

## Thorough Examination and Reporting Unsafe Lifting Equipment to an Enforcing Authority

### Aim

The aim of this bulletin is to provide members of the UK Material Handling Association with clear guidance when a Report of Thorough Examination for lifting equipment must be forwarded to the relevant enforcing authority.

### Legal Requirement to Forward a Report of Thorough Examination to an Enforcing Authority

Regulation 10(1)(c) of **The Lifting Operations and Lifting Equipment Regulations 1998** (LOLER) specifies certain circumstances when the competent person, having completed a Thorough Examination of lifting equipment, is required to forward a copy of the corresponding Report of Thorough Examination to the relevant enforcing authority, i.e. the Health and Safety Executive (HSE) or the environmental health department of the applicable unitary authority or district council.

### When Should you Forward a Report of Thorough Examination to an Enforcing Authority?

During a Thorough Examination, if in the opinion of the competent person there is a defect in the lifting equipment, involving an existing or imminent risk of serious personal injury. The competent person must forward a copy of the corresponding Report of Thorough Examination as soon as is practicable, to the relevant enforcing authority.

This requirement is limited to those cases where there would be a risk of serious personal injury arising from failure of the lifting equipment should anyone attempt to use it. Furthermore, such a failure is likely to be imminent, meaning that it could happen within a short time of the equipment being used again.

Such Reports would normally be restricted to the actual lifting machine. However, a severely damaged lifting accessory which is close to failure and is still being used should also be reported. Lesser defects in lifting accessories should only be reported to the owner/user of the equipment, not to an enforcing authority.

Reports of Thorough Examination must provide all the information required by **Schedule 1 of LOLER**, which describes the minimum requirements for such a Report.

Under no circumstances shall the forwarding of a Report of Thorough Examination to the relevant enforcing authority be used to solicit additional work.

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### Whose Duty is it to Forward a Report of Thorough Examination to an Enforcing Authority?

Regulation 10(1)(c) of **The Lifting Operations and Lifting Equipment Regulations 1998** (LOLER) is clear. In certain circumstances, it's the duty of the competent person that performed the Thorough Examination to forward a copy of the corresponding Report to the relevant enforcing authority. It's not the duty of the competent person's employer, the equipment owner or user.

This is not negotiable and the employer of the competent person has an obligation to support the competent person when such actions are necessary. Although the employer could send a copy of the Report of Thorough Examination to the relevant enforcing authority, on behalf of the competent person.

Competent persons are recommended to maintain evidence that they have fulfilled their legal duty to forward a copy of the corresponding Report of Thorough Examination to the relevant enforcing authority, e.g. a register including the delivery address used and date of email transmission.

**Note:** Email is often the most effective method of forwarding a copy of the corresponding Report to the relevant enforcing authority, however a valid email address must be used.

### Fork Lift Truck Components not Covered by Thorough Examination

There is a legal requirement under **Regulation 9 of LOLER** for a competent person to examine lifting equipment. Components such as fork arms and lifting chains are included under the examination requirements of LOLER.

However, items such as (but not limited to) lights, steering, brake, overhead guard, bleeper, seat belt do not fall under the examination requirements of LOLER. These items, along with many others are inspected under the requirements of Regulation 6 of **The Provision and Use of Work Equipment Regulations 1998** (PUWER). Therefore, there is no requirement to notify an enforcing authority of defects in these components alone. However, they may be included in a Report of Thorough Examination at the discretion of the competent person, if they are likely to imminently affect the safe use of the forklift truck.

Under PUWER, any imminent serious failure of any safety critical parts not associated with lifting loads should be reported to the HSE using the **concerns form** on the website [hse.gov.uk](https://www.hse.gov.uk) or similar at the relevant local authority.

### HSE Approved Code of Practice and Guidance

Meeting the requirements of LOLER would be assisted by adherence to the HSE's Approved Code of Practice (ACOP) and guidance for **LOLER L113 Safe use of lifting equipment**.

While ACOP L113 is not law, it has been produced under section 16 of the **Health and Safety at Work etc Act, 1974** (HSW Act) and has a special status (as outlined in introductory page (ii) of the ACOP).

## Thorough Examination and Reporting Unsafe Lifting Equipment to an Enforcing Authority

ACOP L113 supports not only LOLER but also the general provisions of section 2 of the HSW Act and other regulations, including **The Management of Health and Safety at Work Regulations 1999** (MHSWR) and PUWER, in relation to lifting equipment and lifting operations.

### Legislation

The extracts below are taken from LOLER Regulation 10:

#### Reports and defects

- 10.—(1) A person making a thorough examination for an employer under regulation 9 shall—
- (a) notify the employer forthwith of any defect in the lifting equipment which in his opinion is or could become a danger to persons;
  - (b) as soon as is practicable make a report of the thorough examination in writing...
  - (c) where there is in his opinion a defect in the lifting equipment involving an existing or imminent risk of serious personal injury send a copy of the report as soon as is practicable to the relevant enforcing authority.

