

NISG – Legal Update Sponsored By Carson McDowell

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Autumn Health and Safety Round-Up

Our Health and Safety Team at Carson McDowell take a look at recent prosecutions, updates and developments in Northern Ireland.

PROSECUTIONS AND RECENT NEWS

Balloo Hire Centre Ltd

Balloo Hire Centre Ltd, a plant hire Company based in Belfast, pleaded guilty to two health and safety offences on 13 September 2024 at Laganside Crown Court. The company was fined £40,000 for breach of Article 4(1) of the Health and Safety at Work (NI) Order 1978, and a further £40,000 for breach of Article 5(1) of the Health and Safety at Work (NI) Order 1978.

This case related to an incident on 4 October 2022 whereby an operator was ejected from a Mobile Elevated Working Platform (MEWP) onto the road and sustained life changing injuries. The MEWP toppled off the side of a lorry trailer as it was being driven onto the trailer.

It was reported the company failed to identify the risks associated with loading plant. They further failed to provide a banksman to assist the operator or ensure adequate measures to segregate traffic and pedestrians from the loading operation which took place on a public road, endangering members of the public.

Taranto Limited

Taranto Limited, a concrete product manufacturer based in Tandragee, was fined £90,000 at Newry Magistrates' Court on 30 September 2024. The company entered a guilty plea to Article 4(1) of Health and Safety at Work (NI) Order 1978. This case related to an incident on 3 August 2021 when an employee suffered fatal crush injuries while removing concrete from the interior walls of a truck mounted mixing drum. The employee entered the access hatches located at either side of the drum, however, the drum rotated causing him to be ejected from the access hatch and drawn under the drum.

It was reported that the drum had not been effectively locked-off or secured and that the company failed to conduct a suitable risk assessment for the task.

Glas-Seal (NI) Limited

Glas-Seal (NI) Limited (**‘Glas-Seal’**) was fined £30,000 following an incident on 19 May 2022 that resulted in the death of an employee. Glas-Seal are a glass processing company based in Ballynahinch. The company entered a guilty plea to Article 4(1) of Health and Safety at Work (NI) Order 1978 after a large pack of glass, known as an “end-cap”, collapsed and fatally struck the employee.

It was found that Glas-Seal failed to conduct a comprehensive risk assessment for the storage, handling and processing of large glass packs and employees were not adequately trained to manage these risks.

In his sentencing remarks, Judge Miller KC made some interesting comments on the English and Wales Sentencing Council Guidelines on Health and Safety Offences. It is acknowledged that while there is good reason to adopt a consistent approach throughout the UK, “the experience of a small fulltime Crown Court Bench, with a knowledge and appreciation of local factors, allows for a greater flexibility in this jurisdiction to reach a just result without being hidebound by rigid tramlines”. The English and Wales Sentencing Council Guidelines are not directly applicable in this jurisdiction and there continues to be significant disparity between the level of fine applied by the courts in Northern Ireland and the rest of the UK.

You can find the full judgment at the Judiciary NI website¹.

UPDATES AND DEVELOPMENTS

Farming Developments

On 9 September, Northern Ireland’s Economy Minister, Conor Murphy, endorsed the “Drive Danger Out” Campaign and the launch of the Farm Safety Partnership Action Plan 2024-2027. Both initiatives are very welcome as farming continues to have the poorest safety record of any occupation in the UK.

The “Drive Danger Out” campaign aims to reduce the number of people killed or injured as a result of workplace transport incidents. Since 2012, 36 workers have lost their lives in incidents involving workplace vehicles, and more than 160 people have been seriously injured.

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<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewiFgM7ZjLaJAxWDWkEAHZoJGWwQFnoECBQQAQ&url=https%3A%2F%2Fwww.judiciaryni.uk%2Ffiles%2Fjudiciaryni%2F2024-10%2FThe%2520King%2520v%2520Glas-Seal%2520%2528NI%2529%2520Ltd.pdf&usg=AOvVaw0O-tgYASrjXjx0QvwzFeSq&opi=89978449>

The campaign promotes the need to be safety conscious and aware of the risks associated with workplace transport on farms, factories, quarries, construction sites and more.

The Farm Safety Partnership strives to make farms safer and reduce the number of fatalities, major injuries and improve health across the sector. At the launch of the new three-year plan at the start of October, the Economy Minister said, “it commits to working towards a target of zero fatalities... keeping safe does not need to be complicated or costly. Small steps save lives”. The Action Plan promotes best practice, education, engaging with children, young people, and older farmers, sustainability and intervening where serious failures are identified.

Amendments to the Personal Protective Equipment at Work Regulations

On 12 September 2024, the Department for the Economy made a Statutory Rule² amending the Personal Protective Equipment at Work (Northern Ireland) 1993 (‘the PPE regulations’).

The new rule modifies the application of Article 10 Health and Safety at Work (NI) Order 1978 to the PPE regulations to ensure “workers” as well as employees are not charged for PPE provided to them.

The existing obligations and requirements on employers and employees contained in regulations 4-11 of PPE regulations will also be extended to “workers”. This includes the provision of PPE equipment, as well as maintenance, information, instruction and training on PPE equipment, and more.

In the context of the amended PPE regulations, “Worker” is defined as an individual who has entered into or works under—

- (a) a contract of employment;
- (b) any contract, whether express or implied, oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

² The Personal Protective Equipment at Work (Amendment) Regulations (Northern Ireland) 2024 (S.R. 2024 No. 161).

PPE should only be worn as a last resort where risks to health and safety cannot be controlled by any other means. Following a suitable risk assessment, where PPE is deemed necessary, appropriate equipment should be provided free of charge to employees and workers and those using it should be properly trained in its safe use.

These regulations came into operation on 21 October 2024.

If you would like any further information or advice relating to health and safety law, please contact Declan Magee or Eilis Maguire from the Health & Safety team at Carson McDowell LLP.



This article has been provided by:

Eilis Maguire, Solicitor at Carson McDowell.

Email: eilis.maguire@carson-mcdowell.com