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Target Audience:
FOD inspectors inspecting agriculture

SUPPLY OF SECOND-HAND MACHINERY

This SIM explains the duties of suppliers of second-hand machinery and describes the options they can take to discharge their duties under Section 6 of the Health and Safety at Work etc. Act 1974. It also explains that "sold as seen" does not allow suppliers to discharge their Section 6 duties and gives an example of a Section 6(8) waiver. It explains the situation where due to the equipment not having been previously supplied into the EEA, it is now subject to EU Supply regulations.

BACKGROUND

1 Agricultural machinery is traded in a number of ways from dealerships through to auctions, the internet and classified ads in local papers. Many buyers and vendors fail to recognise that when equipment is sold on for use at work, Section 6 applies to that transaction.

2 Often imported new or Second-hand equipment is traded at auctions which may be "grey imports" outside the knowledge of the authorised UK dealer and may not be up to European safety levels if it has been imported from outside of the EEA (European Economic Area – EU States plus Norway, Iceland and Liechtenstein).

3 For example there has been a market in second-hand mini tractors imported from Japan. Most of these models were never intended for use in the EU and do not comply with EU Tractor Directive requirements – particularly with respect to noise levels at the driver's ear and in some cases the roll bar test standard. Agricultural tractors are not covered by the Supply of Machinery (Safety) Regulations 1992.

4 If equipment, new or second-hand, is being sold for the first time in the EEA it will need to meet all the requirements of the relevant EU supply Directives e.g. Machinery Directive. Note that all equipment previously used/sold in all the 25 member states in the past is out of scope of the supply Directives, even those

supplied previously to the “new member states” joining the EU. The duties to meet the Supply Directives involved will fall on the first person to place such machines on the market or if purchased from outside the EEA on the importer even if the equipment is for their own use e.g. it would fall on the auctioneer if they sourced the equipment from outside the EEA and the original manufacturer did not CE mark the equipment and/or issue a legal Declaration of Conformity. Unlike sales under HSW Section 6, sales subject to the requirements of EU supply Directives cannot be passed on to the purchaser, they always remain as described above.

5 The "[HSE guide to the inspection of the manufacture and supply of products and substances](#)" is a useful reference and should be read in conjunction with this SIM.

"SOLD AS SEEN"

6 There is a common misconception amongst machinery traders and dealers that the addition of "sold as seen" or "sold as is" on the invoice absolves them of their liabilities. Any second-hand article sold for use at work will fall within scope of Section 6 and the vendor has a qualified duty to ensure that the article, as supplied, is safe for use.

7 Section 6 also requires items such as operator's handbooks to be supplied as well for complex machinery such as sprayers and potato harvesters; but may not be necessary for simple cultivation equipment such as a chisel plough.

SOLD FOR SPARES

8 If dealers (or others) wish to sell work equipment for spares or break-up by the purchaser they should obtain a written undertaking from the purchaser describing this intention.

SECTION 6(8) WAIVERS

9 Section 6(8) allows vendors to pass on their duties under Section 6 to the purchaser provided that there is a written undertaking between the two parties, which describes the "specified steps" that the purchaser has to take to make the work equipment safe for use.

10 An example of a waiver and schedule of specified steps can be found in appendix 1. This was drawn up by the manufacturing sector.

AUCTIONEERS

11 Auctioneers are deemed to be "supplying" machines within the meaning of sec.53 of HSWA and so have duties under Section 6. They have greater or lesser control over the goods that they auction and the extent of their control will be a factor in determining whether they have discharged their duties under Section 6. Vendors will also have duties under Section 6. The total overall duty to supply a machine safe for use at work must therefore be accepted by these two parties as falling between them. The extent of each party's responsibility will vary with the contract.

12 There are two main types of auction, knock down and catalogue:

a. Knock down auction

Where a vendor is familiar with the goods and is either the manufacturer, importer or previous owner etc., they are considered to have greater responsibility for meeting the duties.

This would apply:

- at Knock Down auctions (where the auctioneer only offers their services to get the bids and has no input to the product description, e.g. the auctioneer goes to a farm to clear it and has no previous sight or knowledge of the goods);
- when the auctioneer is called on at short notice;
- when the auctioneer is supplied with information by the vendor they can reasonably believe to be correct.

