

SIP013 - GUIDANCE ON MANAGEMENT OF NON-PERMANENT EMPLOYEES IN PORTS





DISCLAIMER

It is Port Skills and Safety (PSS) policy to obtain permission to link to external web sites, and contextual links are provided to such sites where appropriate to the industries business. PSS is not responsible for, and cannot guarantee the accuracy of, information on sites that it does not manage; nor should the inclusion of a hyperlink be taken to mean endorsement by PSS of the site to which it points

DOCUMENT AUTHORS

This guidance document has been produced by Port Skills and Safety with the support of the Health and Safety Executive and representatives of the UK ports industry

COPYRIGHT

Contains public sector information licensed under the Open Government Licence v2.0.

Crown copyright applies to the whole of this publication. The content may be used by third parties in accordance with the terms of the Open Government Licence. None of the content may, without HSE's express agreement, be given to third parties for use outside the terms of the Open Government Licence. www.nationalarchives.gov.uk/doc/open-government-licence/version/2/

Publication: September 2019

Printed: December 2019

SIP013 - GUIDANCE ON MANAGEMENT OF NON-PERMANENT EMPLOYEES IN PORTS

CONTENTS

<i>INTRODUCTION</i>	<i>1</i>
<i>1. REGULATORY FRAMEWORK AND GUIDANCE</i>	<i>3</i>
<i>2. HEALTH</i>	<i>4</i>
<i>3. RISK ASSESSMENT</i>	<i>4</i>
<i>4. CONSULTATION, COOPERATION AND COORDINATION</i>	<i>7</i>
<i>5. RESPONSIBILITIES</i>	<i>7</i>
<i>6. CHOOSING A PROVIDER OF NON-PERMANENT EMPLOYEES</i>	<i>8</i>
<i>7. PORT SAFETY PASSPORT SCHEMES</i>	<i>8</i>
<i>8. PORT SAFETY INDUCTIONS</i>	<i>9</i>
<i>9. COMPETENCE</i>	<i>9</i>
<i>10. MEDICAL FITNESS</i>	<i>10</i>
<i>RELEVANT LEGISLATION AND GUIDANCE</i>	<i>13</i>

SIP013

GUIDANCE ON MANAGEMENT OF NON-PERMANENT EMPLOYEES IN PORTS

INTRODUCTION

The Health and Safety Executive provided support to Port Skills and Safety in producing this guidance, which is aimed at improvements within the Ports industry. This guidance may go further than the minimum you need to do to comply with the law regarding health and safety.

It is for companies operating in the UK ports industry with responsibility for the safe design, construction, operation, management and maintenance of ports and terminal facilities and activities. It will also be useful to employees and their representatives.

Following the guidance is not compulsory and you are free to take other action. If you follow the guidance you will normally be doing enough to comply with the law. Health and Safety Inspectors seek to secure compliance with the law and may refer to this guidance. If the guidance goes beyond compliance, then this will be clearly identified.

Regulations in this document are referred to by title but not year, because they are amended from time to time. The reader should always seek the current version. Acts are given a year as they tend to change less frequently. The list of references at the end of this document however does include a year that was correct at the time of publication.

Guidance within these shaded areas of this document denotes that the contents go beyond statutory compliance and are industry recommended best practice. These guidelines are not mandatory, though the legislation referenced below is. Individual organisations have a duty of care to those who might be affected by their operations and are responsible for devising arrangements that meet their obligations.

This guidance has been developed to cover the key issues associated with using non-permanent employees (NPEs). In parts of the industry NPE's can be known as Agency Workers and also as non-permanent workers. An NPE may work for a host employer on a day by day or term-contract basis. NPEs may also work under several different contract arrangements.



