

BROADGATE CENTRAL RETAIL DESTINATION

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THE DROP 12:30PM



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HOW RESPONSIBLE ARE YOU?

The legal onus for compliance explained



HOW RESPONSIBLE IS YOUR 'RESPONSIBLE PERSON'?

For *Legionella* prevention and fire prevention measures such as kitchen extract cleaning and fire damper testing you must appoint a designated Responsible Person. But what exactly are they responsible for, and how much of their responsibility can they delegate to a specialist contractor?

Martin Hembling, commercial director for Swiftclean, explains

As a provider of specialist services which ensure compliance with the Approved Code of Practice L8 for *Legionella* Control and the twin specifications of TR19 Air and TR19 Grease for ventilation cleaning and testing, we often find facilities or building managers mistakenly believe that once they have appointed us, the responsibility for compliance transfers to the supplier.

Once you become the Responsible Person, the legal onus for ensuring compliance rests with you. You can share a degree of this with a specialist provider, or even with a colleague, but the overall responsibility for compliance stays with you.

This is why it is essential to appoint the right service

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provider to help you fulfil these duties. If you appoint a less than competent general cleaner, the result may be disappointing and commercially damaging, but in the case of compliance with ACoP L8 or TR19 Grease, the consequences of incompetence can be far reaching.

It is also vital to ensure that they can provide robust evidence of your compliance by documenting and, where appropriate, certifying their work.

Legionella testing: what does the law say?

In the UK, if a building is open to the public, the owner or the facilities or building manager has a legal obligation to ensure that the water system is clean, safe and free from *Legionella*. Landlords have the same responsibilities in rented residential properties.

In a retail destination, there may be a number of water systems to oversee. Public toilets will have a water system, as will each food court or catering outlet. Individual retail outlets may have separate water systems for staff toilets and kitchens. If you have hair, beauty salons or hotels attached to the retail destination, these also will have water systems. There may be miles of pipework, as well as cold water storage tanks and water heaters. All of these must be monitored for *Legionella*.

The Responsible Person's legal duties regarding *Legionella* are set out in The L8 Approved Code of Practice, issued by the HSE (Health & Safety Executive). This requires that they minimise the risk of *Legionella* by carrying out the following:

- identify and assess any potential sources of risk
- sufficiently manage the risks you have identified
- put in place appropriate preventative measures
- keep detailed and accurate records of any testing, results, or work carried out.

Water must be able to circulate freely around the entire water system, and there should be no 'dead legs' of pipework in which water can remain static. This could occur with alteration to the system, for example, where water outlets have been removed to change the use of the unit.

The hot and cold water temperatures should be regularly tested. Hot water should be stored above 60°C, hot water distribution should be above 50°C, and cold water storage and distribution should be below 20°C, in order to prevent *Legionella* proliferation.

Keeping accurate records is essential, and it is strongly recommended that your documentation includes a photographic record of pipework and tanks, as well as before and after photography of

any cleaning or remedial work; such as before and after images of a water tank clean. These images should form part of a comprehensive water hygiene log book and risk assessment. If you have cold water storage tanks on the roof, it is vital that these are sufficiently shaded and protected from solar gain.

If you have units whose water systems are unused for more than a few days, you will need to ensure that the systems are thoroughly flushed before reusing. If unused for longer periods, they may need to be chemically treated and recommissioned before use.

If there is an outbreak of *Legionella*, the Responsible Person and their organisation may be prosecuted for negligence. A conviction can result in a limitless fine for the organisation and a possible custodial sentence for the Responsible Person – especially if there have been cases of Legionnaire's Disease, the potentially fatal illness caused by *Legionella* bacteria. You should, therefore, be careful to appoint a member of the Legionella Control Association (LCA) to provide *Legionella* control services. LCA members are vetted regularly, and their membership is confirmed on an annual basis. LCA members will provide robust evidence of your compliance.