Where the vendor is without practical experience of the goods to be sold, the vendor and the auctioneer must agree what needs to be done to satisfy Section 6 of HSWA, and who will arrange this. This might mean calling a competent person to establish that the machine is safe, or contacting the manufacturer for a manual.

b. Catalogue auction

In the case of Catalogue Auctions the auctioneer is considered to bear greater responsibility due to their knowledge of the products, having examined, valued and catalogued them.

It is most likely that an auctioneer's duty will vary for each item that comes up for sale. However, what must be clearly understood by the seller is the fact that selling goods by auction does not free them from their responsibilities.

MACHINERY TRADERS

13 If the trader is acting as an agent and does not take possession of the equipment being sold i.e. he only takes a commission for introducing the vendor to a purchaser then they would not have any duties to discharge under Section 6. The responsibility to ensure that the equipment was safe for use would lie entirely with the vendor provided they are established in the UK or one of the other Member States of the EEA.

DEALERSHIPS

14 Agricultural machinery dealers will take in machinery as part exchange for supplying new equipment. The transaction between the vendor and the dealer for the trade in would not fall within scope of Section 6 as the dealer is not buying the equipment to use at work. The equipment is being obtained as part payment.

15 If the dealer is planning to sell the equipment on then they should take steps to ensure items such as operator's handbooks are supplied by the vendor. If there are safety deficiencies then the dealer will need to rectify those defects prior to sale to another user.

FARMERS/CONTRACTORS

16 If a farmer or contractor sells equipment to another farmer or contractor then Section 6 will apply to that transaction and the vendor will have to ensure that the equipment he sells is safe for use at work.

COMMON DEFECTS

17 The following list is not exhaustive but does reflect areas where failures have been found in the past:

- a. PTO guarding and PIC – especially where shaft guarding may have been replaced. Vendors need to ensure they are in a sound condition with restraining devices in position and the appropriate overlap with the PIC guard (at least 50 mm in the straight line position);
- b. general machine guards – guards for belts and pulleys, chains and sprockets, stand off guards etc. are likely to have been provided when new and need to be in place when resold. Vendors will need to check the condition of guard fastenings and their suitability, particularly those that cover power transmission parts;
- c. tractor cabs and roll bars – tractors over 560 kg should not be sold without the provision of a safety cab or roll bar. Virtually all older tractors in use are capable of being fitted with a roll bar. The sector holds a list of approved roll bars and cabs. Vendors should also look at the condition of the cab with regards to corrosion, noise cladding for "Q" cabs, replacing broken window glass and refitting cab doors;
- d. sprayers – chemical induction systems, emergency wash water and protective clothing lockers should be provided on the sprayer. These items are practicable to fit on old sprayers but in some cases it may not be reasonable on cost grounds in which case the sprayer may need to be scrapped or broken up for spares;
- e. asbestos cement products - items sold at farm auctions may include roof sheets, or complete farm buildings (including the roof) for dismantling and re-erection elsewhere. Many farm roofs are asbestos cement. The Asbestos (Prohibitions) Regulations 1992 do not, strictly speaking, ban the sale of second hand asbestos cement products, however they do not allow such products to be taken from one site to be re-used at another in connection with a work activity. Suppliers must ensure that such products are properly labelled under The Chemicals

(Hazard Information and Packaging for Supply) Regulations (CHIP Regulations). (See OC 265/47 for further information);

- f. potato harvesters – the guards for haulm, clod and cleaning rollers must be in a serviceable condition. The net haulm roller guards that can be found on some older Grimme machines must be replaced with metal guards before resale;
- g. operator instructions – this is a must for complex machinery such as sprayers. For less complex machines they should be provided and if not, the vendor should make every effort to obtain these from the original manufacture. If they have not been able to obtain instruction books from the manufacturer (e.g. because the manufacturer is no longer trading) then the vendor may be able to draw up instructions for safe use themselves for the less complex machines;
- h. warning decals – vendors should ensure that any warning/instructional stickers relating to safe use are replaced on the machine if they have been lost or damaged.
- i. instructions and warning decals not in English – if machinery imported from outside the UK it may not have English translations of the instructions and on the decals – it is the vendor's responsibility to provide such translations, these should be supplied together with the original non-English instructions.

