



HEALTH & SAFETY NEWS

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Overview

As we begin a New Year it is good to review the significant safety events over the last 12 months and assess the impact on the safety culture within the UK.

The introduction of the Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA 2007) and the increased penalty tariff available to courts provided by the Health and Safety Offences Act 2008, will allow wider proportionate responses from the Courts. Towards the end of this year and as we progress into 2010, the first impact of these new pieces of legislation should be felt.

The CMCHA 2007 was introduced to reinforce the need for corporate bodies to ensure that existing safety management systems deliver a safe and healthy working environment. Senior management and the type of safety culture (positive or negative) may come under scrutiny where fatalities take place. It is envisaged that real deterrent will be the financial penalties and negative publicity that successful prosecutions under CMCHA 2007 will attract.

During the course of CMCHA 2007 investigations, breaches in specific H&S legislation can be dealt with separately and it will be interesting to see if these cases incur a high penalty under the new sentencing tariff allowed by the Health and Safety Offences Act 2008. It follows that if as a result of an investigation under CMCHA 2007 where fatalities have occurred and the organisation individuals within it have breached specific H&S requirements, the public pressure may be for higher penalties in these cases.

However, we are yet to see how both these pieces of legislation will be implemented and if they have the desired effect of improving safety management within UK PLC.

With the credit crunch and financial down turn beginning to bite; will organisations throw the baby out with the bath water by failing to assess the safety affects of any 'downsizing' or organisation restructure? After all, the decisions of staffing are taken at Board level and if the removal of safety critical staff or systems is seen to be part of the cause of a fatal incident in the future, it could be a problem. We often hear that change management is critical and this may well come into play during CMCHA 2007 investigations. Directors and senior managers should take safety considerations into account when making staff, process or system changes. I am sure that we will be hearing more about the use of organisational change safety assessments and corporate defence policies and procedures in 2009 and 2010.

However, on a positive note, those organisations that take safety seriously (and it is evident from Board level down) have nothing to fear and should see the benefits in their sectors of being responsible employers.

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Below is a summary of the changes in legislation and some significant prosecutions during 2008:

Key Legislation in 2008

The Corporate Manslaughter and Corporate Homicide Act 2007

- Took effect from 6 April 2008.
- Failure by senior management to ensure compliance with health and safety law may leave companies open to being charged under the new offence, should a work-related death occur.
- This new Act will make it easier to prosecute companies who fail to protect people.

Health and Safety Offences Act 2008

- It received Royal Assent on 16 October 2008 and will come into force on 16 January 2009.
- Increases penalties and provides courts with greater sentencing powers for those who flout health and safety legislation.
- The Act raises the maximum penalties that can be imposed for breaching health and safety regulations in the lower courts from £5,000 to £20,000 and the range of offences for which an individual can be imprisoned has also been broadened.

Employers' Liability (Compulsory Insurance) (Amendment) Regulations 2008

- From 1 October 2008 employers are no longer required to keep a copy of their employer liability insurance certificate for 40 years.
- The Regulations also provide that an employer is no longer required to physically display the certificate, as long as the certificate is available electronically and can be accessed by the relevant employees.

Noise at Work Regulations 2005

- Came into force on 6 April 2008 for the music and entertainment sectors.
- These Regulations protect workers in the music and entertainment sectors from exposure to excessive noise.



Key Prosecutions in 2008

January 2008

Manual handling case

Company fined £25,000 with £28,000 costs.

Worker injured when 50kg sack of rice fell on his neck.

Legislation breached: Section 2(1) of the Health and Safety at Work etc Act 1974 - failure to ensure the safety of employees.

February 2008

Risk assessment of moving vehicles

Company fined £200,000 and ordered to pay £55,000 costs.

Employee killed when he was struck by a reversing skip lorry.

Legislation breached: Section 2(1) of the Health and Safety at Work etc Act 1974 - failure to ensure the safety of employees.

