

FELLOWS

The UXO risk management experts

Part of the Optima Group



UXO RISK MANAGEMENT

What is risk management?

1. What is risk management?

Risk is the chance or probability that people, the environment, assets or company reputation will be harmed or experience an adverse effect if exposed to a hazard.

Risk is inherent in all forms of business, from financial risks to IT security threats, and from natural disasters to strategic mistakes. The services we provide help our clients to effectively manage their UXO risks.

Risk management involves the identification, assessment, prioritization and removal or mitigation of risks that may damage your business.

For construction and development projects, the Construction (Design and Management) Regulations 2015 (“CDM 2015”) impose specific duties on clients, designers, contractors and workers for the way that a construction project is managed and implemented and prescribes who is accountable for the health and safety of those working on or affected by the project.

Further, all employers have responsibilities under the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 to ensure, so far as is reasonably practicable, the health and safety of their employees and that of other people who are affected by their work activities.

This duty applies “so far as is reasonably practicable” – it is not an absolute obligation. The term “reasonably practicable” was defined by the Court of Appeal [in Edwards v. National Coal Board [1949]] as follows:

“‘Reasonably practicable’ is a narrower term than ‘physically possible’ ... a computation must be made by the owner in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other, and that, if it be shown that there is a gross disproportion between them – the risk being insignificant in relation to the sacrifice – the defendants discharge the onus on them.

As a result, making sure a risk, which includes UXO, has been reduced to a level as low as is reasonably practicable (or “ALARP”) requires a weighing of the risk against the sacrifice

needed to further reduce it – and that calculation will vary on a case-by-case basis. Essentially, however, the question will not be whether or not the financial cost that will be incurred is reasonable in the circumstances, but whether the cost is “grossly disproportionate” to the identified risk – and this is a complex calculation. How much cost can outweigh the benefit before being deemed to be “grossly disproportionate” will depend on a number of factors, perhaps most importantly the size of the risk – the larger the risk, the greater the disproportion between the cost and the risk may be. UXO risk falls under this obligation in the same way as any other risk for example, asbestos, contaminated ground or pollution.

The information on this document is for information purposes only and is not legal advice. It should not be relied upon or treated as a substitute for specific advice relevant to particular circumstances.

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