

November 2024

## WORKSAFE POSITION

# What we expect when compliance certifiers apply discretion

### Purpose

This position sets out what we expect of compliance certifiers when they apply their discretion under Regulation 6.23(3) of the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations).

### What compliance certifiers do

A compliance certifier is an individual or organisation authorised by us under the Regulations.

Compliance certifiers play a key role in the hazardous substances regulatory regime. They provide:

- assurance that those working with hazardous substances have identified and are managing the risks associated with those substances
- assurance that individuals, sites or equipment are compliant with the Regulations
- information that helps us do our role as regulator.

### What the law says

Compliance certifiers may issue compliance certificates as set out in regulation 6.23(1) if the relevant requirements are met.

Regulation 6.23(3) allows compliance certifiers to issue a certificate if they are satisfied that any potential adverse effect from the relevant requirement not being met:

- a. has been satisfactorily avoided, or
- b. in the case of a hazardous substance location, can be satisfactorily avoided by issuing a conditional compliance certificate under regulation 6.24.

### What we expect from compliance certifiers

Our expectations of compliance certifiers when they're considering exercising discretion under regulation 6.23(3) are set out below.

#### Act in good faith

Compliance certifiers will:

- use their judgement to decide if it is appropriate to apply discretion under regulation 6.23(3)
- comply with legislation and with their authorisation as a compliance certifier, and any limitations or conditions on their authorisation
- not act outside of their authorisation.

#### Be impartial

Compliance certifiers will:

- be impartial, unbiased, and objective when applying discretion
- not handle matters in which they have an actual conflict of interest
- take into account only relevant considerations.

#### Make good decisions

Compliance certifiers will:

- apply the Regulations appropriately
- make decisions based on supporting evidence, and seek more information if they need it
- be able to show and explain how they reached their decision to issue or not issue a compliance certificate under regulation 6.23.

## Keep records

Compliance certifiers will:

- create, keep, and maintain records of their decisions and all the evidence they used to make their decisions
- record how any potential adverse effect from the noncompliance has been satisfactorily avoided, including what alternative mitigation or control is in place to ensure there's no potential adverse effect
- store records in line with relevant performance standards, including the [Health and Safety at Work \(Hazardous Substances Information and Process Requirements for Compliance Certifiers\) Performance Standard 2019](#) and the [Health and Safety at Work \(Hazardous Substances - Location Compliance Certification for Classes 2 to 6, and 8\) Performance Standard 2021](#)

## How we work with compliance certifiers

We acknowledge the role of compliance certifiers in the hazardous substances regulatory regime. We work with them in good faith to support them, provide information, and make sure the regime operates well.

Given their role, compliance certifiers' performance is important to us. We monitor their performance and engage with them when we identify areas where they can improve.

Where we have reason to believe that compliance certifiers are not using discretion in line with this position, we may investigate as set out in regulation 6.15.