

Health and Safety (Offences) Act 2008

Hot on the heels (legislatively speaking) of the Corporate Manslaughter and Corporate Homicide Act, the Health and Safety Offences Act (the 'Act') came into force on the 16th January in England, Wales and Scotland.



The intention behind the Act is to look at broadening penalties, rather than introducing substantive new law. As such, the Act introduces no new obligations on employers. The duties of employers under existing legislation, principally the Health and Safety Act 1974 ('HSWA') and the Construction Management (CDM) Regulations are

Changes

The Act does three things:
1. It increases the maximum fine for health and safety offences to be £20,000 (with the potential for imprisonment);
2. It increases the financial penalties that can be imposed for a breach of certain health and safety regulations;

3. It introduces a new offence of 'recklessness' for a wider range of health and safety offences. The Act also shifts a greater percentage of cases from the Crown Courts to the Magistrates' Court. Historically, the lower courts declined jurisdiction on the basis that their sentencing powers were insufficient with the gravity of the offences.
For prosecutions brought under the Act, the maximum fine is now unlimited.

Regulations. Now, defendants who find themselves in the Magistrates' Courts could face a fine of up to £20,000 for a breach of a regulation too. This should act both to increase the deterrent the law imposes and shift a greater percentage of cases from the Crown Courts to the Magistrates' Court. Historically, the lower courts declined jurisdiction on the basis that their sentencing powers were insufficient with the gravity of the offences.
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The maximum amount insurers will pay in respect of criminal prosecution defence costs is usually capped and varies from insurer to insurer. It is also important to note that policies usually stipulate that payment will only be made by insurers if their legal advisers indicate that the defence of such criminal proceedings has a reasonable prospect of success. The insurer's consent must always be obtained before any defence costs are incurred.

Any subsequent or concurrent civil action arising from such criminal prosecution would be covered by the terms of the policy in the normal way.

Comment – what this means

Importantly, the Act is linked to existing health and safety requirements imposed by law. For those who are already compliant with current health and safety law, the introduction of the Act should not cause concern. As with the recently enacted Corporate Manslaughter Act, this piece of legislation should attract focused minds on compliance with the law.

A wealth of information in the public domain on health and safety law. There are also a number of guidance documents as to how to prepare for the new legislation. Of particular interest, the new guidance will be the joint publication of the Health and Safety Commission, the Health and Safety Executive and the Health and Safety Commission's 'Leading Health and Safety' initiative. This provides valuable guidance.

The Act is provided via the Health and Safety Commission's on-line Risk Management Centre. This provides a valuable resource for all clients. It can be accessed via the following link: www.hse.gov.uk/leadingsh.htm

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