March 2008

Failure to contain a flammable toxic gas

Shell UK Oil Products Limited fined £266,681 and ordered to pay £37,131.62 costs.

20 tonnes of a highly flammable and toxic gas escaped through a corroded pipe, but dispersed without exploding.

Legislation breached: duty imposed by Regulation 4 of the Control of Major Accident

Hazards Regulations 1999 (as amended) to take all measures necessary to prevent major accidents, by its failure to contain a flammable toxic gas.

April 2008

Allowing cranes to operate over the heads of employees

Company fined £100,000 and ordered to pay £16,941.

Man killed and another seriously injured after they were struck by a load that fell from a crane.

Legislation breached: Section 2(1) of the Health and Safety at Work etc Act 1974 - failure to ensure the safety of employees.

May 2008

Working at height case

Company fined £6,000 with £15,963.25 costs.

Workers found to be repeatedly exposed to the risk of falling from height.

Legislation breached: Work At Height Regulations 2005 Regulation 8(a) and Health and Safety at Work etc Act 1974 Section 3.

June 2008

Failure to 'maintain equipment and devices (including the access gates to the premises) in efficient working order and in good repair'

Company fined £22,000 with costs of £18,000.

Lorry-driving employee killed when a sliding metal gate weighing 0.4 tonnes fell onto him as he was closing it.

Legislation breached: Regulation 5(1) of the Workplace Health, Safety & Welfare Regulations 1992.

July 2008

Failure to ensure employees are properly trained to use equipment

Council fined £37,500 with £17,500 costs.

Worker clamped an electric cable thinking it was a domestic water main. The cable ruptured sending a massive current through his body. System of work used to detect the water supply did not involve the use a cable avoidance tool (CAT) to safely detect electric current and avoid the electricity supply to the house. *Legislation breached:*

Section 2 of the Health and Safety at Work etc Act 1974, Regulation 3(1) of the Management of Health and Safety at Work Regulations 1999 and Regulation 3(1) of the Electricity at Work Regulations 1989.



August 2008

Multiple breaches of asbestos regulations

Two companies fined; one fined £150,000 with costs of £30,000, the other fined £70,000 and costs of £13,821.

Workers in their employment were exposed to asbestos containing materials.

Legislation breached: Section 2.1 of the Health and Safety at Work etc Act 1974, Regulation 18 of the Construction (Health, Safety and Welfare) Regulations 1996, Regulations 7 and 15 of the Control of Asbestos at Work Regulations 2002.

September 2008

Failure to ensure the protection of workers' lives

Company director jailed and disqualified from acting as a company director for five years.

Worker fell 12 feet through a skylight, suffering fatal injuries.

Legislation breached: Section 37 of the Health and Safety at Work etc Act 1974.

October 2008

Failure to identify asbestos insulation board

Company fined £18,000 and ordered to pay over £21,000 in costs.

Surveys undertaken were inadequate in that the company failed to identify the presence of asbestos in a number of areas within two schools. *Legislation breached:* Section 3(1) of the Health and Safety at Work etc Act 1974.

November 2008

Failure to ensure that adequate precautions taken to prevent injuries caused by reversing waste and recycling collection vehicles

Council fined £40,000 and ordered to pay £7,365 costs.

Member of the public killed after a refuse truck hit him as it was reversing.

Legislation breached: Section 3 of the Health and Safety at Work etc Act 1974.

Failure to conduct an undertaking in such a way as to ensure that persons not in employment, but who were affected by it, were not exposed to risks to their safety

Two companies fined: one £150,000 with £50,500 costs; the other £100,000 with £25,000 costs.

Employee killed whilst work was taking place to decommission one of the pile chimneys on the Sellafield site in Cumbria; he fell approximately 95 metres and suffered fatal injuries.

Legislation breached: Section 3(1) of the Health and Safety at Work (HSW) etc, Act 1974 and Section 2(1) of the HSW Act.

