

Association of Public Service Excellence

# THE LAW ON HEALTH AND SAFETY

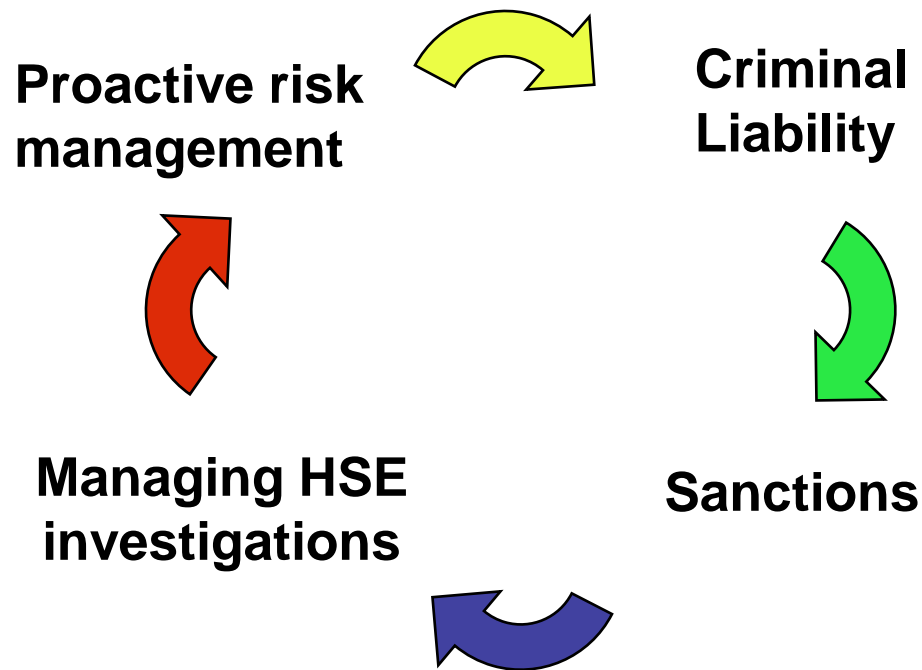
## Managing the risks

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# Legal responsibility for health and safety



# Criminal liability

# Health and Safety Offences

- **Health and Safety at Work Act 1974**
- **Secondary legislation**
  - Management of Health and Safety at Work Regulations 1999
  - Workplace (Health Safety and Welfare) Regulations 1992
  - Construction (Design and Management) Regulations 2007
- **Manslaughter**
  - Gross negligence manslaughter
  - Corporate Manslaughter and Homicide Act 2007



# The Health and Safety at Work etc. Act 1974

- Section 2(1)

*'It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees'.*

- Section 3(1)

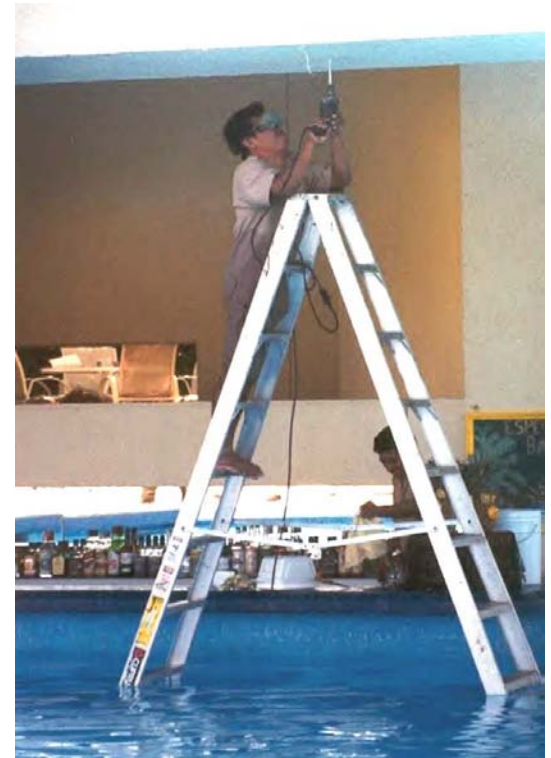
*'It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment, who may be affected thereby are not exposed to risks to their health or safety'*

# ‘Reasonably practicable’

- An appreciable risk?
- Magnitude of risk
- Balancing exercise
- **Risk** against **sacrifice** to avert it
- Burden of proof on defendant



# Risk and reasonable practicability



# Individual liability under HSWA

- **Employees must**
  - take reasonable care (section 7)
  - co-operate (section 7)
  - not intentionally or recklessly interfere with or misuse anything provided in the interests of health and safety (section 8)
- **Directors, managers etc**
  - are liable for any H&S offence '*committed with their consent or connivance or attributable to their neglect*' (section 37)

# Manslaughter

- Gross Negligence Manslaughter
- Corporate Manslaughter & Homicide Act 2007
  - In force from 6 April 2008
  - Aim = easier to convict
  - Applies to
    - companies
    - partnerships
    - local authorities & government departments



# Corporate Manslaughter and Corporate Homicide Act 2007

- An organisation is liable;
  - if the way in which its activities are managed or organised
  - constitute a gross breach
  - of a ‘relevant duty of care’
  - which causes death
- No requirement to show that a senior person is also guilty of manslaughter

# Sanctions

# Maximum sentences

	<b>Conviction of company or other entity (eg council)</b>	<b>Conviction of individual (employee or director/manager)</b>
<b>Health and Safety at Work Act 1974</b>	Unlimited Fine	Unlimited Fine/ 2 years imprisonment*
<b>Breach of Regulations</b>	Unlimited Fine	Unlimited Fine
<b>Gross negligence manslaughter</b>	N/A	Life imprisonment
<b>Corporate Manslaughter</b>	Unlimited fine plus additional sanctions	N/A

\* for failure to comply with enforcement notice/court order or have requisite licences

# Managing an Investigation

# Enforcing Authority Powers

- Prohibition & Enforcement notices
- Interview witnesses
  - Voluntary statements
  - Statements under compulsion
- Inspect and copy documents
- Seize physical evidence
- Interview suspects under caution



# Simple Do's and Don'ts

## DO

- Understand the law
- Know your rights
- Co-operate
- Take legal advice
- Protect legal privilege
- Remain calm and considered

## Don't

- Obstruct an investigation
- Destroy evidence
- Lie
- Pressurise others
- Be pressurised by investigators/insurers
- Panic

***Control, communicate,  
co-operate....***

***....without capitulation***

# Proactive Risk Management

# Practical steps

- Review & monitor compliance
  - Written policy/procedure
  - Knowledge and understanding
  - Implementation
- Assess risk
- Foster a compliance culture

# Developing a compliance culture - change motivators

- **Institution**

- Insurance
- Reputational risk
- Goodwill
- Fine

- **Individual**

- Personal safety
- Recognition
- Financial reward?
- Deterrence?

*“Every £1 invested in prevention saves £7 spent on the cure”*