

Technical Bulletin No: 22-2016



Title:	New H&S Legal Breach Penalties		
Priority		None – for information only	
Legislation:	Legal Aid, Sentencing and Punishment of Offenders Act 2012, H&S (Offences) Act 2008		
Brief Description:	The above act came into force on the 12 th March 2015 and enables higher penalties in Magistrates / Lower Courts for prosecution where H&S Law has been breached		
Equipment Affected:	Not Applicable		
Overview:	<p>For offences committed before March 2015, the maximum fine in a Magistrates / Lower Court was £20,000 for an employer and £5,000 for an employee. For cases where this level of fine would not be deemed to be a sufficient punishment, Crown / Higher Courts would be used. The cost of cases being heard in Higher Courts is significant.</p> <p>The Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the H&S (Offences) Act 2008 both raised the effective level of fines for breaches of H&S Law.</p> <p>Any breach of Section 33 of the Act (Health & Safety at Work Etc. Act 1974) i.e. breaching the Act or any Statutory Provision e.g. H&S Regulations is now punishable in a Lower / Magistrates Court with an unlimited fine and up to 6 months imprisonment. In some cases this may be extended to up to 12 months imprisonment.</p> <p>Cases may still be escalated to Higher Courts e.g. where a fatality or significant harm has occurred.</p> <p>This is a significant change and as with all criminal cases the sentence is intended to punish and it could be argued that a £20,000 fine would not be prohibitive for many organisations whereas, an unlimited fine (based on the ability to pay) and a custodial term (jail) for up to 12 months for a controlling mind (director) in the business or for the individual where the criminal negligence lies.</p> <p>There will be no claims that can be made from Central Funds for corporate defendants even if they are found not guilty.</p>		
Disqualification Orders:	<p>Prosecution penalties may also include Disqualification Orders for Directors which prevent an individual holding a Directors post for up to 5 years in a Lower Court and 15 years in a Higher Court.</p> <p>This would typically be for a breach of Section 7 of the Act “<i>General duties of employees at work.</i>”</p> <p><i>It shall be the duty of every employee while at work—</i></p> <p><i>(a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and</i></p> <p><i>(b) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.”</i></p> <p>Acts or Omissions – in other words stuff you do and stuff you don’t! If you have a policy and do not ensure it is implemented, this is an omission on your part.</p> <p>Co-operate – if as a Director you don’t stick to company procedures and co-operate with your company e.g. not sticking to policies or risk assessments, it’s an offence and above and beyond fines and jail you may be struck-off as a director.</p>		
Circulation:	Directors and Management Teams		

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