December 2008

Failure to ensure accurate details are kept of asbestos in buildings before any construction work takes place

Company and Director fined £7,000.

At least 15 tradesmen exposed to airborne asbestos fibres over almost two months during a major refurbishment.

Legislation breached: Section 3(1) and section 37(1) of the Health and Safety at Work etc Act 1974.



Key Guidance and News in 2008

February 2008

- HSE launched its Construction Occupational Health Management Essentials (COHME) for construction companies: <http://www.hse.gov.uk/construction/healthrisks/index.htm>

March 2008

- Dame Carol Black's review of the health of Britain's working age population – Working for a Healthier Tomorrow

April 2008

- The Corporate Manslaughter and Corporate Homicide Act 2007 took effect from 6 April 2008.

May 2008

- Asbestos Essentials: A task manual for building, maintenance and allied trades on non-licensed asbestos work, HSG210.
- Safe use of work equipment: Approved Code of Practice and Guidance, Legal Series L22.

June 2008

- Thorough examination of lifting equipment: A simple guide for employers, IND(G) 422.
- Guide to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, Legal series L73.
- REACH - the European Chemicals Agency began accepting registrations from 1 June 2008. This process closed on 1 December 2008.

July 2008

- Sound Advice: Control of noise at work in music and entertainment, HSG260.

October 2008

- Health and Safety (Offences) Act 2008 receives Royal Assent.
- Involving your workforce in health and safety: Good practice for all workplaces, HSG263.
- Consulting employees on health and safety: a brief guide to law, IND(G) 232.
- Consulting workers on health and safety: Approved Code of Practice and Guidance, Legal Series L146.

November 2008

- Revised - Employers' Liability (Compulsory Insurance) Act 1969.
- Guidance: Employers' Liability (Compulsory Insurance) Act 1969: A guide for employers (HSE).
- 'Improving health and work: changing lives' published on 25 November 2008 – the Government's response to Dame Carol Black's review of the health of Britain's working age population – Working for a Healthier Tomorrow.

December 2008

- Working on roofs - INDG284



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COMING IN 2009...

Legislation

Health and Safety Offences Act 2008

Coming into force: 16 January 2008

Chemical (Hazard Information and Packaging for Supply) Regulations 2009

(Currently under consultation until 13 February 2009)

Coming into force (proposed): 6 April 2009

The current CHIP Regulations to be amended as a consequence of the adoption and entry into force of the European Regulation on the Classification, Labelling and Packaging of Substances and Mixtures, known as the CLP Regulation. The CLP Regulation adopts in the European Union, the internationally agreed Global Harmonised System on the classification and labelling of chemicals, known as the 'GHS'.

Supply of Machinery (Safety) Regulations 2008

Coming into force: 29 December 2009

<http://www.berr.gov.uk/whatwedo/sectors/sustainability/regulations/ecdirect/ipsg/page13049.html>

These Regulations aim to streamline the process of 'CE marking' machinery and equipment. They also implement Directive 2006/42/EC, which also amends the EU Lifts Directive (95/16/EC).

Key Guidance & News in 2009

HSE

Health and safety in roof work, HSG33 – due January 2009.

Sentencing Guidelines Council

Provisions in the Corporate Manslaughter and Corporate Homicide Act which relate to publicity orders will commence when sentencing guidelines are published. It is anticipated that this will be by summer 2009.

REACH

After 1 December 2008 late pre-registration provisions are available.

Late pre-registration does not apply to companies that failed to meet the preregistration deadline. These companies cannot continue producing or importing the substance until they have submitted a full registration dossier.

Submission of late pre-registrations can begin from 5 January 2009.

REACH 2009 dates:

- 1 January 2009: List of pre-registered substances published and SIEFs are formed
- 1 June 2009: First recommendation of priority substances to be considered for authorisation published by ECHA (European Chemicals Agency)

European Agency for Safety and Health at Work

Second year of its Health Workplaces campaign on risk assessment.

Aimed at employers, workers and safety representatives.