1. REGULATORY FRAMEWORK AND GUIDANCE

- 1.1. The two principal relevant pieces of law are the Health and Safety at Work etc. Act (HSWA) 1974, and the Management of Health and Safety at Work Regulations (MHSWR), which set out the basic requirements to ensure, so far as is reasonably practicable, the health, safety and welfare of all involved.
- 1.2. Port specific, Merchant Shipping and other legislation applies and should be referred to.
- 1.3. Approved Code of Practice (ACOP) L148 'Safety in Docks' was introduced on 6 April 2014: www.hse.gov.uk/pubns/books/l148.
- 1.4. The PSS/HSE Safety in Ports guidance suite, available from the PSS website at: www.portskillsandsafety.co.uk/resources is an important supplement to Safety in Docks ACOP L148.
- 1.5. The guidance is aimed at routine operations and does not cover some of the specialised and high-risk activities associated with handling dangerous goods and hazardous cargoes, or major hazards sites which are subject to the Control of Major Accident Hazards Regulations for which specialist advice may be required.
- 1.6. Reference can also be made to the International Labour Organisation's (ILO) Code of Practice on Safety and Health in Ports (ILO 152): www.ilo.org/sector/activities/sectoral-meetings/WCMS_546257/lang--en/index.
- 1.7. NPEs may be paid by their employer e.g. an employment agency/business. However, the host company still has a duty of care under the HSWA 1974. The host company cannot pass on a legal duty that falls to them under the HSWA 1974 by means of a contract and the host company will still have duties towards others under Section 3 of the Act.
- 1.8. There are different types of labour supply businesses involving different relationships with the host employer. If entering into an agreement, the host company should understand the type of relationship involved as this will affect the respective responsibilities (see Section 6 on Responsibilities, below).
- 1.9. This guidance is intended wholly for the purpose of enhancing health and safety and enabling effective communication, coordination and cooperation between parties that work together in the port environment. It is not intended for creating employment precedent or establishing employment status and should not be used for such purposes. It does not comment on the nature or extent of any commercial, legal or contractual relationship between the 'host employer', the 'NPE provider' and the worker, which is governed by employment and contractual law. 'Host employer' and 'non-permanent employee' are used in this guidance only to provide consistent terms that enable health, safety and welfare duties and industry good practice to be approached using common language. They have no bearing on the employment or worker status of the individuals concerned.



1.10. Further advice and guidance on specific topics can be found on the HSE website and includes specialised advice. Other legislation/guidance that should be considered include but is not limited to:

- Working Time Regulations and Working Time (Amendment) Regulations
- DTI Guidance on Conduct of Employment Agencies and Employment Businesses Regulations
- Department for Business, Energy & Industrial Strategy guidance on Agency Workers Regulations

1.11. Both the host company and the NPE provider should be satisfied that both parties have complied with their requirements set out in the above regulations.

2. *HEALTH*

2.1. The wide range of activities in ports can give rise to possible health risks such as exposure to dusty cargoes; back injuries, sprains and strains from lifting and handling, pushing and pulling; noise and vibration. There is specific legislation including the Control of Substances Hazardous to Health Regulations, the Control of Noise at Work Regulations, the Manual Handling Operations Regulations and Personal Protective Equipment at Work Regulations.

2.2. While there is reference to some specific health risks in these guidance documents, it is not possible to cover all the issues. Further information and guidance on the identification, assessment and reduction or avoidance of such risks can be found on the HSE website at:

- Ports web pages: www.hse.gov.uk/ports
- Control of Substances Hazardous to Health: www.hse.gov.uk/coshh
- HSE Whole Body Vibration in Ports Information Paper: www.hse.gov.uk/vibration/wbv/ports.pdf
- Musculoskeletal disorders (MSDs): www.hse.gov.uk/msd
- Noise at Work: www.hse.gov.uk/noise
- Personal Protective Equipment: www.hse.gov.uk/toolbox/ppe
- Vibration at Work: www.hse.gov.uk/vibration