ACTION BY INSPECTORS

18 Inspectors should raise awareness of the above issues during visits to machinery suppliers, dealers and auctioneers to ensure second hand equipment being offered for sale for use at work meets reasonably practicable levels of safety. They should ensure that, as appropriate, older equipment is upgraded to meet currently accepted industry standards and where this is not economically viable that the equipment is withdrawn from the supply chain.

19 Any equipment found that is in scope of the Supply of Machinery (Safety) Regulations 1992 as amended, ie where it is being offered for sale for the first time in the EEA, should be CE marked and have a Declaration of Conformity. If this is not the case action should be taken to require this non-compliance to be rectified using the procedures explained in the intranet HSE Guide to Manufacture and Supply, through the ICSMS (replacement for SAPID) system. Inspectors should note that these Regulations have been brought into line with other Health and Safety legislation and are now triable “either way” – details are given in the above HSE Guide.

20 Inspectors may also wish to draw this information to the attention of farmers/contractors whom they know to be offering equipment for sale.

21 The sector has raised these issues with the British Agricultural and Garden Machinery Association (BAGMA) who are the trade association, which represents agricultural machinery dealerships.

22 Appendix 2 gives further advice for those who are selling at auction and Appendix 3 gives further advice for auctioneers. Both documents can be printed off and given out at visits.

Date first issued: 24/07/2006

APPENDIX 1

HEALTH AND SAFETY AT WORK ETC ACT 1974 (AS AMENDED)

**Written undertaking pursuant to Section 6(8) of the Health and Safety at work
Etc Act 1974**

The Purchaser ⁽¹⁾**The supplier** ⁽²⁾

.....
.....
.....
.....

Description of Equipment ⁽³⁾

.....

Make /type

Serial number

I, the purchaser ⁽¹⁾, undertake to take the specified steps set out in the attached schedule (*which forms part of this undertaking*) so as to ensure, so far as is reasonably practicable, that the equipment ⁽³⁾ is safe and without risks to health when it is being set, used, cleaned or maintained by a person at work.

I understand that by entering into this agreement I will relieve the supplier ⁽²⁾ of his duties specified under section 6(1)(a) or 6(1A), as the case may be, of the Health and Safety at Work Etc Act 1974 (as amended) in so far as they relate to the matters in the attached schedule. I also understand that failure to take the specified steps before taking the equipment into service may render me liable to prosecution and liable to a fine of up to £20,000 on summary conviction.

(Note: It is a legal requirement that before work equipment can be taken into use it must comply with the Provision and Use of Work Equipment Regulations 1998 and any other relevant legislation)

I confirm that I am duly authorised to give the above undertaking for or on behalf of the purchaser ⁽¹⁾

SignaturePrint name

PositionDate

SCHEDULE OF SPECIFIED STEPS

Machine Description Type/Model Serial No	
Purchaser name and address	

Notes for completion;

1. Those matters marked “No” **require steps to be taken** to ensure that the work equipment complies with the provisions of Section 6.
2. The remedial action required should be detailed in the remarks column.
3. Those matters marked “Yes” indicate that those parts and/or safety functions are provided and are in effective working order.
4. Those matters marked “N/A” indicate that they are not relevant to the equipment being supplied

Risk control measure	Yes	No	N/A	Remarks
Instruction Manual (including relevant control system diagrams)				
Dangerous Parts				
Fixed Guards				
Moveable interlocked Guards				
Adjustable Guards				
Self-adjusting guards				
Perimeter/distance guards				
Light curtains (AOPDs)				
Pressure Mats (PSPDs)				
Trip Probes				
Two hand controls				
Hold-to-run control				
Limited movement device (incremental movement)				
Other protective devices				
Protection appliances e.g. Jigs, Holders, Push sticks				
Containment for ejected parts				
Means to prevent fire/overheating				
Means to prevent or control discharge of any article, dust, gas, liquid, vapour or other substance (produced or used)				
Means to prevent or control explosion of equipment or substances used/stored				
Means of protection from high or very low temperature e.g. guards/shields, insulation				
Controls/Control system				