Kitchen extract systems – TR19 Grease compliance

You are also required to appoint a Responsible Person when it comes to fire prevention under the Regulatory Reform (Fire Safety) Order and the Workplace (Health, Safety & Welfare) Regulations. This is important for your food court or any separate restaurants or cafes. One major fire hazard is caused by the accumulation of grease deposits in a commercial kitchen extraction system. You are required to ensure that each kitchen extraction system is regularly cleaned and inspected in accordance with TR19 Grease, the specification issued by the Building Engineering Services Association (BESA). Cleaning should include the canopy, plenum, filters, ductwork, risers and fans. BESA TR19 Grease contains a useful table outlining the frequency of cleaning needed, according to your kitchen's usage in Table 5 – the frequency of grease risk control clean vs average daily grease

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accumulation. Your buildings insurance provider will also expect you to comply with TR19 Grease. Failing to comply may invalidate your insurance policy, so your insurer may not pay out following a fire where non-compliance has been a factor.

Failure to comply can also have serious legal consequences as it can be construed as negligence, especially if there has been danger or harm to life, and/or serious property damage. The Responsible Person may be prosecuted, and, if convicted of negligence, may face a custodial sentence.

Evidence of your compliance and the work done competently by your service provider is therefore critical. Careful documentation and robust record keeping can help to protect you from prosecution. Appointing a member of BESA's Vent Hygiene Register (VHR) will ensure that you can receive BESCA (Building Engineering Services Competence Assessment) certification of every clean, including before and after photography of each individual asset. BESCA is the certification arm of the BESA and is widely recognised as an authority on compliance with industry standards.

Fire dampers – your legal duties

It is a legal requirement for all fire dampers to be tested on an annual basis, in accordance with BS

9999:2017, to ensure that they are functioning correctly. Fire dampers are installed in ventilation ductwork at the point at which ductwork passes through an internal fire-resistant wall.

The ductwork effectively creates an opening in the wall through which fire can travel, using the ductwork like a chimney, so it is critical to be able to restore this fire-resistant compartment. This is achieved by installing a fire damper, a set of steel louvres which are normally held open to allow air to circulate, but which close automatically in the event of a fire, creating a barrier to prevent or delay the spread of smoke and flames.

The problem for many facilities or building managers is that they are unaware of the number or location of their buildings' fire dampers, or in some cases, that fire dampers are present at all. In the past, record keeping was somewhat hit and miss, and the location, type and number of fire dampers was not recorded. This can be a huge headache for the property owners and managers as fire damper testing may be an unexpected cost. Suddenly discovering that you have hundreds of fire dampers which must be tested and possibly cleaned and maintained can radically alter your costs per square metre – making huge demands on an already hard-pressed budget. A specialist fire damper testing provider can help you to locate and identify any



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fire dampers, creating a robust record of each asset for future reference – especially for accurate budgeting. It is essential that you can access every fire damper for testing, so it may be necessary to retrofit additional access points to facilitate testing. Again, your specialist provider can help with this. The ventilation ductwork itself should be regularly cleaned in compliance with TR19 Air.

So, who's responsible?

Your specialist provider for *Legionella* control, ductwork cleaning and fire damper testing also has

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an obligation to carry out their work in a professional and competent manner. It is important to appoint a competent and professional provider, not only to ensure, but also to demonstrate, your compliance. They should provide accurate and robust documentation of each clean of every asset.

We strongly recommend that before and after photography of each clean, or item of remedial work, should be included. If no cleaning or remedial work is required, you should still have a photographic record of the condition of the asset at the time of its inspection. In the case of ventilation ductwork cleaning, only a member of the BESA Vent Hygiene Register will be able to provide BESCA post-clean certification.

If your service provider is less than competent, they may be held partly to blame and deemed negligent in the event of a catastrophe. However, this does not change your liability as the appointed Responsible Person. It remains part of your legal duty to appoint a competent provider who will ensure your systems' compliance.

In the end, responsibility stays with the Responsible Person. **RD**