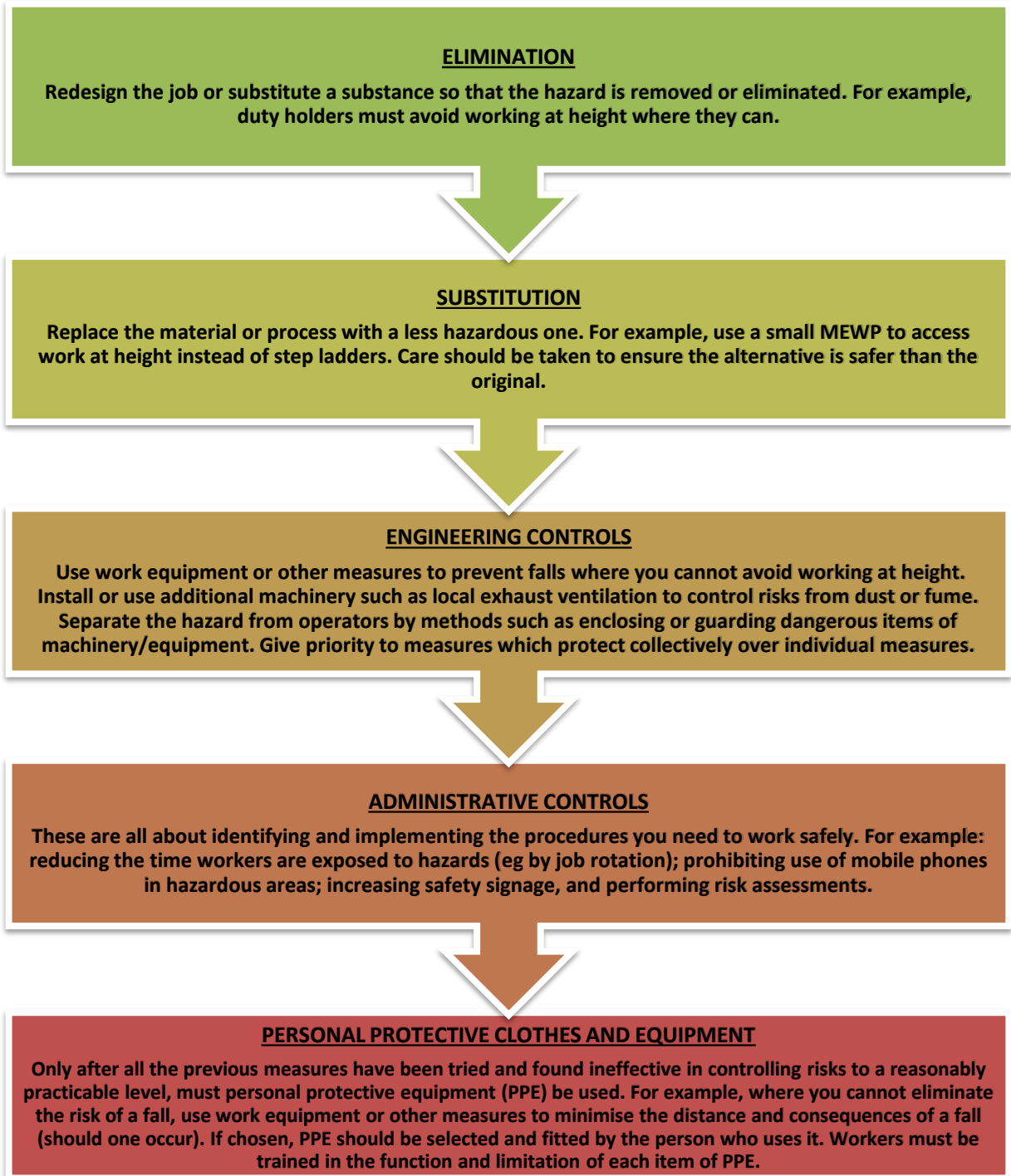
3. *RISK ASSESSMENT*

3.1. Risk Assessments must be undertaken in accordance with the Management of Health and Safety at Work Regulations. The risk assessment must consider the risks, to everyone involved or affected by the activity. This includes but is not limited to non-permanent employees (MPE's), ship's crew, passengers and visitors. The appropriate control measures must be introduced and should consider collective measures before personal or individual measures.



