamental part of the management process.

HSE expects dutyholders to make all reasonable efforts to arrange for TE&T to be carried out within the statutory time limits. This will include

- Ensuring inspection bodies have access to equipment in a timely manner.
- Working with the inspection body to manage appropriate SD in the workplace, to satisfy both your needs and those of the inspection body, as part of the Government drive to manage the spread of COVID-19.
- If your business is not currently operating and staff are furloughed, consider allowing access to the inspection body so that equipment is ready for when your business reopens. Otherwise you may have to delay restarting that equipment until it has been subjected to a TE&T.
- If your inspection body is unable to provide engineers due to staff absence, make reasonable attempts to source engineers from another provider.

Inspection bodies are expected to undertake TE&T to meet their clients' needs, and also to consider how they may prioritise resource to support the safety of higher risk areas and to meet Government's drive to ensure essential industries and services continue to operate. This will include:

- Working with the clients and dutyholders to manage access for TE&T with appropriate SD in the workplace, to satisfy both your needs and those of the dutyholder, as part of the Government drive to manage the spread of COVID-19.
- Consider seeking access to businesses that have furloughed staff and are not currently operating so that equipment is ready for when your business reopens.
- Where availability of engineers and other inspection staff becomes a limiting factor consider how resource can be prioritised to support key industries and to address the most significant areas of risk.

HSE will continue discussions with inspection bodies and their representative organisations to assist their decision making on prioritising resources. Indications from the inspection industry are that they are prioritising businesses essential to the national infrastructure or to protect vulnerable groups in society, including; supporting the NHS; the energy networks; maintaining supply chains for food and key supplies, and ensuring protection of vulnerable groups such as those in social housing. Some of the plant which is subject to thorough examination is safety critical. It is important that this plant continues to operate safely and effectively.

## **Managing social distancing (SD) for inspection activities**

There is clear and comprehensive guidance published by Public Health England (PHE) via GOV.UK to help dutyholders and inspection bodies manage SD in the workplace. This guidance is based on principles of minimising contact between individuals and relies on good management of hygiene while on the premises and on access and egress from the business. HSE believes that SD measures should not be a barrier to most TE&T activities being carried out effectively.

Arrangements should be discussed in advance between inspection bodies and the dutyholder/site operator. Dutyholders should manage the workplace and should not routinely prevent access of the competent persons due to Covid-19 considerations. When inspectors are scheduled to visit site, the inspector and dutyholder should make every reasonable effort to cooperate and apply Covid-19 related hygiene and SD measures.

Depending on the specific conditions, this may include provision of: a named local contact; a chaperone; an isolated area, or markings/barriers/signage to ensure they minimise contact between people, hand washing facilities etc. Inspection bodies and dutyholders should keep abreast of developments in GOV.UK/PHE guidance to ensure the most up to date application of control measures.

## **Prioritisation of inspection activity**

Whilst inspection bodies are managing resource to prioritise those areas essential to the national infrastructure and to protect vulnerable parts of society, they will continue to demand to undertake TE&T at other dutyholder sites. Factors to take into account may range from the role an industry plays in supply chain, provision of food supplies and energy networks to the need to maintain egress/access at social housing or to avoid unnecessary risk caused by shut down/restart of plant.

Those dutyholders with businesses that are currently closed due to Covid-19, can give an inspector access to undertake thorough examination work. In such situations the business is not reopening for its normal business activity, but to provide access to allow the thorough examination of plant. The general Covid-19 social distancing and hygiene controls should still be applied.

The more that dutyholders and the inspection industry can cooperate and maintain the regimes of TE&T the less impact there will be from plant having to be taken out of service or there being a sizeable backlog of work to be completed and the less delay in businesses reopening once Covid-19 restrictions are relaxed.

In some cases, primarily those in domestic type settings, it may be the case that shielding of identified vulnerable groups, self-isolation of symptomatic individuals, or self-isolation of those that believe they may have been exposed or are particularly at risk, dictates that access is not possible for TE&T and in this case it must be deferred until restrictions end.

