

# IOSH South East Branch

LEGAL UPDATE  
11<sup>th</sup> December 2007

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## **HSE Statistics 2006/07**

**Fatalities – 241 workers killed (up from 212, with 17 more deaths in construction)**

**Injuries - 274 000 reportable injuries**

**Ill health – 2.2 million people were suffering from a work related illness (200,000 more)**

**36 million working days lost -**

**Up by 6 million. 30 million work-related ill health  
and 6 million workplace injury.**

**Revitalising Health & Safety?**

**Ill health – not on track**

**Major Injuries - on track**

**Fatal injuries - on track**

**Enforcement - 1141 offences prosecuted by HSE (up 8%).**

**257 offences prosecuted by local Authorities (2005/06).**

**Notices served (up 23%) to 8099 & 1% increase in conviction rates to 848.**

# **HSE Campaigns – 2007/08**

## **Moving Goods Safely 3**

**FALLS FROM VEHICLES campaign 1st October**

**European Week for H&S at work October (MSD  
)**

**Stop slips in kitchens - January to March 2008**

**HSE Launch work related death protocol  
August 07**

# **Leading Health & Safety at Work**

## **INDG417**

**Guidance for directors and board members,  
issued jointly by IOD and HSC.**

**Focus on what needs to be done in order to  
achieve effective H&S leadership**

**‘Essential principles’ are:**

**Strong and active leadership from the top – visible, active commitment from the board; clear ‘downward’ communication and management systems; the integration of good health and safety management with business decisions**

**Worker involvement – engaging the workforce; effective ‘upward’ communication; providing high quality training**

**Assessment and review – identifying and managing health and safety risks; accessing (and following) competent advice; monitoring, reporting and reviewing performance.**

**Four-point agenda for embedding the essential health and safety principles.**

**1 - Core actions for boards and individual board members that relate directly to the legal duties; good practice guidelines; and case studies**

**2 - a summary of legal liabilities**

**3 - a checklist of key questions for leaders**

**4 - a list of resources and references**

**<http://www.hse.gov.uk/pubns/indg417.pdf>**

## **Section 7 HSWA Prosecution**

**1 - David Swindells junior, the visiting site supervisor for a scaffolding company found guilty of a breach of Section 7(1) HSWA in the way he supervised the construction of scaffolding**

**A 17 year old scaffolder fell to his death after his employers were issued with a Prohibition Notice due to lack of sufficient fall arrest equipment.**

**A suggestion that a bonus was a stake for the employees finishing that day.**

**PC, C and Employer all pleaded guilty to HSWA offences.**

**Sentencing due 4th and 5th of February 2008**

**2 - A worker was fined £800 and ordered to pay £100 costs after he seriously injured a colleague in a 1,500-tonne transfer power press.**

**The victim was setting up the machine while in an interlocked, guarded area housing the power press.**

**The press setter closed the gates and activated the press, which then trapped the victim.**

## **Death at Work Cases**

**1 - Port of Tilbury London Ltd was fined £100,000 with £157,000 costs, after pleading guilty to breaches of Sections 2(1) and 3(1) HSWA, after the death of an employee's son at work.**

**The employee's son was thrown from a forklift truck, after it had an accident with another truck.**

**The child was then crushed by a three-quarter tonne paper reel, which rolled off the second truck. The paper reel was being balanced on top of two others whilst being transported and was not clamped in place.**

**SWPs not followed nor enforced by management.**

**2 - TNT Logistics UK Ltd fined £120,000 + costs of £28,184.75 for breaching section 2(1) HSWA.**

**A lorry driver fell approximately 2 meters off a parked lorry whilst trying to help free a worktop on the back of the lorry.**

**Lack of suitable and sufficient Risk Assessment.**

**3 - Gwent CPS has announced it will prosecute the owner of a Roofing company for Manslaughter, following the death of a 17-year-old employee.**

**Their initial decision NOT to prosecute the owner for was successfully challenged by the deceased's family via Judicial Review in the High Court.**