Start Device				
Stop Device				
Known safety related Control system faults requiring rectification				
Other controls				
Emergency Stop				
Marking of controls				
Electrical safety				
Has machine been tested as being safe from electric shock				
Is over current and earth fault protection fitted				
Is control circuit supply derived from a control transformer				
Does operating voltage of the control circuit exceed 230 V a.c.				
Live parts shrouded or screened (control panel)				
Interconnecting cables condition/termination				
Means of Isolation from power sources				
Electrical				
Pneumatic				
Hydraulic				
Stability of equipment				
Fastenings/Supports, Clamps/ties, etc.				
Lighting				
Markings/warnings				
Signs				
Audible (Sirens)				
Visible (Beacons)				
Mobile work equipment				
Seating				
Access to wheels or tracks				
Roll over protective structure (ROPS)				
Falling object protective structure (FOPS)				
Restraining Devices (e.g. seat belts)				
Prevention of unauthorised start up e.g. ignition keys				
Power take off shafts				
Means to prevent seizure				
Means to support shaft				
Noise				
Means to prevent noise transmission e.g. enclosure				
Control of Hazardous substances				

Local exhaust ventilation				
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APPENDIX 2

SELLING MACHINERY THROUGH AUCTION: GUIDANCE FOR CLIENTS (SELLERS)

A short guide to the law and some information on what to do for anyone selling plant and machinery for use at work through auction.

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1. Introduction
2. What is plant and machinery?
3. What is the Health & Safety law relating to auctions?
4. Definition of a 'Supplier'
5. "So far as is reasonably practicable" in more detail
6. Responsibilities between the auctioneer and the seller
 - Knock down auctions
 - Catalogue auctions
7. Responsibilities of sellers
8. Exclusions
9. Further reading

1 INTRODUCTION

This guide is aimed at anyone selling new or second hand plant and/or machinery through auction. It clarifies the general health and safety responsibilities of the seller and the auctioneer to protect those who might use or come into contact with the equipment at a later stage. Failure to manage and discharge these responsibilities could lead to events that could prove costly to all parties. It should be noted that auctioneers could also be sellers.

2 WHAT IS 'PLANT' AND 'MACHINERY'?

Plant is a term that does not have a specific meaning in supply legislation, but is used to refer to all items of industrial apparatus and so will include the more narrow term 'Machinery'. It also includes complex items made up of individual items and also pressure equipment, and electrical equipment etc. Plant can also refer to the building and the site and the permanent appliance needed for running and maintaining equipment.

Machinery has a specific meaning in the Supply of Machinery (Safety) Regulations 1992 and is normally regarded as being a piece of equipment, which has moving parts and, usually, some kind of drive unit. Examples include:

- fork-lift truck;
- metal working drill;
- paper making machine;
- circular saw;
- combine harvester;
- lifting equipment (including lifting tackle);
- escalator;
- meat mincing machine;
- baling machine.

3. WHAT IS THE HEALTH & SAFETY LAW RELATING TO AUCTIONS?

Section 6 of the Health & Safety at Work Act 1974 (HSWA) covers the sale of plant and machinery at auction. It broadly places duties on anyone who designs, manufactures, imports or supplies any article for use at work, to ensure, so far as is reasonably practicable, that it will be safe. It applies to new and second hand articles.

The duties extend to:

- carrying out or arranging for any necessary testing and examination; providing adequate information to those supplied with the articles about their use and maintenance;
- providing any necessary revisions of that information.

4. DEFINITION OF A "SUPPLIER"

Section 53 of the HSWA refers to the supplying of articles by sale, lease, hire purchase, whether as principal or agent for another. Agent in this respect means the relationship where one person has the authority to create legal relationships between a principal and third parties – as with an auctioneer.