HSE recognise that there are therefore some circumstances that will lead to equipment falling outside its time limits for TE&T and therefore potentially dutyholders being unable to comply with the law and being unable to operate the

equipment safely and having to take it out of service. These cases will either arise due to the cases of self-isolation described above or there being insufficient inspection resource to meet dutyholder demand.

### **If a thorough examination cannot be undertaken**

As described above there are likely to be circumstances that result in some dutyholders finding it difficult to comply with statutory requirements for TE&T and that they may see a need for work equipment to operate beyond the period of examination. In making decisions about whether equipment should be taken out of service once the examination period has passed the primary and overriding statutory obligation is to ensure that work plant and equipment remain safe to use.

If dutyholders, having worked with their inspection body as outlined above, are unable to arrange a periodic inspection within the specified time period, they must take competent advice (e.g. from their inspection body) and apply a robust, risk-based approach to decision-making about the continued operation of plant and machinery outside of the statutory regime.

If the conclusion is that the equipment cannot be used safely then it must be taken out of use.

If dutyholders conclude that the equipment can be used outside its testing period they must document the efforts they have made to get the plant examined; their decision-making process, and the factors considered to justify their decision to continue operating plant or equipment. Dutyholders should consider whether the plant or equipment should be removed from use, either ceasing that particular operation or using an alternative system of work, processes or piece of equipment. If these options are not feasible, then additional measures should be identified that are required to minimise any potential risks arising from continued use. Additional measures may include a robust inspection or extra maintenance by competent persons with management oversight. Agreement should be reached with the competent person in all instances.

Where such contraventions of statutory compliance can be demonstrated to be directly attributable to the Covid-19 pandemic, HSE will adopt a pragmatic and proportionate approach towards enforcement actions for non-compliance. Equipment should only be used outside of its test regime, if the dutyholders can demonstrate that it is critical for essential work and that it can still be operated safely.

HSE will adopt a pragmatic and proportionate approach towards enforcement action for non-compliance with statutory requirements which are directly attributable to the Covid-19 pandemic. Our usual enforcement response will be to take no action if the only failing is that TE&T is not carried out by the required date. However, equipment should only be used outside of its test regime, if the dutyholder can demonstrate that it is critical for essential work and that it can still be operated safely. The dutyholder must also be able to demonstrate that they have made all reasonable attempts to have the TE&T carried out, and they have made a thorough assessment of the increased risk and taken appropriate action to manage it.

For the purposes of this guidance, essential work is work the Government have identified as critical to the COVID-19 response. This includes work in, or in support of, all the Government's list of critical sectors.

### **Issues to be addressed in the risk assessment considering continued operation**

The exact scope of a suitable risk assessment will be dependent on the particular circumstances of the equipment that requires thorough examination, but should include consideration of at least the following:

- Have you considered if alternative equipment, or some sort of alternative process, is available?
- Can you explain how the operation of the equipment is in support of essential work? Are you within a listed industry sector, or can you explain how your work is essential to support the continued operation of those sectors?
- The immediate potential degree of harm that could result if the equipment failed - collapse on to people, damage to building, major explosion?
- If relevant, the ability for the failure of this equipment to cause wider harm – is there a risk of some form of 'domino' effect failure, resulting in a much greater degree of harm?
- A review of the written scheme and the history of past thorough examination and maintenance reports - in particular, any specific points on past issues identified as requiring additional observation/test/repair or revisions to the scheme?
- Any comments or advice received from the competent person or maintenance staff regarding common potential causes for concern or additional checks or routine maintenance that should be undertaken.
- The working environment and use being made of the equipment – e.g. is it in an environment that promotes corrosion, is minor ongoing damage a common occurrence?
- What additional measures you are putting in place to help manage the risk – extra checks, additional maintenance, process or operational changes, additional personnel training or restrictions, limits to maximum loads/pressures, etc.
- What is the competency of the persons able to undertake routine checks and maintenance, or any additional checks and maintenance you have identified as being needed? – Do you have access to competent maintenance engineers or only the operators doing visual checks?
- When do you intend to review this risk assessment to determine if continued operation can continue? This should include a consideration of how long it will be before TE&T is likely to recommence and when you will review if further additional measures may need to be put in place e.g. temporary reduction of maximum operating loads/pressure.

