

## Potentially Unsafe Powered Gate Installations

The legal framework for the safety of powered gate installations has changed very little since 1993 when the original Supply of Machinery Regulations took effect. What has happened since then however, is that there has been a gradual increase in understanding and application of the rules.

In 2006, the first of a series of high profile child deaths associated with powered gates occurred, followed by the watershed moment in 2010 when two children died in separate powered gate incidents in the same week. It would be entirely fair to say that, since then, there has been a huge change in perceptions and understanding of the rules, standards and culture of the industry.

The Door and Hardware Federation entered the powered gate arena late in 2010 with encouragement from HSE and has seen a steady flow of companies joining its Powered Gate Group ever since. In 2012, the DHF Powered Gate Group issued its Guide to Gate Safety, Legislation and Standards and, in 2013, started delivering its Gate Safety Diploma qualification to member companies. During 2014, the diploma was made available to non-member companies and other related industry partners.

The current range of European standards affecting powered gates is generally accepted to be less than perfect, primarily because they were drawn up by a committee that was focussed on industrial doors rather than perimeter gates. In 2011, HSE issued a formal objection to the standards as a result of the 2010 child death investigations. Then, in 2013, the serious injury of another child in a sliding gate incident led to reinforcement of this position. The draft of a replacement European standard was circulated for comment in 2014, which generated multiple comments and objections. The European committee responsible for this new standard is now in the process considering and addressing those comments. The final scope and proposed publication date for the new standard is still, as yet, not known. It is with this seemingly confusing background that companies are attempting to operate. It is though universally now accepted that a safe powered gate is one which has all crush, impact, shear, draw in, cutting, hooking, structural and electrical hazards identified and resolved such that persons will not be trapped or otherwise injured by the gate.

In 2014, two companies associated with one of the 2010 child death incidents were convicted of breaching the Health and Safety at Work Act. Interestingly, the companies that were prosecuted were not the original installers but those who had been involved in repair and maintenance of the gate since installation. Understandably today, those involved in repair and maintenance of powered gates are, wisely, very sensitive about the safety of systems they repair or maintain.

The period since 2010 has seen a gradual and ongoing improvement in the understanding of the rules within the industry. It is understandable then that there are a large number of unsafe gates still in operation today and that, as maintenance or repair companies encounter them, they will be informing the owners of safety problems with their gates.

At a recent industry seminar HSE made the following observation.

*“The prime function of identifying the responsibilities of duty holders is not to hold them accountable when things go wrong but to ensure that things do not go wrong in the first place.”*

*“Don’t think what do I need to do to avoid prosecution?”*

*“But, what do I need to do to make the situation safe?”*

The regulations applicable to maintenance and repair companies are now quite clear due, in some part at least, to the legal precedent set by numerous prosecutions during 2013 and 2014.

Repair and maintenance companies are bound by the Health and Safety at Work Act to ensure that *any* works they undertake will result in a safe outcome.

Owners of workplace powered gates are bound by the Workplace Regulations 1992 and the Health and Safety at Work Act 1974 to ensure their gates are maintained in a safe condition.

Landlords and managing agents are bound by the Health and Safety at Work Act to ensure their gates are maintained in a safe condition.

Domestic owners of powered gates are advised to keep them in a safe condition or face the possibility of being sued for negligence should anything go wrong.

Any party, whether owner or practitioner, who by their actions or inactions causes injury or damage to property of others, faces the possibility of civil action for damages due to negligence. This applies equally to owners, maintainers, repairers or installers of powered gates.

If your powered gate service provider comes to you with concerns over the safety of your gate system, please understand that they are not just looking to protect themselves but also they are attempting to protect you, your employees, tenants, clients or anybody else who may come into contact with your gate system. You may have concerns that it seems rather late in the day to be raising this issue, or that the gate may not have been entirely safe when it was first installed, please take into account that there has been a steep learning curve for all concerned in the industry (including HSE) and that the most important thing now is to ensure that the correct course of action is taken going forward.

It is entirely possible that a DHF member company will advise that an unsafe gate be switched off or otherwise secured to make it safe. Please take note of their advice, but also be aware that the gate system is yours and that the ultimate decision will be yours. If you elect to leave it in service you do so entirely at your own volition and against good sound professional advice. In many cases, a powered gate can revert to manual use pending upgrade of the safety systems or sometimes the means of control can be changed to hold-to-run, whereby the gate is controlled by a trained operator who has to keep a switch pressed, in view of the gate, from a place of safety, for the gate to move.

At no point should the owner and contractor attempt to enter into an agreement that transfers the contractor's responsibility to the owner. It is not possible under UK law to transfer a criminal responsibility from one party to another by means of civil contract. This could be seen by investigating authorities as colluding with the owner to maintain an unsafe situation.

As a result, if an owner refuses to have an unsafe gate made safe, then it could be that the contractor may have no other option than to exit the contract. If the result is an unsafe gate remaining in service, then both DHF and HSE see this as an unacceptable situation.

More information on powered gate safety can be found at:

- <http://www.hse.gov.uk/work-equipment-machinery/faq-powered-gates.htm>
- <http://www.hse.gov.uk/safetybulletins/powergates.htm>
- <http://www.dhfonline.org.uk/docs/1053-Gate-Guide-CURRENT.pdf>