5. "SO FAR AS IS REASONABLY PRACTICABLE" IN MORE DETAIL

The law requires that duty holders, which will include an auctioneer as a supplier, weigh up the degree of risk against the cost of implementing measures to reduce it. Basically, the duty holder must take measures to reduce a significant risk unless the cost of doing so clearly exceeds the benefit. This means that either the auctioneer or the seller will need to ensure a risk assessment in respect of the goods to be sold has been done and that the risks are sufficiently reduced. Note, that if legal action is taken in any particular case it is the defendant who has the legal duty to prove in

court, that is was not reasonably practicable to do more they did. If the machine is as originally manufactured and all the documentation is in place this should be sufficient, provided the standards of protection are still valid –but this needs to be checked.

6. RESPONSIBILITIES BETWEEN THE AUCTIONEER AND THE SELLER

These largely depend upon which party is most familiar with the goods in question and what is involved in the transaction (information, spares etc.). The important point is that neither party can completely evade responsibility. There are two main types of auction, Knock Down and Catalogue.

a. Knock down auction

Where a seller is familiar with the goods and is either the manufacturer, importer or previous owner etc., they are considered to have greater responsibility for meeting the duties. This would apply:

- at Knock Down auctions (where the auctioneer only offers their services to get the bids and has no input to the product description, e.g. the auctioneer goes to a farm to clear it and has no previous sight or knowledge of the goods;
- when the auctioneer is called on at short notice;
- when the auctioneer is supplied with information by the seller they can reasonably believe to be correct.

Where the seller is without practical experience of the goods to be sold, the seller and the auctioneer must agree what needs to be done to satisfy Section 6 of HSWA, and who will arrange this. This might mean calling a competent person to establish that the machine is safe, or contacting the manufacturer for a manual.

b. Catalogue auction

In the case of Catalogue Auctions the auctioneer is considered to bear greater responsibility due to their knowledge of the products, having examined, valued and catalogued them. It is most likely that an auctioneer's duty will vary for each item that comes up for sale. However, what must be clearly understood by the seller is the fact that selling goods by auction does not free them from their responsibilities. Separate guidance has been produced to assist Auctioneers.

7. RESPONSIBILITIES OF SELLERS

What does a seller need to do when selling a new machine?

Before selling new equipment the seller must think about:

- where and how it will be used;
- what it will be used for;
- who will use it (skilled employees, trainees);
- what risks to health and safety might result;

- checking the standard(s) of how well the health and safety risks are controlled is acceptable, e.g. by it following the current European Standard and having a declaration on conformity. It may help to compare the control methods used by different manufacturers to judge that the risks are being controlled to at least the same level.

If a seller is unsure about the operation and/or safety of more complex or custom-built machinery they should contact a competent person (organisation) to help and/or advise them.

Prior to bidding the seller should provide the auctioneer with a written declaration stating that the equipment should be safe –BUT remember that if the machinery is clearly unsafe to a layperson then the auctioneer's liability will NOT be mitigated.

How can the seller check the machine?

First they will have to make sure that the manufacturer or supplier has given them information on how the machine works and its safety features. With smaller off-the-shelf machinery, e.g. electric hand drills this should be included with the machine. If the seller doesn't know then they will have to arrange for the equipment to be examined by a competent person.

They should also consider the following:

- do any parts look dangerous, e.g. exposed gear wheels, cutters?
- are there guards and are they in place?
- can the machine operate with the guards removed?
- can the controls be understood?
- can dust or fumes escape from the machine?
- is it excessively noisy?
- is there excessive vibration?
- are any exposed parts likely to be extremely hot or cold?
- are there any live electrical parts that are exposed or easy to get at?
- are there any special features, e.g. slow speed running, for use when setting?
- are the manufacturers' instructions clear and comprehensive?
- if new, is the machine CE marked and has a Declaration of Conformity?

What the seller should do if they think the machinery isn't safe?

Do not sell it. Contact the manufacturer, supplier or competent person (organisation) for advice and arrange for the machine to be put right.

What else can they do?

They should consider producing guidelines for prospective buyers, including any warnings that are necessary.

How is doing all of this going to help the User and their business?

Allowing people to use machinery which is unsafe may cause an accident. Accidents or incidents cost money, and the costs can be higher than people realise. (See HSE leaflet '**The cost of accidents at work**', HSG96).

Do importers, suppliers and auctioneers have to follow all these requirements even if the machinery is made outside Europe?