3.2. Risks should be reduced to as low as is reasonably practicable by taking preventative measures in order of priority below. The diagram opposite sets out an ideal order to follow when planning to reduce risk.

HIERACHY OF CONTROLS



Reference: HSE Leadership and Worker Involvement Toolkit. Available at www.hse.gov.uk/construction/lwit/assets/downloads/hierarchy-risk-controls



- 3.3. Risk assessments must be reviewed:
- regularly
 - immediately after any incident
 - when there are significant changes to the operation
- 3.4. Most accidents and near misses can be avoided if the risks from the work are suitably and sufficiently assessed and appropriate control measures adopted.
- 3.5. A risk assessment should record the significant hazards and risks of an operation together with the relevant control measures. In port operations, risk assessments should consider changes such as tidal changes, weather, trim, list, load/cargo and vessel dynamics.
- 3.6. Planning and work execution are discussed in HS(G) 177, Managing Health and Safety in Dockwork: www.hse.gov.uk/pubns/books/hsg177.
- 3.7. The Health and Safety at Work Act 1974 applies on board a ship when shore-based workers are engaged in cargo handling or other tasks on board. Cargo handling may include, but is not limited to:
- loading, unloading, stowing, unstowing, pouring, trimming, classifying, sizing, stacking, unstacking
 - composing and decomposing unit loads
 - services in relation to cargo or goods such as tallying, weighing, measuring, cubing, checking, receiving, guarding, delivering, sampling and sealing, lashing and unlashings
- 3.8. The Health and Safety at Work Act 1974 applies to the Master and ship's crew when working with shore-based personnel on board ship.
- 3.9. A signed agreement or an agreed and recorded system of work with the master of each vessel is recommended. This is not a legal requirement but may help to ensure effective co-ordination with other parties.
- 3.10. Regulations made under the Health and Safety at Work Act 1974; such as:
- The Management of Health and Safety at Work Regulations
 - The Lifting Operations and Lifting Equipment Regulations
 - The Provision and Use of Work Equipment Regulations
- do **not** apply to a master or crew of a ship, or any persons employing them, in relation to:
- safe access, plant and equipment which remain on board the ship
 - any undertakings or work which are carried out on board ship solely by the master and the crew



Instead, the Merchant Shipping Act 1894 and related Merchant Shipping Regulations impose similar duties on board ship in UK territorial waters.

- 3.11. A ship's Master has duties under the Health and Safety at Work Act 1974 in relation to the ship's crew who are put ashore to perform their own tasks. For example, loading ship's stores or carrying out maintenance work on their ship. Those duties extend to plant and equipment (for example a forklift truck) under the Master's control being used ashore by ship's crew, or when used by shore-based workers ashore or on-board ship
- 3.12. When employing NPEs additional consideration should be given to the potential increased risk due to possible lack of local knowledge, experience and understanding. If additional controls are required to overcome the potential increased risk, the host company should also consider, the need for increased supervision, information, instruction and training.

4. *CONSULTATION, COOPERATION AND COORDINATION*

- 4.1. **Consultation:** Employers have a duty to consult with their employees, or their representatives, on health and safety matters. By gaining worker involvement on health and safety through two-way communication, concerns can be raised and solved together, and views and information can be sought and exchanged in a timely manner.
See HSE pages: Consulting and involving your workers www.hse.gov.uk/involvement.
- 4.2. **Cooperation and Coordination:** Cooperation and coordination between shipside and landside employers is required. Employers must therefore carry out risk assessments and develop safe systems of work (in consultation with the workers involved) that all parties agree to. So that the respective employers can co-operate effectively with each other.

