

**HEALTH AND  
SAFETY  
ENFORCEMENT**

**RISK DIRECTORY  
2021/2022**

# HEALTH AND SAFETY ENFORCEMENT

## RISK DIRECTORY 2021/2022

### INTRODUCTION

In most instances the Health and Safety Executive (HSE) and local authorities have the responsibility for undertaking investigations into work-related incidents that have resulted in death, physical injury, occupational disease or a dangerous occurrence. Where the incident results in a fatality, it should be noted that the police are also likely to become involved.

Following an investigation, the enforcing authorities may decide to prosecute. In 2018-19, there were a total of 394 health and safety prosecutions in England and Wales, of which over 90% resulted in a successful conviction.

Convictions may lead to fines and/or imprisonment. Recent changes to the legal framework and sentencing guidelines in respect of health and safety legislation have made it even more important for organisations to effectively manage any such breach.

This guidance seeks to provide guidance on key legislation, enforcing authority investigations and a summary of potential legal sanctions.



## KEY LEGISLATION

Key legislation includes:

### HEALTH AND SAFETY AT WORK, ETC. ACT 1974

This Act forms the basis for much of modern health and safety legislation. A summary of the main provisions in relation to health and safety enforcement are detailed below:

- Section 18:** Provides the HSE and local authorities with enforcement powers.
- Section 20:** Specifies the powers of inspectors which enable them to fulfil their duties.
- Sections 21 & 22:** Detail the circumstances in which enforcement notices may be issued and their legal status.
- Sections 27 & 28:** Describe the type of information that is to be provided to inspectors to enable them to fulfil their duties.
- Section 33:** Covers specific offences in relation to the Act, for which prescribed modes of trial and maximum penalties are detailed.

### THE CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

Under this legislation, an organisation will be found guilty if the way in which its activities are managed or organised causes a death, and this amounts to a gross breach of a duty of care to the deceased. In order for the legislation to apply, a substantial part of the failure within the organisation must have occurred at a senior level.

### COMPANY DIRECTORS DISQUALIFICATION ACT 1986

This legislation gives the courts the power to make a disqualification order against any company director they believe to be 'unfit to be concerned in the management of a company', which may be as a result of breaches of health and safety legislation.



## HEALTH & SAFETY (FEES) REGULATIONS 2012

These Regulations introduced the concept of 'fee for intervention', whereby a duty holder found guilty of a material breach of health and safety legislation may be required to pay a fee, which covers the costs of the inspector's time and activities. These activities include: site visits; written communications and notices; taking statements; and the provision of specialist support. Further information on 'fee for intervention' is available here:

[READ MORE](#)



## THE REPORTING OF INJURIES, DISEASES AND DANGEROUS OCCURRENCES REGULATIONS 2013

These Regulations, commonly referred to as RIDDOR, place a duty on employers to inform the enforcing authority of certain prescribed accidents or incidents. The Regulations define the action to be taken in the following specific instances:

### **Death or Major Injury (as defined within RIDDOR)**

The enforcing authority must be notified without delay if there is an accident connected with work, in which an employee (or a self-employed person working at your premises) is killed or suffers a major injury, or a member of the public is killed or taken to hospital. Reports must be sent within a maximum of 10 days after the incident.

### **Over-Seven-Day Incapacitation**

Accidents must be reported where they result in an employee or self-employed person being away from work, or unable to perform their normal work duties, for more than seven consecutive days as the result of their injury. This seven day period does not include the day of the accident, but does include weekends and rest days. These accidents must be notified to the enforcing authority within 15 days of the incident.



### **Disease (as defined within RIDDOR)**

If a doctor notifies the company that an employee is suffering from a reportable work-related disease, a completed Disease Report Form (F2508A) must be sent to the enforcing authority as soon as the responsible person receives the diagnosis.

### **Dangerous Occurrence (as defined within RIDDOR)**

If there is an incident which does not result in a reportable injury, but clearly could have done, it may be construed as a dangerous occurrence, which must be reported immediately to the enforcing authority. This must be followed up by a completed Accident Report Form (F2508) within 10 days.