## **VEHICLES AT WORK**

**A packaging company and their security contractors were found guilty of H&S offences after a security guard was injured by a vehicle exiting the packaging company's site.**

**The guard was poorly trained and there was no effective system for managing the flow of traffic plus poor signage / road markings.**

**They were respectively fined £65,000 and £50,000 plus £1,650 and £7,900 in costs.**

## **Road traffic**

**Employers of drivers involved in ‘Killed or Seriously Injured’ incidents to be investigated for basic safety checks (MOT, business use insurance, valid licenses held).**

**The Met. and other police forces aim to reduce the estimated 1,000 fatal crashes a year.**

**A driver had an accident whilst driving for work. The initial trial judge found that a probable cause of the accident was the large number of text messages sent and received by him during his journey.**

**However, the Court of Appeal held that it was more probable that he fell asleep at the wheel, due to the excessive hours and unreasonable workload expected of him.**

**33% Contributory Negligence.**

# **CDM Regulations 2007**

**8 Months on**

**‘Competency’?**

**Early Day Motion to ‘annul the regulations’  
defeated.**

## **A Question of “reasonably practicable”?**

**The ‘reasonably practicable’ test, was subject to infraction proceedings brought by the European Commission.**

**Claim that ‘SFRP’ inconsistent with the European Framework Health and Safety Directive 89/391, due to consideration of the ‘financial cost’ to the employer.**

**ECJ ruled in favour of UK.**

## **No Smoke without.....?**

**The Smoke Free (General Provisions)  
Regulations in force since July 2007.**

**No smoking in enclosed workplaces where the ceiling area is greater than 50% of the walled area.**

**No smoking in 'smoke free' vehicles - 'pool cars' & mini buses**

**However, one in 10 hospitality workers has suffered violence or verbal abuse from customers flouting the smoking ban according to a survey of more than 5,000 hospitality workers, (recruitment website Caterer.com, )**

# **The Regulatory Reform** **[Fire Safety] Order 2005**

## **1 Year on**

**Risk Assessment approach. Fire Certificates no longer required, BUT the RRO refers to the *traditional* fire safety requirements to be applied wherever indicated by the risk assessment - means of escape, lighting, etc.**

**Establishes the 'Responsible Person' who's duties are to ensure that all matters covered by articles 8-22 of the Order are complied with.**

**In particular [article 8]:**

***take such general fire precautions as will ensure, so far as is reasonably practicable, the safety of any of his employees; and***

***in relation to relevant persons who are not his employees, take such general fire precautions as may reasonably be required in the circumstances of the case to ensure that the premises are safe***

**11 industry specific guides developed to assist duty holders implement the RRO.**

**Problems in moving from a prescriptive to a risk assessed approach?**

## **REACH**

**Registration, Evaluation and Authorisation of Chemicals - June 2007**

**Those who manufacture or import chemicals above 1 tonne to be registered and gather information on their basic hazards and properties.**

**Must provide RAs for identified uses as well (Chemical Safety Assessment) at 10 tonnes or above , to be documented in the Chemical Safety Report .**

**Involvement of downstream users.**

**European Chemicals Agency to manage REACH.**

# **Control of Asbestos Regulations 2006**

**1 Year on**

**The Regulations replaced**

**The Control of Asbestos at Work Regulations  
2002,**

**The Asbestos (Licensing Regulations) 1983, as  
amended, and**

**The Asbestos (Prohibitions) Regulations 1992,  
as amended;**

**introduced a lower single control limit of 0.1  
fibres per cm<sup>3</sup> of air for work with all types of  
asbestos;**

**Removed work with textured decorative coatings containing asbestos from the licensing regime;**

**All work with asbestos containing materials must be undertaken by trained workers in accordance with a plan of work and using proper controls to prevent exposure to and spread of asbestos**

**Require accreditation by all organisations or individuals carrying out the Four-Stage Asbestos Clearance and Certificate of Re-Occupation after asbestos removal works.**