### What Defects Must be Reported to the Relevant Enforcement Agency

The UK Material Handling Association deems that the defects listed below found during a Thorough Examination, must be reported by the competent person to the relevant enforcing authority.

- A chain elongated to 3% or more
- A cracked chain link or pin
- An anchor pin or fixing point showing signs of physical damage
- A cracked or misaligned mast
- Cracked forks or worn heels at 10% or more
- A missing or defaced capacity/data plate

**Note:** The above list is not exhaustive.

### Notifying the Equipment User and Owner of Enforcement Agency Reportable Defects

During a Thorough Examination, if in the opinion of the competent person there is a defect in the lifting equipment, involving an existing or imminent risk of serious personal injury. Upon completion of the Thorough Examination, the competent person must formally report their findings in writing.

The Report of Thorough Examination must specify that the lifting equipment is not to be used and must be withdrawn from service, until the noted defect has been rectified. This duty applies even where the defect is immediately rectified, the lifting equipment is scrapped or is withdrawn from service.

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The original copy of the Report of Thorough Examination should be given to the users representative, with a copy of the original Report being sent to the owner (who may be the same person) from whom the equipment has been hired or leased.

This is to ensure that prompt appropriate action is taken to repair, replace or withdraw the lifting equipment from service until the defect has been rectified. The competent person is not responsible for policing remedial work.

Under no circumstances shall the threat of reporting dangerous lifting equipment to the relevant enforcing authority be used to solicit additional work.

The users employer should be aware of whether the forklift truck is rented, leased or owned and which enforcement authority they fall under. However, there is no longer a mandatory requirement to display this information on the HSE approved workplace health and safety poster.

## Which Enforcement Authority – HSE or Local Authority?

Responsibility for the enforcement of health and safety legislation is generally split between the HSE and local authorities (LAs), e.g. environmental health officers. However, there are other enforcing authorities for food, fire, environment and railways etc.

The split is dependent on the main activity of the premises being inspected and is detailed in **The Health and Safety (Enforcing Authority) Regulations 1998**.

The HSE will normally be the enforcing authority for the **Health and Safety at Work etc. Act 1974** (HSWA) and related legislation, for such matters as factories, chemical plants, construction sites, docks, nuclear installations and hospitals.

The broad division of responsibilities between the HSE and LAs is that the HSE enforces in respect of higher risk premises. In general, LAs are the main enforcing authority for retail, wholesale distribution and warehousing, hotel and catering premises, offices, and the consumer/leisure industries.

Regardless of the main activity of the premises, the relevant Enforcement Authority will be the HSE for all lease and rental forklift trucks.

For some businesses the main activity is less clear-cut and HSE and LAs will agree and assign the appropriate enforcement responsibility locally.

**Schedule 1 of the Health and Safety (Enforcing Authority) Regulations 1998** stipulates which premises and activities will normally fall within LAs control, and are:

- The sale of goods, or storage of goods for retail or wholesale (with certain limited exceptions).
- Display or demonstration of goods at an exhibition for the purposes of offer or advertisement for sale.
- Provision of permanent or temporary residential accommodation including the provision of a site for caravans or campers.
- Consumer services provided in a shop (except dry cleaning or radio and television repairs).
- Wet or dry cleaning in coin-operated units in a launderette or similar premises.

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- The use of a bath, sauna or solarium, massaging, hair transplanting, skin piercing, manicuring or cosmetic services and therapeutic treatments, except where they are carried out under the supervision of a doctor, dentist, physiotherapist, osteopath or chiropractor
- Office activities.
- Catering services.
- The practice or presentation of the arts, sports, games, entertainment or other cultural or recreational activities.
- The hiring out of pleasure craft for use on inland waters.
- The care, treatment, accommodation or exhibition of animals, birds or other creatures (except horse breeding/training at a stable), or agricultural activity, or veterinary surgery.
- Activities of undertakers (except where the main activity is embalming or making coffins).
- Church worship or religious meetings.
- The provision of car parking facilities within the perimeter of an airport.

Activities for which the HSE is the enforcing authority are detailed in **Schedule 2 of the Health and Safety (Enforcing Authority) Regulations 1998** and are:

- Activities in a mine or quarry other than a quarry where notice of abandonment has been given.
- Activities in a fairground.
- Activities in premises occupied by a radio, television or film undertaking where broadcasting, recording or filming is carried on, as well as the activity of broadcasting, recording or filming wherever this takes place.
- Certain activities when they are carried on at premises by persons who do not normally work at those premises (including construction work, installation, maintenance or repair of gas or electricity systems, and work with ionising radiation).
- The use of ionising radiations for medical exposure.
- Any activity in premises occupied by a radiography undertaking in which there is any work with ionising radiations.
- Agricultural activities, and activities at agricultural shows where this involves handling livestock or working agricultural equipment.
- Activities on board a sea-going ship.
- Activities in relation to ski slopes, ski lifts, ski tow or cable cars.
- Fish, maggot and game breeding except in a zoo.
- Activities in relation to pipelines within the meaning of **Regulation 3 of The Pipelines Safety Regulations 1996**.
- The operation of a railway.

