

# Health and Safety Bulletin

## Watch out senior managers!

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### Useful contacts:

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Recent evidence suggests that the HSE are focusing more on senior managers and their accountability for health and safety. HSE's Enforcement Policy Statement issued in 2008 (<http://www.hse.gov.uk/pubns/hse41.pdf>) included a revision specifically highlighting this strategy:

- ensure that dutyholders take action to deal immediately with serious risks;
- promote and achieve sustained compliance with the law;
- *ensure that dutyholders who breach health and safety requirements, and directors or managers who fail in their responsibilities, may be held to account....*

Information obtained under Freedom of Information requests indicates how the strategy is being converted into practical action.

### Prosecutions

Although there are no specific health and safety duties enshrined in law for directors or senior managers, section 37 (S37) of the Health and Safety at Work etc. Act (HASWA) allows for them to be prosecuted alongside an organisation where any breach of relevant statutory provisions has occurred because of their consent, connivance or neglect. Recently the number of prosecutions under S37 has been rising. The HSE issued this information following a



Freedom of Information request, but stated that the data had not been validated. However, since the average number of annual prosecutions has risen from 23 to 43 between 2001 and 2011, the change appears significant. During the same period, prosecutions under section 7 HASWA (identifying duties of all employees) has remained at about 20 each year.

### Fees for intervention (FFI)

FFI was introduced in October 2012 under the Health and Safety (Fees) Regulations. The regulations impose a duty on the HSE to charge £124 per hour to recover their costs for carrying out their functions where a material breach of health and safety law has been identified. The HSE has issued a list of nine "basic health and safety mistakes crippling British industry," (at <http://www.hse.gov.uk/fee-for-intervention/basic-safety-mistakes/index.htm>) and since this is on the HSE's website FFI area we can only assume these cover the topic areas in which the HSE expects many of the material breaches to be identified.

Under another Freedom of Information request, the HSE has stated it recorded FFI time for 903 premises between 1<sup>st</sup> October 2012 and 30<sup>th</sup> November 2012, with more than 40% of the premises in the construction sector. They have also stated they are expecting to recover up to £39 million using FFI.

### Conclusion

There is currently only voluntary guidance on health and safety management for directors, unfortunately research in 2010 indicated that only 36% of directors of organisations employing five or more people were aware of it. The number of S37 prosecutions and the use of FFI suggest that the HSE are using other tools at their disposal to demonstrate how vital safety leadership is in achieving acceptable health and safety performance.

**Recently issued health and safety information:**

- INDG229: Using work equipment safely <http://www.hse.gov.uk/pubns/indg229.pdf>
- WIS23: Wood dust controlling the risk <http://www.hse.gov.uk/pubns/wis23.pdf>
- INDG459: Oxygen use in the workplace <http://www.hse.gov.uk/pubns/indg459.pdf>
- GEI55: Fragile roofs – safe working practices <http://www.hse.gov.uk/pubns/geis5.pdf>
- GEIS4: Conveyer belt workstation design <http://www.hse.gov.uk/pubns/geis4.pdf>
- HSE's office microsite: <http://www.hse.gov.uk/office/index.htm>

## Approved Codes of Practice Review

CD 241, issued in June 2012 proposed the revision, consolidation or withdrawal of 15 ACOPs (by end-2013) as well as proposals to make minor revisions or no changes to a further 15 ACOPs (by end-2014). The HSE have published the consultation results, which include:-

- DSEAR ACOPs – five ACOPs to be consolidated into one
- Asbestos – ACOPs L127 and L143 to be consolidated into one
- COSHH – ACOP to be revised with supporting guidance for low risk industries
- Workplace Regs – ACOP to be revised with supporting guidance
- Management of health and safety at work – L21 to be withdrawn and replaced by updated guidance
- Work Equipment – L22, L112, L114 to be revised
- Lifting Equipment – L113 to be revised
- Confined spaces – L101 to be revised

### About Clwyd Associates...

We are a management consultancy, focusing on health and safety and SAP) based in the Midlands.

We employ consultants with at least 15 years practical experience backed up by recognised professional and academic qualifications - ensuring our clients receive first class service.

Clwyd Associates Ltd  
www.clwydassociates.co.uk



## Case Law update

*This issue focuses on cases taken under S37 HASWA*

A business owner was prosecuted after an employee fell nearly four metres while painting the top of a water storage tank and shattered his left leg. He lost his balance as he walked along the curved top surface and fell onto the concrete floor slabs below. The MD provided inadequate access equipment for the job and had instructed the two men to use it. He had then seen both his employees working in a clearly unsafe manner, but had failed to take any steps to put effective safety measures in place to prevent them from falling. He was fined **£2,500** and ordered to pay **£1,800** in costs.

The HSE prosecuted a school and the director of a company responsible for a refurbishment project, after an investigation found they had failed to identify and prevent the risk of asbestos exposure. Asbestos insulation boards were removed in an unsafe way, exposing building contractors and a teenage work experience student to asbestos fibres, and leaving them at risk of developing serious and potentially fatal diseases later in life. The Director was found guilty of breaching Section 37 of HASWA and Regulations 11(3) and 18(1) of the Construction (Design and Management) Regulations 2007 for contributing to the failings of

his company. He was fined a total of **£10,000** with costs of **£6,000**.

A former soldier was killed while cleaning the inside of an inadequately guarded industrial mixing machine. He switched off the machine and climbed inside the blender to clear the residue but while he was doing so another employee switched on the machine and the rotating blade fatally wounded him. The company director responsible for safety on the factory floor had ignored warnings from a safety consultancy that a number of machines had inadequate guards. He was fined **£4000** and **£2000** in costs.

## Buy quiet campaign

HSE have launched a "Buy Quiet" initiative to encourage partnership between equipment designers, manufacturers, importers and purchasers to reduce the risk of Noise Induced Hearing Loss (NIHL) by tackling the problem at source and avoid the generation of high noise levels by equipment.

The campaign has a website at <http://www.hse.gov.uk/noise/buy-quiet/index.htm>, providing guidance and technical information.

## IOSH Safety for Senior Executives

A one day course designed to give **Directors and Senior Managers** a clear understanding of their responsibilities for health and safety at work, and practical guidance on how to improve health and safety performance.

For more information  
[http://www.clwydassociates.co.uk/1\\_iosh.htm](http://www.clwydassociates.co.uk/1_iosh.htm)

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