**Training now required for any person who may be exposed incidentally to asbestos during their work, such as maintenance staff, electricians, plumbers, carpenters, construction workers.**

## **‘Duty to manage’**

**Duty-holders are required to prepare a management plan which identifies and controls asbestos risk and is reviewed on a regular basis.**

**The condition of ACMs must be re-inspected to take account of changes in condition.**

## **New HSE Inspection Pack for Duty to Manage Asbestos in Premises.**

**In work year 2007/8 HSE senior management are advocating a more proactive approach to enforcement of CAR 2006 to build on previous duty to manage inspections and awareness raising work**

## Asbestos Cases

**1 - Galamast Ltd, from Bromley in Kent were convicted for breaches of Section 2 (1) and Section 3 (1) HSWA arising from a 'stripout' of an old Littlewood's store .**

**Verbal instructions were misunderstood, leading to its employees, sub contractors and health and safety inspectors for the client being exposed to asbestos.**

**Galamast Ltd was fined £20,000 + £16,140 in costs.**

**2 - Wear Valley District Council fined £18,000 after admitting six offences under CAR. It was also ordered to pay £7,722 costs.**

**A maintenance worker discovered that the plant room of the council-run leisure centre where he had worked for many years contained asbestos.**

**3 - Blacks fined £150,000 + £15,000 costs after breaches of S.2(1) & 3(1) HSWA when an asbestos fibre was found in the basement of one of its stores.**

**Blacks had commissioned a report but failed to fully act on it's findings, after a sealed store room was put back into use again.**

**Judge's comments 'breaches motivated by financial reasons – not isolated oversights, serious & deliberate breaches.'**

## **Corporate Manslaughter and Corporate Homicide Act 2007**

**Historically very difficult to convict large corporations of gross negligence manslaughter.**

**Directors of small firms most likely to face a custodial sentence .**

**It is far easier to establish the ‘identification principle’ of the ‘directing mind’ in smaller companies.**

**An organisation is guilty of the offence of corporate manslaughter if:**

- .the way its activities are managed or organised**
- .by its ‘senior managers’**
- .results in a persons death**
- .due to a ‘gross breach’**
- .of its ‘duty of care’.**

**A ‘senior manager’ is one who:**

**plays a ‘significant role’ in the decisions on how the organisation’s activities (or a ‘substantial’ part of them) are to be managed,**

**or**

**who actually manages those activities**

**It is a ‘gross breach’ if the conduct of the organisation falls *far below* the standard reasonably expected of it in the circumstances.**

**A ‘gross breach’ is for jury to decide.  
They **MUST** look at any H&S legislation**

**They **MAY** look at other factors, including any HSE Guidance and the ‘safety culture’ of the organisation, or whether any consideration of profit came into play.**

**Crown bodies subject to prosecution**

**Individuals remain exempt**

**The penalty is an unlimited fine**

**Courts will also be able to impose Remedial and  
Publicity Orders**

**Proceedings only by the DPP**

**No greater penalties than currently exist**

**No specific health and safety obligations or duties on company directors.**

**But.....consider the impact of adverse publicity for ‘corporate manslaughter’.**

# **New Ministry of Justice guidance on the Corporate Manslaughter and Corporate Homicide Act 2007**

**Details the offence, who is covered, the scope  
and penalties under the Act .**

**<http://www.justice.gov.uk/guidance/manslaughteraactguidance.htm>**

## **Employing Workers from Overseas**

**Approximately 1.5 million migrant workers at the beginning of 2007.**

**New HSE leaflet on essential guidance to employers, employment agencies, and other labour providers on their HS&W responsibilities.**

**Labour providers and users to clarify and agree their respective responsibilities for H&S.**

**The leaflet also covers:**

**risk assessment - information, instruction, training and supervision**

**control measures - record keeping**

**other requirements, such as Employers' Liability Compulsory Insurance.**

**INDG414 is available at:**

**<http://www.hse.gov.uk/pubns/indg414.pdf>**

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