All those involved in the supply process have to make sure the machinery they supply in the European Economic Area (EEA) is safe no matter where it is made. The EEA includes the European Union member countries and also Iceland, Norway and Liechtenstein, but excludes Switzerland even though that country is implementing the European Directive.

The seller will also need to check that the documentation shows that:

- the manufacturer has carried out all the steps involved in making sure the machine is safe;
- there is a Declaration of Conformity or Incorporation for the machine;
- there are full instructions for installing, using and maintaining the machine;
- if complete, the machine has CE marking.

What does a Declaration of Conformity have on it?

- the name and address of the manufacturer or other responsible person.
- the make, type and serial number of the machine.
- the signature of an authorised person and information on:
- which standards have been used in the design and manufacture (if any);
- what European Union laws (directives) the machine complies with.

What is a Declaration of Incorporation?

If the machine is intended for:

- incorporation into another machine;
- assembly with other machines (note this does not apply to interchangeable equipment that can be taken on or off the other machine by the operator, these machines must have a Declaration of Conformity and be CE marked – examples are farm machinery used with tractors such as balers, power harrows etc) ;
- the manufacturer can issue a 'Declaration of Incorporation'. In this case the partly complete machine may not have CE marking.

Does new machinery have to be made to any particular standards?

The machine must comply with the Essential Health and Safety Requirements (EHSRs) of the relevant product supply law. However, when a machine has been made to the specification in a harmonised European Standard (identified by an EN before the number, e.g. BS EN ... and its reference published in the EU Official Journal), there is a presumption that it conforms to the relevant EHSRs. The use of these standards is voluntary. Some European Standards for particular types of machinery are already available, others are being written.

Manufacturers can design and manufacture their machinery to other product standards, e.g. British or American standards, as long as they are certain the machine will comply with the relevant EHSRs and be safe. However, the use of such standards, during manufacture, does not give a presumption of conformity with the relevant EHSRs. In some circumstances, machinery (e.g. some woodworking machinery and power-presses) must be examined by an independent third party if it is not made in accordance with a harmonised standard. Details will be given on the Declaration of Conformity – if sellers have doubts they will need to seek expert advice.

What to do when selling new machinery?

When selling new machinery the seller will need to:

- check that it has CE marking (where necessary) and ask for a copy of the EC Declaration of Conformity if you have not been given one. N.B. The CE marking is only a claim by the manufacturer that the machinery is safe and that they have met relevant supply law;
- check that the supplier has explained what the machinery is designed to be used for and what it cannot be used for (unless this is off-the-shelf machinery);
- make sure a manual has been supplied which includes instructions for safe use, assembly, installation, commissioning, safe handling, adjustment and maintenance – and is the right one for the model being sold;
- make sure the instructions on the machine and in the manual are written in English; (the maintenance instructions may, however, be written in another European language if specialised staff from the manufacturer or supplier will carry out maintenance);
- make sure information has been provided about any remaining risks from the machine, and the precautions users need to take to deal with them. These may include electrical, hydraulic, pneumatic, stored energy, thermal, radiation or health hazards;
- check that data about noise and vibration levels have been provided and, where necessary, explained to the buyer;
- ensure that any warning signs are visible and easy to understand;

- for a complex or custom-built machine arrange for a trial run so the buyer can be shown the safety features and how they work;
- check to see if you think the machine is safe;
- make sure any concerns about the safety of the machine are reported to the supplier.

What about selling second-hand machinery?

It is still covered by Section 6 of HSWA and has to be safe for use. In many cases it will not have CE marking, but it is still the duty of the supplier to make sure that it is safe and has instructions for safe use. There is also the duty to make sure that second-hand machinery is:

- safe;
- suitable for the work it is to do;
- maintained in a safe condition.

If a second-hand machine has been totally refurbished and upgraded (e.g. adding CNC control to a machine, together with other work) it should have a new CE marking, if not it will probably need to go through a conformity assessment and be CE marked, you or the client may need to consult a suitable expert. This extra work is needed because the way it operates and the way risks are controlled may be different after the refurbishment and as a result it needs to be treated as if it was a new machine.

What about machinery which is going to be part of an assembly line?