Further information on RIDDOR together with online Accident/Disease Report Forms (F2508 and F2508A) and reporting contact details can be found here:

[READ MORE](#)



The submission of a RIDDOR report to the enforcing authorities can result in an investigation by a HSE or Local Authority inspector. They will expect an internal accident investigation to have been instigated, but not necessarily completed. Further guidance on conducting accident investigations can be found in a separate Risk Directory document.

**THERE  
ARE  
OVER 70,000  
RIDDOR REPORTABLE  
INJURIES & FATALITIES  
EVERY  
YEAR**



# INCIDENT INVESTIGATION

## Summary Report

## ENFORCING AUTHORITY INVESTIGATIONS

A formal investigation may be undertaken by a health and safety inspector following either a reportable incident or a received complaint. The enforcing authorities generally undertake investigations to determine:

- The causes of the incident.
- Whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with legislation.
- The appropriate response to a breach of law.
- Lessons to be learnt and to influence changes to the law and official guidance.

As soon as it is clear that a formal health and safety investigation is to take place, it is strongly recommended that expert legal representation is sought. This will help to ensure the investigation is undertaken appropriately and in line with legal requirements.

Before considering best practice it is important to understand the powers of health and safety enforcement inspectors, as detailed in the Health & Safety at Work etc. Act 1974. These powers must be exercised in a 'proportionate and necessary' manner, meaning that their actions must be appropriate to both the nature and scope of the potential breaches. It is important that organisations are aware of the limitations of these powers and can assert their own rights if it is believed that an inspector is exceeding theirs. However, it is also essential to maintain good relations with inspectors by acting courteously and being as co-operative as possible.

Inspectors' rights include:

- Entering the premises at any time without giving prior notice.
- Sealing off the premises and/or instructing that it be left undisturbed if it is deemed to be dangerous.



- Dismantling, processing or testing anything connected to the incident. The organisation is entitled to have a witness present before dismantling or testing begins.
- Removing for examination any article or substance which has caused or is likely to cause a danger to health and safety.
- Taking samples for subsequent analysis. Unless it is impractical, the inspector must divide the sample into three portions, one of which is to remain with the organisation for its own analysis.
- Taking photographs and measurements.
- Inspecting and taking copies of documents.
- Taking witness statements.
- Conducting interviews under caution.

Best practice in respect of documentary evidence, witness statements and interviews is now considered below.

## DOCUMENTARY EVIDENCE

Whilst an inspector may inspect and take copies of documents, they are not permitted to remove original documents. The only exception to this is where copying facilities are not available, and in such instances documents may be taken away to be copied, but must be returned. An 'image' may also be taken of a computer's hard drive. It is recommended that a record of all documentary evidence either given to or requested by Inspectors should be maintained.

Accident investigation reports can also be requested or inspected by an officer, unless they are subject to legal privilege, which protects all communications between a professional legal adviser and their clients from being disclosed. It is recommended that legal advice be sought on the complex issue of legal privilege and where it applies. Care should be taken to avoid ambiguous statements in internal accident reports and investigations, which may consequently be misconstrued. In addition, reports that criticise existing procedures and the subsequent revision of risk assessments and/or safe systems of work can imply that adequate controls were not in place at the time of the accident.

## WITNESS STATEMENTS

The inspector can request witness statements as part of their investigation. Under section 9 of the Criminal Justice Act 1967, a witness can agree to give a voluntary statement. These statements should record facts only, not opinion, and witnesses should be advised of this before they give a statement. Inspectors have stronger powers under section 20 of the Health & Safety at Work Act, etc, 1974 and, if these powers are enforced, a witness will be obliged to answer any question put to them by an inspector.

Under section 20, the witness is entitled to have a person of their choosing present whilst the interview takes place. That person should be directed to keep a record of what is said. Whilst it is always recommended that legal advice be obtained, it is generally recommended that voluntary statements be avoided, as there is no entitlement for a witness to be present. It is also recommended that for witnesses at supervisory or management level, the inspector should be advised from the outset that they will not give voluntary statements, and that it will be necessary for them to exercise their powers under section 20 of the Act. It is noted that a Section 20 statement is not admissible against the person providing the statement, meaning they cannot incriminate themselves.

