

Health & Safety Bulletin

Autumn 2006



Welcome to the first edition of our Health & Safety Bulletin.

The purpose of this bulletin is to introduce our Health & Safety team, the specialist services we can offer and also to inform you on the latest developments that affect business owners, executives, employees and individuals.

Thomas Eggar has renowned experience in dealing with Health & Safety matters and has a team of individuals that can offer prompt advice from the very outset.

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Accidents will happen

In the past few years the workplace has become one of the most highly regulated areas. The introduction of both domestic and Europe driven legislation has meant that businesses of all sizes have struggled to keep up to date with changes in the law which seem to happen on a weekly basis.

We have recently seen the implementation of the Regulatory (Fire Reform) Order and with it all the new duties and responsibilities it places on businesses (and employees) - the first prosecution will undoubtedly follow shortly. The Corporate Manslaughter Bill is progressing swiftly through the House of Commons and will be law in the not too distant future.

Increasing numbers of businesses have found themselves under investigation or even worse, before the courts, simply because they were unaware of their duties and responsibilities. Accidents do happen even when all proper policies and procedures are in place - things just simply go wrong!

Investigations by the HSE can be a great source of worry and concern and it is fair to say that many business owners and company directors are wholly ignorant of what they are required to do or say in the course of these investigations.

The Health and Safety Team here at Thomas Eggar can help you through this process advising and assisting you from the very outset. Our dedicated team has a wealth of experience in this area and is complemented by the services of other specialist teams across the firm. Our experience has shown that prompt advice at the start of any investigations does make a significant impact on how the case is finally disposed of. In some circumstances early advice can even lead to the avoidance of court proceedings.

Accidents will happen - Thomas Eggar are here to help.

Recent legislation

1 October 2006
Regulatory Reform (Fire Safety) Order 2005

9 October 2006
Road Safety Bill - remaining stages in House of Lords

10 October 2006
Second reading in House of Commons of Corporate Manslaughter Bill

Forthcoming legislation

April 2007

Work At Height (Amendment) Regulations

Construction Design and Management Regulations

Chemicals (Hazard Information and Packaging for Supply) (Amendment) Regulations

Biocidal Products (Amendment) Regulations 2007

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Integrated services

We have two specialist units dealing with health & safety issues and representation and advice in Criminal Courts through to the House of Lords.

We offer an integrated approach to your problems - looking at the bigger picture and drawing on the wealth of expertise across the firm to provide real and valuable solutions. Sometimes investigations will involve a number of enforcing authorities and so it is important that you receive the correct advice from the very outset.

We can advise in relation to investigations by:

- The Police - from road traffic cases to more serious charges
- Environment Agency
- DEFRA
- Health and Safety Executive
- Department of Trade and Industry
- HM Revenue & Customs
- VOSA
- Local Authorities

Health & Safety Unit

One of the most common scenes of an accident is the workplace, where safety is highly regulated. Recently announced legislation will increase penalties for breaching these regulations or ignoring legal responsibilities and could lead to company officials receiving prison sentences.

We can advise you on:

- your liabilities and responsibilities both as an individual and as a corporate entity
- compliance issues
- policies
- procedures



No matter the size, all businesses have health and safety considerations whether it is employees lifting equipment, daily use of computers, even working from home - complacency could cost you and your business dear.

Criminal Justice Unit

Led by James Morgan-Harris, who has an unprecedented reputation for criminal advocacy work, and supported by Associate Sarah Dineley, the Criminal Justice Unit offers a speedy, comprehensive and practical advice service to individuals, businesses and their employees.

We can advise our clients in investigations for:

- Food and hygiene legislation
- Welfare legislation
- Heavy goods vehicle regulations
- Marine prosecutions
- Licensing - liquor and gaming
- Noise and nuisance
- Environmental issues/contamination
- Animals Act/Dogs Act

Other services

Our health & safety and criminal justice units are just part of the specialist services we can offer.

We have a dedicated employment unit, dealing with contentious and non-contentious employment matters, and our team of solicitors can provide practical advice and find solutions to your problems.

We also have a large team of personal injury specialists, who have considerable experience in dealing with a range of complex matters, including road traffic accidents, work-related injuries and industrial disease cases.

“Our specialist teams possess the legal expertise and commercial knowledge that is necessary to deliver not only effective advice on the law but also offer practical solutions that satisfy our clients’ needs.”

A missed opportunity

After nearly a decade of planning, new legislation has been published which will ensure companies are prosecuted if their negligence leads to the death of employees or the public. The Corporate Manslaughter Bill creates a new offence of corporate manslaughter, and should provide a more effective sanction for holding companies and other organisations accountable when management failure has proved fatal.

The Bill abolishes the difficult to prove concept of ‘the directing mind’ in a company, and instead targets corporate liability and senior management. Courts will now be able to take account of a far wider range of management conduct and ‘any other matters relevant to... the breach’. This ability to consider all relevant factors, and the shift of focus onto senior management, is to be widely welcomed. The number of prosecutions brought by the HSE to date is far too low. One suspects this is, in part, a result of evidential difficulties - trying to prove who is responsible. The new Bill should see an end to these problems.