If a machine is designed to be incorporated into other machinery, it may not have CE marking fixed to it. It should be manufactured to be as safe as possible and be provided with a Declaration of Incorporation. Instructions on safe installation and use of the parts not affected by the incorporation process should also be provided. When the machine is fitted into the assembly line, particular attention must be given to any hazards, which may have been caused by the machine being fitted into the line. For instance, additional guarding or other controls may be required and information should be provided on the incorporation process. The person doing the assembly work is responsible for CE marking the complete machine, but they are only responsible for the compliance assessment for the safe interface of the partly completed machinery into the line, not for a complete re-assessment of the whole line. Details of the Declaration of Incorporation should be kept with the technical information on what was done to interface the machine into the line (i.e. the technical file). **Please note:** The equipment may also have to comply with some of the requirements of several items of supply law, e.g. the Electrical Equipment (Safety) Regulations 1994 and the Electromagnetic Compatibility Regulations 1992.

Supplying the manufacturer's safeguards?

Normally it is better to sell the machine with all the manufacturer's safeguards included. However, in some special circumstances, for example where particular tools, etc. are going to be incorporated or an existing noise enclosure is going to be

re-used, there can be a specific written agreement relating to the provision of these particular items, between the seller, the buyer, and the supplier. But the seller must sign to accept this responsibility and in effect become involved in the final part of the manufacturing process. However the CE marking should not be fitted in these circumstances and only be added to the machine by the manufacturer or the User (if they do the incorporation) after the other safeguards, etc. have been fitted.

8. EXCLUSIONS

The supply law requiring CE marking and Declaration of conformity, does **not** apply to the following machinery:

- those put on the market only for use outside the EEA
- second-hand (when not refurbished) provided they have previously been supplied in the EEA –if imported from outside the EEA, then they must be treated as if they were new machines.

9. FURTHER READING

A Guide to the Health and Safety at Work etc Act 1974 - LI ISBN 0 7176 0441 1

Provision and Use of Work Equipment Regulations 1992 L22 Guidance on Regulations HSE Books 1992 - ISBN 0 7176 0414 4 (currently being revised)

Supplying new machinery - INDG270, ISBN 0 7176 1560 X

Buying new machinery - INDG271, ISBN 0 7176 1559 6

Using work equipment safely - INDG229 ISBN

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This leaflet contains notes on good practice which are not compulsory but which you may find helpful in considering what you need to do.

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APPENDIX 3

SELLING MACHINERY THROUGH AUCTION: GUIDANCE FOR AUCTIONEERS

A short guide to the law and some information on what to do for auctioneers.

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8. Further reading

1. INTRODUCTION

This guide is aimed at auctioneers who act as agents in the sale of new or second hand plant and/or machinery through auction. It clarifies the general health and safety responsibilities of the auctioneer and the seller to protect those who might use or come into contact with the equipment at a later stage. Failure to manage and discharge these responsibilities could lead to events that could prove costly to all parties. It should be noted that auctioneers could also be sellers.

2. WHAT IS 'PLANT' AND 'MACHINERY'?

Plant is a term that does not have a specific meaning in supply legislation, but is used to refer to all items of industrial apparatus and so will include the more narrow term 'Machinery'. It also includes complex items made up of individual items and also pressure equipment, and electrical equipment etc. Plant can also refer to the building and the site and the permanent appliance needed for running and maintaining equipment.

Machinery has a specific meaning in the Supply of Machinery (Safety) Regulations 1992 and is normally regarded as being a piece of equipment, which has moving parts and, usually, some kind of drive unit. Examples include:

- fork-lift truck;
- metal working drill;
- paper making machine;
- circular saw;
- combine harvester;
- lifting equipment (including lifting tackle);
- escalator;
- meat mincing machine;
- baling machine.

3. WHAT IS THE HEALTH & SAFETY LAW RELATING TO AUCTIONS?

Section 6 of the Health & Safety at Work Act 1974 (HSWA) covers the sale of all plant and machinery including at an auction. It broadly places duties on anyone who designs, manufactures, imports or supplies any article for use at work, to ensure, so far as is reasonably practicable, that it will be safe. It applies to new and second hand articles.