A statement given to an inspector must be signed by the witness. When the statement is given, the inspector will write it out. It is vital that witnesses are instructed to carefully read the whole statement before they sign it. Where they do not agree with what the statement says or consider elements of it may be misconstrued, they should refuse to sign it. Copies of all statements should be requested as there are often significant delays in subsequent legal proceedings and the organisation needs to know what its employees have said to the enforcing authority, especially if they are subsequently asked to attend an interview under caution. Further information on how the Health and Safety Executive takes witness statements is available here:

[READ MORE](#)

## INTERVIEWS UNDER CAUTION

Interviews under caution are usually conducted where an individual or body corporate is suspected of committing a criminal offence. Individuals or representatives of the body corporate may be invited to attend such an interview at any time during an investigation. If an interview is declined, it can be brought to the court's attention at the time of sentencing to highlight the extent of cooperation or otherwise. If the invitation to the interview is accepted, legal representation is considered essential.

Interviews under caution are undertaken in accordance with Police and Criminal Evidence Act 1984 and are usually referred to as 'PACE interviews'. Further information on how the Health and Safety Executive conducts such interviews is available here:

[READ MORE](#)

## LEGAL SANCTIONS

The main legal sanctions relate to enforcement notices and criminal prosecutions which are considered below. In both instances it should be noted that details of these are published by the enforcing authorities.

### ENFORCEMENT NOTICES

Inspectors have the power to serve improvement and prohibition notices. An improvement notice requires the recipient to take steps to remedy a breach in health and safety legislation within a specified timescale (no less than 21 days). If an improvement notice is issued, it should be ensured that the timescales for compliance are sufficient, as the inspector may not subsequently grant an extension. A prohibition notice can be served in relation to activities where an inspector is of the opinion that they involve a risk of serious injury. The notice requires an immediate cessation of the unsafe activity, thereby resulting in an interruption to normal operations.

**OVER 11,000  
ENFORCEMENT  
NOTICES ARE  
ISSUED BY THE HSE  
AND OTHER BODIES  
EVERY YEAR**

## CRIMINAL PROSECUTIONS

The decision to proceed with a prosecution following a breach of duty rests with the enforcing authorities. This decision will largely be dependent on whether there is sufficient evidence to provide a realistic prospect of conviction, and whether the case is in the public interest. Individual directors and managers may be prosecuted if the enforcing authorities consider the role they played in the offence was committed with their consent or connivance, or was attributable to neglect on their part. Whilst not exhaustive, the following table shows the maximum penalties for breaches of health and safety legislation:

HEALTH AND SAFETY OFFENCE	LOWER COURT MAXIMUM	HEALTH AND SAFETY OFFENCE
Failure to comply with an Improvement or Prohibition Notice	£20,000 fine and/or 12 months' imprisonment.	Unlimited fine and/or 2 years' imprisonment.
Breach of Sections 2-6 of the Health & Safety at Work Act etc. 1974	£20,000 fine and/or 12 months' imprisonment.	Unlimited fine and/or 2 years' imprisonment.
Most other breaches of the Health & Safety at Work Act 1974 and health and safety regulations	£20,000 fine and/or 12 months' imprisonment.	Unlimited fine and/or 2 years' imprisonment.
Directors' convictions in relation to the management of a company, Sections 36 & 37 of the Health & Safety at Work Act etc. 1974	5 years' disqualification as a company director (in addition to any fines or imprisonment).	10 years' disqualification as a company director (in addition to any fines or imprisonment).
Corporate Manslaughter or Homicide.	Not Applicable	Unlimited fine, dependent upon the size and turnover of the organisation.

**NB** Directors can be disqualified for up to 15 years under the Company Directors Disqualification Act 1986.



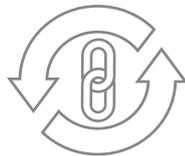


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## ACKNOWLEDGEMENTS, REFERENCES AND RECOMMENDED FURTHER READING

- What to Expect When a Health and Safety Inspector Calls - HSC14 - HSE Books
- Enforcement Policy Statement - HSE41 - HSE Books
- Reporting Accidents and Incidents at Work - INDG453 - HSE Books
- Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences: Definitive Guidance - Sentencing Council
- Work-related Deaths Protocol for England and Wales (WRDP) - CPS

## LEGAL NOTICE

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