5. *RESPONSIBILITIES*

- 5.1. The NPE **provider** is responsible for ensuring that NPE supplied, is fit for the purpose for which they were hired. This includes but is not limited to ensuring that the NPE is:
 - Trained
 - Competent
 - Medically fit to work (with/without restrictions)
- 5.2. The NPE **provider** is responsible for performance management of the NPE.
- 5.3. The host company is responsible for:
 - 5.3.1. Specifying any appropriate medical standards
 - 5.3.2. Providing suitable and sufficient job specifications (including training/skills requirements)



- 5.3.3. Undertaking suitable and sufficient monitoring/auditing of the NPE provider, to be satisfied that the provider is meeting its responsibilities on training, competence, medical fitness and performance management
- 5.3.4. Ensuring that it does not engage an NPE in any operations until that person has been assessed and the host company is satisfied that the NPE:
 - has undertaken appropriate safety induction training
 - is competent to undertake the intended operations
 - is medically fit to undertake the intended operations

6. CHOOSING A PROVIDER OF NON-PERMANENT EMPLOYEES

- 6.1. Points to consider when selecting a provider of NPEs should include but are not limited to; their safety performance, training programmes, health and safety enforcement history, insurance and references.
- 6.2. It is advisable to have a written agreement with the provider of the NPEs to establish responsibilities in terms of communication of information, including but not limited to;
 - Risk assessment
 - Health checks
 - Working hours
 - Health and safety representatives and committee arrangements
 - Induction training
 - Safety information
 - Supervision
 - Provision of personal protective equipment
 - Reporting of accidents/incidents
 - On-going competency
- 6.3. The monitoring of hours worked to ensure compliance with the Working Time regulations is the responsibility of both parties. How this will be monitored and controlled should be agreed and documented and it should be borne in mind that NPEs may work with multiple host employers.

7. PORT SAFETY PASSPORT SCHEMES

- 7.1. Passport schemes have the benefit of providing an indication that the holder has received a certain standard of port related health and safety information within an appropriate period.
- 7.2. There are several voluntary port safety passport schemes in operation throughout the UK. Such a scheme may confirm the suitability of the holder to be considered for undertaking port operational activities. However, the possession of a safety passport



should not be taken as sole confirmation that the holder is competent to carry out all port operations where hazards and risks may vary. Some passports or elements of a passport may not be transferable between ports. The host company remains responsible for establishing and ensuring the competence of NPEs.

7.3. Before accepting any form of safety passport scheme as forming part of their own induction process the port operator should ensure that the content of that scheme meets their requirements. Port safety passport cards / certificates may incorporate but are not limited to the following details:

- Photograph
- Full name
- Passport card unique identifying number
- Details of safety induction training received (when carried out and by whom)
- Details of issuing company / accreditation body
- Date of issue / expiry

8. *PORT SAFETY INDUCTIONS*

8.1. NPEs must undergo suitable and sufficient induction before commencing work. If an NPE holds a current port safety passport or some other valid evidence of competence, then the host company and the NPE provider may take this into account in the individual's induction plan. The content and extent of induction and training will depend on the job specific task, skills, qualifications and experience of the individual. Induction and training should be in line with port industry guidelines for safety induction training. For more information and guidance see **SIP018 Safety Induction and Training**

9. *COMPETENCE*

9.1. Although an NPE may hold a Port Safety Passport and have completed port safety induction. A host employer needs to establish that an NPE is competent to undertake job specific tasks, such as lashing/unlashing and plant operations. Any further job specific training requirements should be identified, communicated to and agreed with the NPE provider.

9.2. Appropriate training records should be maintained by the host company or the provider of the NPE (usually in the form of a training matrix backed up by relevant training documents). Where training records are maintained by the NPE provider it remains the responsibility of the host company to audit those records.

9.3. It is the responsibility of both the host company and the provider of the NPE to ensure that they do not engage an individual until it has been confirmed that the person is competent for the planned work tasks.