The duties extend to:

- carrying out or arranging for any necessary testing and examination; providing adequate information to those supplied with the articles about their use and
- maintenance;
- providing any necessary revisions of that information.

In addition to the above the Supply of Machinery (Safety) Regulations 1992 as amended, apply to new or second hand machinery if it is being offered for sale for the first time in the EEA (European Union member countries and also Iceland, Norway and Liechtenstein, but excludes Switzerland even though that country is implementing the relevant European Directives).

Under these Regulations there is a duty placed on the first person importing the machinery for their own use or first placing it on the EEA market, to ensure it is CE marked and has a Declaration of Conformity. If it does not they must show the machinery meets the Essential Health and Safety Requirements (listed in Schedule 3) by completing a conformity assessment procedure and issue a Declaration of Conformity and affix the CE mark. Certain Machines listed in Schedule 4 cannot be self certified and have to go through specific conformity assessment procedures using a “notified body” appointed by one of the EU Member States.

4. DEFINITION OF A ”SUPPLIER”

Section 53 of the HSWA refers to the supplying of articles by sale, lease, hire purchase, whether as principal or agent for another. Agent in this respect means the

relationship where one person has the authority to create legal relationships between a principal and third parties – as with an auctioneer.

5. “SO FAR AS IS REASONABLY PRACTICABLE” IN MORE DETAIL

The law requires that duty holders, which will include an auctioneer as a supplier, weigh up the degree of risk against the cost of implementing measures to reduce it. Basically, the duty holder must take measures to reduce a significant risk unless the cost of doing so clearly exceeds the benefit. This means that either the auctioneer or the seller will need to ensure a risk assessment in respect of the goods to be sold has been done and that the risks are sufficiently reduced. If the machine is as originally manufactured and all the documentation in English is in place, including if relevant a CE mark and Declaration of Conformity, this should be sufficient, provided the standards of protection are still valid – but this needs to be checked.

6. RESPONSIBILITIES BETWEEN THE AUCTIONEER AND THE SELLER

These largely depend upon which party is most familiar with the goods in question and what is involved in the transaction (information, spares etc.). The important point is that neither party can completely evade responsibility. There are two main types of auction, Knock Down and Catalogue.

a. Knock down auction

Where a seller is familiar with the goods and is either the manufacturer, importer or previous owner etc., they are considered to have greater responsibility for meeting the duties. This would apply:

- at Knock Down auctions (where the auctioneer only offers their services to get the bids and has no input to the product description, e.g. the auctioneer goes to a farm to clear it and has no previous sight or knowledge of the goods;
- when the auctioneer is called on at short notice;
- when the auctioneer is supplied with information by the seller they can reasonably believe to be correct.

Where the seller is without practical experience of the goods to be sold, the seller and the auctioneer must agree what needs to be done to satisfy Section 6 of HSWA, and who will arrange this. This might mean calling a competent person to establish that the machine is safe, or contacting the manufacturer for a manual.

b. Catalogue auction

In the case of Catalogue Auctions the auctioneer is considered to bear greater responsibility due to their knowledge of the products, having examined, valued and catalogued them.

It is most likely that an auctioneer's duty will vary for each item that comes up for sale. However, what must be clearly understood by the seller is the fact that selling goods by auction does not free them from their responsibilities.

7. RESPONSIBILITIES OF SELLERS

There are a number of things for sellers to consider when selling through an auction. These include:

- checking the machine for safety purposes
- what to do if they think the machinery isn't safe
- checking if the machine has to be made to any particular standards
- requirements for new and second hand machinery
- requirements for machinery that is going to be part of an assembly line
- requirements for machines made outside of Europe

8. FURTHER READING

A guide to the Health and Safety at Work etc Act 1974, LI ISBN 0717604411

Provision and Use of Work Equipment Regulations 1992 L22 Guidance on Regulations HSE Books 1992 - ISBN 0717604144 (currently being revised)

Supplying new machinery INDG270, ISBN 071761560X

Buying new machinery INDG271, ISBN 0717615596

Using work equipment safely INDG229, ISBN

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<p>This leaflet contains notes on good practice which are not compulsory but which you may find helpful in considering what you need to do.</p>
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