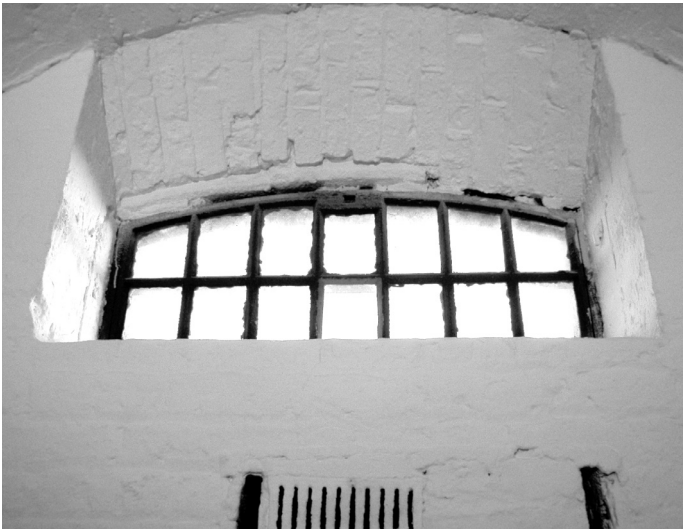


Adviser

The Health and Safety Offences Act 2008



- The Health and Safety Offences Act 2008 comes into force in January 2009.
- It raises the maximum financial penalties that can be imposed by the lower courts for breaches of health and safety regulations from £5,000 to £20,000. Fines in the upper courts remain unlimited.
- The range of offences for which employees, directors, managers and officers can be imprisoned has also been broadened.
- When viewed in conjunction with the recent Corporate Manslaughter legislation, this new Act sends a clear message that government expects employers to take their health and safety responsibilities seriously and will clamp down on those who do not.
- Marsh recommends that all businesses put in place robust mechanisms to defend themselves, their directors and managers against both criminal prosecutions and civil claims related to health and safety breaches. Businesses should also review their insurance cover for legal defence costs related to prosecutions in this area.

The Health and Safety Offences Act 2008 (the Act), which covers Great Britain and Northern Ireland, will come into force in January 2009. The new legislation amends section 33 of the Health and Safety at Work Act 1974 and the Health and Safety at Work (Northern Ireland) Order 1978 (HSWA), by increasing penalties and providing courts with greater sentencing powers for those who do not comply with health and safety legislation.

This document sets out the reasons for the new Act, the main changes it introduces and suggests how businesses should respond.

The rationale for the new legislation

Increasing penalties and providing the courts with greater sentencing powers has been Government and Health and Safety Executive (HSE) policy since the publication of the *Revitalising Health and Safety Strategy Statement* in June 2000.

“It is generally accepted that the level of fines for some health and safety offences is too low. These changes will ensure that sentences can now be more easily set at a level to deter businesses that do not take their health and safety management responsibilities seriously and further encourage employers and others to comply with the law.”

Lord McKenzie, Department of Work and Pensions Minister



What the Act does

- Raises the maximum fine which may be imposed by the lower courts to £20,000 for most offences
- Makes a prison sentence an option for more health and safety offences in both lower and higher courts
- Makes certain offences that can currently only go to trial in lower courts, triable in either the lower or higher courts.

At present, imprisonment is only an option in certain cases, for example where an improvement or prohibition notice has been breached. The 2008 Act will, however, make imprisonment more widely available for a number of breaches of the HSWA. This includes sections 7 and 37 of the HSWA, which relate to individual liability of employees and directors, managers and officers who form part of the directing mind of the organisation.

Currently, individuals found to be in breach of these sections of HSWA can face a fine not exceeding £5,000 on summary trial (i.e. trial in the lower courts), or an unlimited fine on indictment (i.e. trial in the higher courts.)

The 2008 Act raises the maximum summary fine to £20,000 and introduces a term of 12 months imprisonment on summary trial, whilst a term of 2 years imprisonment and/or an unlimited fine will be available on indictment.

More information can be found at: <http://services.parliament.uk/bills/2007-08/healthandsafetyoffences.html>

What the Act does not do

The Act does not change the responsibilities or offences set by the HSWA, only the penalties. The responsibilities of employers have not changed.

The insurance position

Legal defence costs related to criminal prosecutions brought under the HSWA are covered under standard employers' and public/products liability insurance policies. However, the extent of cover varies. Cover for defence of such criminal prosecutions is also available under separate legal expenses insurance policies.

Recommended action

- Ensure you are operating a health and safety management system based on BS OHSAS 18001 2007, which is generally recognised as the best practice standard.
- Review your procedures for defending against criminal prosecutions and civil claims.
- Check the adequacy of your insurance cover.

How Marsh can help

Marsh has a team of health and safety and claims defensibility professionals who can assess your systems and processes in safety management, accident investigation and associated documentation. We can then make recommendations for strengthening policies, practices and procedures. Together this can lead to a reduction in accidents, claims and potential prosecutions. We can also review and advise on insurance cover options.

For more information and assistance please contact your usual Marsh representative.

The information contained in this publication provides only a general overview of subjects covered, is not intended to be taken as advice regarding any individual situation and should not be relied upon as such. Insureds should consult their insurance and legal advisors regarding specific coverage issues.

Statements concerning legal matters should be understood to be general observations based solely on our experience as insurance brokers and risk consultants and should not be relied upon as legal advice, which we are not authorised to provide. All such matters should be reviewed with the client's own qualified legal advisors in these areas.

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