10. MEDICAL FITNESS

- 10.1. The host company and NPE provider must satisfy themselves that NPEs, in addition to being inducted and competent, are also medically fit to undertake the operations for which they will be engaged.
- 10.2. Medical fitness standards will be required for safety critical roles.
- 10.3. A definitive list of safety critical roles does not exist. The host company will need to decide whether:
- an activity contains a safety-critical element; and
 - an incapacitated worker might expose themselves or others to a significant risk of harm
- 10.4. Some jobs in the port industry involve activities that can place workers at risk, unless the person has full, unimpaired control of their physical and mental capabilities. These jobs are called 'Safety critical' and the people who do them are 'Safety-critical workers'.
- 10.5. Safety critical workers can include; drivers, crane operators, maintenance staff, personnel working in the vicinity of plant and equipment and other employees engaged in port operations.
- 10.6. The term 'fitness' is taken to mean allocate an individual to a category of fitness, such as:
- medically fit to perform a role with no restrictions,
 - medically fit to perform a role with restrictions,
 - be medically unfit for that role
- 10.7. The host company should determine the appropriate level of medical fitness required, considering existing relevant fitness standards. The host company should satisfy itself that the person meets those standards either through existing records or further medical screening and or examination.
- See **SIP011 Sources of occupational health information**
 - See **SIP017 Guidance on the management of fitness for work and health surveillance**
- 10.8. It is the responsibility of the provider to supply sufficient medical fitness information for the host company to fulfil their legal responsibilities and safely put the NPE to work. Appropriate records of fitness should be maintained by the NPE provider. Any such information should be maintained in line with the Data Protection Act 2018.
- 10.9. Where the host company operates a Drug & Alcohol Policy, then this should be extended to cover NPEs when engaged in work for the host company. This should be included in and done via the contract or letter of agreement with the Provider.



- 10.10. Implementation of such a Drug & Alcohol policy would be recommended having considered appropriate advice e.g. from the Faculty of Occupational Medicine (FOM), Chartered Institute of Personnel and Development (CIPD), British Medical Association (BMA) and having taken into account the views of employees, trade unions etc.

RELEVANT LEGISLATION AND GUIDANCE

Relevant legislation and guidance include the following. Please note that these are the correct versions at the time of publishing, but the reader should always seek out the most current version.

The current versions of other PSS Safety in Ports Guidance documents can be found at:
www.portskillsandsafety.co.uk/resources.

- **Agency Workers Regulations 2010 - guidance for recruiters:**
www.gov.uk/government/publications/agency-workers-regulations-2010-guidance-for-recruiters
- **British Medical Association (BMA):** www.bma.org.uk
- **Chartered Institute of Personnel and Development (CIPD):** www.cipd.co.uk
- **Code of Safe Working Practices for Merchant Seafarers (COSWP):**
www.gov.uk/government/publications/code-of-safe-working-practices-for-merchant-seafarers
- **Consulting and involving your workers:** www.hse.gov.uk/involvement
- **DTI Guidance on Conduct of Employment Agencies and Employment Businesses Regulations:**
www.berr.gov.uk/files/file24248.pdf
- **Data Protection Act 2018:** www.ico.org.uk/for-organisations/data-protection-act-2018
- **Faculty of Occupational Medicine (FOM):** www.fom.ac.uk
- **Health and Safety at Work etc. Act (HSWA) 1974:** www.hse.gov.uk/legislation/hswa
- **International Labour Organisation's (ILO) Code of Practice on Safety and Health in Ports (ILO 152):** www.ilo.org/sector/activities/sectoral-meetings/WCMS_546257
- **Management of Health and Safety at Work Regulations 1999:** www.hse.gov.uk/managing
- **Managing Health and Safety in Dock Work HS(G)177:** www.hse.gov.uk/pubns/books/hsg177
- **Ports web pages:** www.hse.gov.uk/ports
- **Safety in Docks ACOP L148:** www.hse.gov.uk/pubns/books/l148.htm
- **The Conduct of Employment Agencies and Employment Businesses Regulations 2003:**
www.legislation.gov.uk/ukksi/2003/3319/contents/made
- **The Working Time Regulations 1998:** www.hse.gov.uk/contact/faqs/workingtimedirective



Raising Standards in UK Ports

FURTHER INFORMATION

For further information, please contact:

Port Skills and Safety Limited, First Floor, 30 Park Street, London SE1 9EQ

Tel: 020 7260 1790 Email: info@portskillsandsafety.co.uk

www.PortSkillsandSafety.co.uk