However, one area that has been overlooked is the question of individual responsibility. The Bill completely ignores the liability of individuals - directors or otherwise. Instead, the prosecution of individuals will continue under existing legislation including the Offences Against the Person Act of 1861! The Bill provided the opportunity to consolidate the legislation in this area of law and produce a single Act dealing with both corporate and individual responsibilities, but yet again we are left with piecemeal legislation.

Perhaps the most glaring missed opportunity is the failure to create an offence of causing serious injury as a result of gross negligence by the management. The Bill is limited to breaches leading to fatalities. This omission is beyond comprehension, given that in 2003-4 over 160 000 people were injured at work compared to 235 deaths in the same period. The Bill sends out completely the wrong message to

companies and directors. The Home Office goes as far as saying ‘this (Bill) will not introduce new standards, organisations taking their current health and safety obligations will have nothing to fear’. I am sure that this will provide little comfort to those injured at work.

One area that the Bill has opened up is the liability of government departments and other Crown bodies who historically have been immune from prosecution. However, the Bill will apply to these departments and bodies, but only where engaged in similar activities to private sector companies and industries. The Bill will not apply to certain core public functions or decisions relating to matters of public policy, as it is said that they are subject to existing lines of public accountability. In practice, this means the Bill will apply to the Armed Forces but not to their activities in relation to planning, preparing or supporting combat operations. It will, however, apply to NHS trusts. I can foresee increased numbers of prosecutions brought against trusts in circumstances where the treating doctor is not properly supervised or has insufficient training.

In summary, whilst I am encouraged by the attempts to deal with the question of corporate manslaughter, I am disappointed that a decade’s worth of planning and consultation has yielded legislation that leaves even more questions unanswered and fails to tackle the increasing numbers of accidents in the workplace.

[Sarah Dineley](#)

Recent work

- Advising a major haulage firm following prosecutions and Traffic Inspector’s Inquiry
- Defending a scaffolding firm in respect of HSE prosecution following an accident that led to a death
- Representing our client in respect of a multiple death road accident and dealing with issues such as directors’ liabilities, subsequent manslaughter charges and seizure of company’s files and computers
- Defending a farmer prosecuted by DEFRA for ploughing a field without having first undertaken an environmental impact screening assessment
- Defending a major motor retail client in HSE investigations arising out of a substantial premises fire which forced the closure of immediate rail and road infrastructure
- Prosecuted for a local authority following an accident at a public golf centre
- Representing a specialist heavy goods haulage contractor with regard to manslaughter charges following a multiple fatal accident on a major UK motorway
- Advising our client on prosecutions specifically relating to dangerous navigations and speeding by water users and on the health and safety implications for harbour users and the local environment.

Fire alarm

The Regulatory Reform (Fire Safety) Order came into force on 1 October. The Order amends or replaces 118 different pieces of legislation - most importantly the repeal of the Fire Precautions Act 1971 and the revocation of the Fire Precautions (Workplace) Regulations 1997. The Order applies to the majority of premises and workplaces but not dwellings, mines, anything that floats or flies or runs on wheels, offshore installations, building sites or the military.

Introducing the team

We can provide a fully encompassing legal service which includes, health & safety, representation, employment and personal injury assistance.



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The Order firmly places responsibilities on the 'Responsible Person' and sets out all that must be done to ensure the safety of all the people he or she is directly and indirectly responsible for. The Responsible Person is the owner of the business or premises or the person with control over the premises, business or activity. Where there are two or more Responsible Persons (eg landlord/tenant) they must co-operate, share information and collaborate to provide measures.

The Enforcing Authority (usually the Fire Brigade but can also be the HSE, MOD or local authority) has been given powers to ensure that the required measures are in place and set penalties if not.

The Responsible Person is now required to carry out a Fire Risk Assessment, produce a policy, develop evacuation procedures, provide staff training and carry out fire drills. This person is also required to provide and maintain clear means of escape, notices, emergency lighting, fire detection and alarms, and extinguishers. A 'Competent Person' must also be appointed and this person is to have 'sufficient training, experience and knowledge'.

Employees have also been given new rights and responsibilities under the Order. Employees must now be consulted on fire safety matters and information provided to them. Furthermore employees must not act in a way that endangers himself or others, must inform on co-workers that do, and co-operate with the employer. Whilst an employer cannot charge an employee for providing safety measures, it appears that an employee is entitled to recover his losses if the employer fails to comply with the Order.



Penalties for breaching the Order range from a fine to two years imprisonment in some cases. In the past there has been a period of grace following the introduction of new health and safety legislation before any enforcement action is taken. More recently however the enforcing authorities have seemed to take a tougher stance evidenced by the first prosecution just two weeks after the implementation of the Work at Height Regulations in April 2005.



The contents of this newsletter are intended as guidelines for clients and other readers. It is not a substitute for considered advice on specific issues. Consequently, we cannot accept any responsibility for this information or for any errors or omissions.

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The register can be accessed via the Financial Services Authority website at www.fsa.gov.uk/register. We can also provide certain further limited investment services to clients because we are members of the Law Society if those services are incidental to the professional services we have been engaged to provide. A comprehensive range of investment services and advice is provided by Thesis Asset Management plc, our associated financial services company, which is regulated by the Financial Services Authority.

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