Further information is available from the HSE website [here](#).

A list of HSE regional offices is available [here](#). Local councils can be identified by entering a postcode into [www.gov.uk/find-local-council](http://www.gov.uk/find-local-council).

## **Thorough Examination and Reporting Unsafe Lifting Equipment to an Enforcing Authority**

### **Enforcement Authority Involvement**

An enforcement authority is concerned with protecting the health and safety of people at work and members of the public. Therefore, they must be informed of defective lifting equipment that poses an existing or imminent risk of serious personal injury.

An enforcing authority must be notified even if the defect has been rectified. Furthermore, it's best practice to notify an enforcing authority if the lifting equipment has been scrapped or withdrawn from service until remedial work has been completed.

On receipt of a copy of a Report of Thorough Examination in the circumstances described above, an enforcement authority may contact the owner/user concerned, seeking confirmation how the risk is being managed and may include a request for evidence that remedial work has been completed.

### **Best Practice**

The paragraphs below are examples of best practice that UKMHA members may wish to adopt. It should be noted that adoption is optional and not a requirement under legislation.

### **Notifying Enforcing Authority on Completion of Defect Rectification**

If there is proof that the necessary remedial work has been completed to rectify the defects, that were an existing or imminent risk of serious personal injury. The proof should be added, along with notification to the Report of Thorough Examination, which is being forwarded to the enforcing authority. Notification should be in the form of a standard letter, similar to that shown at Appendix 1, together with a copy of each relevant worksheet or similar documentation.

Receipt of such notification assists an enforcing authority and may negate the need for them to contact the owner/user of the lifting equipment seeking confirmation of how the risk is being managed.

### **If Rectification cannot be Completed within the Timescale Specified in the Report of Thorough Examination**

It might not always be possible to rectify the defect in the lifting equipment, involving an existing or imminent risk of serious personal injury within the timescale specified in the Report of Thorough Examination. For example, there may be occasions where there is a long lead-time for the provision of a part e.g. replacement fork arms.

If there is proof that the replacement part has been ordered. The proof should be added, along with notification to the Report of Thorough Examination, which is being forwarded to the enforcing authority. Notification should be in the form of a standard letter, similar to that shown at Appendix 2, together with a copy of each relevant purchase order or similar documentation.

Along with a statement from the owner/user confirming that the lifting equipment will not be used until the defect has been rectified.

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It is acceptable that such delays are for reasons outside the control of the owner/user, however delays on the grounds of cost are unacceptable.

It should be noted that an enforcing authority will decide what action to take on a case-by-case basis. There is no guarantee that the procedures described above will result in no further action being taken by an enforcing authority.

### Appendices

Appendix 1 – Standard letter to notify completion of repairs

Appendix 2 – Standard letter to notify delayed repairs

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The above information is provided by the UK Material Handling Association (UKMHA) as guidance and, where applicable, takes account of current best practice and our interpretation of current legislation.

However, the UKMHA accepts no responsibility for the recommendations, advice, statements, opinions and conclusions set out above, either expressly or by implication.

No warranty or representation of assurance, in respect of the accuracy or validity of the same is given.

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The information in this Technical Bulletin has been assembled and interpreted to give forklift truck owners and users basic guidance on frequently asked questions. Further important information will be given in the quoted reference documents. Responsibility for meeting the safety obligations discussed rests with the employer, and the UKMHA will not accept liability for any problem arising as a result of the content of this document. Fact Sheets, containing abridged information on a variety of subjects are made available from the UKMHA website [here](#).

## Appendix 1 – Technical Bulletin 08

### Standard Letter to Notify Completion of Repairs

*(Company Letterhead)*

*(Date)*

*(To the relevant enforcing authority.)*

**Thorough Examination Report Number:** *(Insert serial number of the Report of Thorough Examination)*

The person identified below can confirm that those defects recorded on the above Report of Thorough Examination that were considered to be an existing or imminent risk of serious personal injury have been rectified.

The defects were recorded as follows:

*(List the defects)*

Copies of the relevant work sheets are attached.

*(Signature)*

*(Name)*

*(Position)*



## Appendix 2 – Technical Bulletin 08

### Standard Letter to Notify Delayed Repairs

(Company Letterhead)

(Date)

(To the relevant enforcing authority.)

**Thorough Examination Report Number:** (Insert serial number of the Report of Thorough Examination)

Please be advised that the following defect recorded on the above Report of Thorough Examination, that was considered to be a serious imminent danger to persons, has not yet been rectified.

(Insert the defect)

The reason for the delay is (insert reason).

Copies of the relevant purchase orders, or other appropriate documents for relevant parts to rectify the defect, are attached.

We also enclose a letter signed by the equipment owner confirming that this equipment will not be used until this defect has been rectified. (This letter should be an original, not a photocopy, printed on the owner's company letterhead.)

(Signature)

(Name)

(Position)

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