## **Offshore/Onshore major hazard industries and pipelines**

This guidance is recognition of the unique challenge faced by dutyholders as a result of the Covid-19 pandemic. It does not remove the duty placed upon dutyholders to ensure so far as is reasonably practicable that all necessary measures have been taken, to prevent incidents/injuries and their consequences to people and, where relevant, the environment.

Offshore dutyholders should also consult with their Independent Verifying Body (IVB) and specialist vendors about any plant or equipment for which they are unable or anticipate being unable to arrange periodic inspection and manage this through their safety management system. **All life-saving equipment and appliances should be maintained appropriately.**

For dutyholders and operators of pipelines, onshore and offshore major hazard industries and installations, your lead HSE inspector may seek information about any plant or equipment for which you are unable or anticipate being unable to arrange periodic inspections or thorough examinations within the specified time period, and the steps being taken to ensure that the delay will not give rise to danger.

Where surveyors, engineers and inspectors are able to undertake thorough examinations, it is essential that they are able to carry out their work with the usual expected health and safety protections, and the necessary SD and infection control measures that are deemed necessary. It is also essential that dutyholders co-operate with competent persons to facilitate safety during statutory inspections.

## **Examples relating to thorough examination of equipment during coronavirus (Covid-19) outbreak**

### **A business with an Air Receiver**

A shop has an air receiver that during normal operation is used to operate pneumatic equipment. The equipment is scheduled for TE&T under the Pressure Systems Safety Regulations (PSSR) in accordance with a written scheme.

#### **Scenario 1 – Closed shop and competent person available**

The business is on one of the sectors identified in COVID-19 business closure legislation, so the business is closed, and the equipment is turned off. The competent person that normally undertakes the businesses TE&T contacts them to finalise a date. The business explains their situation and explains that whilst they cannot reopen the business for trading purposes, they can arrange for someone to give the competent person access to site so they can undertake the TE&T.

The TE&T is undertaken whilst following PHE social distancing and hygiene advice. This means that the air receiver can be ready for use when the shop is permitted to reopen for trading.

#### **Scenario 2 – Food business in operation, competent person not available**

A small food manufacturing business is contacted by the company that normally does their TE&T to say their inspectors have been diverted to higher priority work in the health sector so they will be unable to visit site.

The business tries contacting other organisations, but finds that it cannot find a suitable alternative, so they will be unable to fulfil their duty for TE&T or to arrange a suitable postponement. The business cannot operate without the equipment in operation.

Following consultation with the company that normally does their TE&T and those that do their maintenance the business undertakes a risk assessment. They conclude that it is essential that they stay open to provide food, and there are some additional interim measure they can put in place to help reduce the risk from continued operation of their air receiver plant.

The business makes sure it has recorded:

- The efforts made to get the examination undertaken in accordance with a written scheme and why this was not possible,
- Any advice or information used to help them reduce the risk of continued operation.
- The risk assessment of the need to continue operating the equipment and the additional risk control system(s) it has put in place to help manage the risk i.e. checks, additional maintenance, changes to operating procedures etc.

- Its plans to ensure that it will subject the equipment to TE&T at the earliest possible opportunity.

The business continues operating the equipment under its new risk control system(s).

## **A Distribution business using fork lift trucks and other lifting equipment**

A food distribution company uses lifting equipment (Fork lift trucks, and automated warehousing/racking equipment) as part of their business. The lifting equipment is due to have its TE&T as part of LOLER Compliance.

