

The Regulation of Drones: A Health and Safety Perspective

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The events at Gatwick airport in 2018, and at Heathrow in 2019 demonstrated the impact of drone misuse and highlighted the extent to which drone use is currently under-regulated. Following the coming into force of the Air Navigation (Amendment) Order 2018 on 30 November 2019, this position has changed somewhat. The Order requires those who manage a drone of more than 250 grams to register it with the Civil Aviation Authority (“CAA”) before use. Those responsible for a drone can include individuals and companies, and pilots of such drones will need to complete a competency test.

Given the expanding use of drones in commercial operations, the potential hazards as well as the emerging nature of this technology, regulation was inevitable. It will be interesting to see if the law keeps pace with the developing technical capabilities of drones. In the meantime it is worth considering both the benefits and risks of this new technology and the issues Health and Safety managers should be aware of in terms of future regulation.

Benefits of using drones

The obvious benefit of a drone is that they can place a machine in a dangerous situation rather than a human. For example, they can be used to conduct close inspections of dangerous structures or inaccessible plants and can sweep an entire site to identify issues. For these reasons drones are already widely used by large corporations and public utility companies, and it is easy to anticipate the scope for drone use will continue to expand.

Risks

Of course there are risks that come with emerging technologies, particularly those operating at height with the potential to strike people or property. This brings with it the corresponding risk of civil or criminal proceedings, to say nothing of potential privacy and data protection issues arising from the taking and storage of video footage. We have summarised below some of the ways in which the use of drones may be regulated in the future.

The CAA

Failure to comply with the rules that came into force in November for registration and pilot testing of drones will result in a maximum £1,000 fine, and flying a drone without the required commercial permission could result in a maximum £2,500 fine. If you are convicted of an offence involving misusing a drone in the air, a Court can order the forfeiture of the drone itself - which could be more costly than a fine.

The HSE

If the HSE deems a drone to be work equipment, there may be a risk of breaches of strict liability duties arising from faults or poor maintenance. It is also arguable that misuse of a drone in a work process could form part of an employer’s undertaking for the purposes of more general health and safety offences. Fines for such offences are theoretically unlimited for corporate bodies, and for individuals, the most severe penalties are custodial sentences.

All of this raises the question of whether the CAA or HSE will investigate when drone use leads to a health and safety offence being committed. The current Memorandum of Understanding between the HSE and the CAA explains that the HSE are responsible for enforcement of any risks from work activity on the ground, whilst the CAA are responsible for enforcement of the safe operation of drones in flight. As drones become more commonly used at work it is likely that this notional dividing line will become harder to untangle in practice.

The Police

Where a drone causes death the Police may investigate offences of gross negligence or corporate manslaughter, or even murder if there is any suggestion of deliberate harm being caused using a drone.

As has been demonstrated, the Police are also likely to become involved in cases of disruption of logistical hubs by drones (such as at Gatwick and Heathrow) particularly where there is a security risk to public safety.

The future of regulation

Whilst the new Air Navigation (Amendment) Order 2018 mainly deals with registration and competency for pilots, the Department for Transport's response to their consultation on the future of drones in the U.K. provides an insight into how the Government intends to regulate drone use. Further to the Queen's Speech in October 2019, it also seems likely we will see a Drones Bill introduced in the future which will extend no-go zones near airports, and increase powers for the Police to:

- issue fixed penalty notices for more minor drone offences;
- require evidence of registration and competency / permission for commercial drone use;
- request names and addresses of the pilot and / or drone operator if they have the reasonable suspicion an offence is / has been committed;
- require a pilot to land the drone in specific circumstances; and
- Seize and / or retain a drone if the police reasonably believe they have been involved in the commission of an offence.

Is the use of drones in your future?

With the industrial use of drones on the rise (no pun intended) Health and Safety managers will be concerned about the ancillary risks and the likely trajectory of new regulations towards more stringent conditions on their use.

If you plan to add drones to your current operation it would be sensible to consider the following:

- The adequacy of training for your drone pilots and supervisors;
- The way drone flights should be planned and monitored;
- Use of geo-fencing;
- Your policy on planning drone flight paths, dealing with restricted airspace and weather conditions; and
- Monitoring near misses and emergency measures.

It is clear that drones are a valuable technology that can help employers in many sectors to manage health and safety. Our team of leading regulatory specialists can help you explore ways to benefit from this new technology, whilst maintaining compliance with existing and emerging legislation.

For more information or advice on the potential impact of drone regulation, please contact one of our experts in our [regulatory team](#).

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