### **Scenario 1 – Fork lift trucks need to have their thorough examination, but the usual competent person is not available**

The business uses forklifts to load some of the packaged food handled on site onto vehicles for sale at shops. The business has been contacted and told that the competent person is unavailable. The company contact another provider and are able to arrange to have their equipment inspected 4 weeks later than it should have had its scheduled TE&T. The company undertake a risk assessment of the use of fork lift trucks outside of their examination period. They identify that there is an essential need at this time to maintain the supply of food and having taken competent advice, they put in place additional checks to manage the risk in the interim.

This allows the forklift trucks to operate until such time as the TE&T can be undertaken. The company records their risk assessment and all relevant information used in their decision making.

Preparations for the visit include ensuring the equipment will be in an easily accessible and controlled area to reduce the time the equipment needs to be off-line for TE&T. When the replacement competent person arrives, the company had arranged for a suitable person to oversee the competent person. This helped ensure that routine health and safety risks and COVID-19 related risk were managed. Including social distancing and hygiene measures to protect both employees and the visiting competent person.

### **Scenario 2 – Automated warehousing/racking equipment, but a competent person is not available**

The core of this distribution business is the operation of integrated automated warehousing/racking equipment to move food onto vehicles for sale at supermarkets. Due to unavailability/illness the business cannot get any suitably qualified competent person to undertake the necessary TE&T for the foreseeable future. The company undertake a risk assessment and identify that there is an essential need at this time to maintain the supply of food and having taken competent advice, they put in place additional checks and control measures to manage the risk in the interim, these included physical check and procedural changes to exclude all non-essential personnel from working in the vicinity of any operating lifting equipment. This helped



manage the risk by reducing the risk of equipment failure and the risk of injury if a failure did occur.

The company records their risk assessment and all relevant information used in their decision making and they ensure they can demonstrate that all staff are following the new procedures.

This allows the distribution business to operate until such time as the TE&T can be undertaken.

## **Healthcare/Social care provider with Patient Hoists**

The large care provider is using patient hoists and lifting accessories to help provide its services for vulnerable people.

The care provider has read the HSE guidance and is aware that it is expected to make all reasonable efforts to arrange for TE&T to be carried out within the statutory time limits. And that equipment should only be used outside of its test regime, if the dutyholder can demonstrate that its use is critical and that it can still be operated safely.

They also have additional concerns that as well as possible problems in the availability of a competent person to undertake the TE&T, the vulnerability of those they provide care for means that additional COVID19 infection measures need to be implemented.

Before agreeing to give the competent person access, they undertook a risk assessment to review if the TE&T could be undertaken in a way that managed the COVID-19 risk to those receiving care and the visitor to site. This included identifying how social distancing guidelines can be adhered to and included:

- Consideration of the status of the household / premises including confirmed or suspected COVID-19 cases, or any extremely vulnerable individuals being shielded.
- Arranging the appointment for times when they can expect less general personnel movement.
- Understanding any additional hygiene precautions that will need to be followed.
- Identify the need for any additional PPE.

The care provider identified they had some settings where it would not be possible to undertake a normal TE&T visit as they could not maintain infection control measures and/or adhere to the social distancing approach. In those situations, they put a more detailed plan into action to address the risk posed, this included:

- Equipment that was not needed was clearly identified as being taken out of use until arrangements could be made for TE&T at a later date.
- Where possible portable equipment and slings were cleaned appropriately and moved within the premises to a point where infection control and social

distancing measures can be observed to allow the thorough examination, or it was exchanged with equipment that had been tested.

- Purchase new lifting accessories (slings/harnesses) to eliminate the need to testing and retain those out of test for subsequent use once they can be cleaned and examined at a later date.
- Individual risk assessments for fixed lifting devices where access could not be arranged. This included communication with the inspection body about additional checks that could be undertaken to help reduce the risk to those being cared for and the staff. Equipment under these additional risk control measures was clearly marked, to ensure checks are undertaken and so the lack of TE&T can be remedied at the earliest opportunity (once current restrictions ease).

The care provider documents all these measures, their risk assessments, decision making processes including, where relevant, the factors considered to justify continued use of equipment.