

Second Edition

Health and Safety Pocket Book

Garry Hunt

Health and Safety Pocket Book

The second edition of the *Health and Safety Pocket Book* has been fully revised and updated to include all the relevant legal, HSE ACoP/ Guidance and practice references. It remains a handy reference tool for practising health and safety professionals, auditors, managers, HR personnel, employee representatives and anyone with health and safety responsibilities.

The book is an essential compilation of guidance, data and checklists covering a wide range of health and safety topics, supported by extensive key glossary terms. The A–Z arrangement within the chapters and extensive cross-referencing make it easy to navigate, while its size and scope make it the ideal volume for ready reference and site visits. The book will also be useful for health and safety courses at all levels.

Key features include:

- The principal health and safety legal requirements for every industry
- Safety management elements and systems
- Checklists for major hazards affecting all industries
- A wealth of charts, hard-to-remember details and data
- A glossary of the main concepts of health and safety
- A list of important health and safety courses, publications and organisations
- Revision tips for key examination themes.

Garry Hunt has over thirty years' experience in the field of health and safety. He is a Chartered Health and Safety Practitioner, a Fellow Member of the International Institute of Risk and Safety Management and a Recognised Safety Practitioner. He is a NEBOSH examiner and sits on the IOSH peer review panel for those seeking Chartered status of the Institution.



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Health and Safety Pocket Book

Second Edition

Garry Hunt

From the original by
Jeremy Stranks

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Contents

<i>Preface to the First Edition</i>	xv
<i>Preface to the Second Edition</i>	xvii
<i>List of abbreviations</i>	xix
Part 1 Health and safety law	1
1(a) Legal background	3
Absolute (strict) liability	3
All reasonable precautions and all due diligence ('due diligence' defence)	3
Approved Codes of Practice	4
Breach of statutory duty	4
Burden of proof	6
Case law	6
Child	7
Civil and criminal liability	7
Common law and statute law	9
Contractor	11
Contributory negligence	11
Controlling (guilty) mind (<i>mens rea</i>)	12
Corporate liability	12
Corporate manslaughter	13
Courts and tribunals	14
Damages	18
Defences	19
Delegated legislation	22
Disclosure of information	23
Due diligence	23
Duties (hierarchy of)	24
Duty holders	25

Duty of care	26
Employers' duties (common law)	26
Employers' liability	28
Enforcement arrangements – powers of inspectors	28
Enforcement authorities	33
Guidance notes (HSE)	33
Indictable offences	34
Judicial precedent	35
Negligence	35
Neighbour Principle	36
No-fault liability	37
Occupiers' liability	37
Precedents	39
Pre-trial review	39
Principles of prevention	39
Prosecution	40
Relevant statutory provisions	41
<i>Res ipsa loquitur</i>	41
<i>Stare decisis</i>	42
Statement of claim	42
Statement of health and safety policy	42
Statutes and Regulations	43
Strict liability	43
Summary offences	43
Temporary employment	44
Torts	44
Vicarious liability	45
<i>Volente non fit injuria</i>	46
1(b) The principal statutes	47
Administration of Justice Act 1982	47
Employers' Liability (Compulsory Insurance) Act 1969	47
Employers' Liability (Defective Equipment) Act 1969	48

Employment Rights Act 1996	48
Equality Act 2010	50
Fatal Accidents Act 1976	52
Health and Safety at Work etc. Act 1974	52
Occupiers' Liability Act 1957	55
Occupiers' Liability Act 1984	55
Social Security Act 1975	56
Unfair Contract Terms Act 1977	57
1(c) Principal regulations	58
Building Regulations 2010	58
Children (Protection at Work) Regulations 1997	61
Classification, Labelling and Packaging Regulation (EC) No 1272/2008	61
Confined Spaces Regulations 1997	63
Construction (Design and Management) Regulations 2015	64
Construction (Head Protection) Regulations 1989	70
Control of Asbestos Regulations 2012	71
Control of Electromagnetic Fields at Work Regulations 2016	74
Control of Lead at Work Regulations 2002	78
Control of Major Accident Hazards Regulations 1999	81
Control of Noise at Work Regulations 2005	87
Control of Substances Hazardous to Health Regulations 2002	93
Control of Vibration at Work Regulations 2005	97
Dangerous Substances and Explosive Atmospheres Regulations 2002	102
Electricity at Work Regulations 1989	104
Health and Safety (Consultation with Employees) Regulations 1996	106

Health and Safety (Display Screen Equipment) Regulations 1992 as amended	108
Health and Safety (Fees) Regulations 2012	110
Health and Safety (First Aid) Regulations 1981	110
Health and Safety (Information for Employees) Regulations 1989 as amended	111
Health and Safety (Safety Signs and Signals) Regulations 1996	112
Ionising Radiations Regulations 1999	113
Lifting Operations and Lifting Equipment Regulations 1998	118
Management of Health and Safety at Work Regulations 1999	121
Manual Handling Operations Regulations 1992	125
Personal Protective Equipment at Work Regulations 1992 as amended	127
Personal Protective Equipment Regulations 2002	129
Pressure Systems Safety Regulations 2000	129
Provision and Use of Work Equipment Regulations 1998	132
Registration, Evaluation, Authorisation and Restriction of Chemicals Regulations (EC) 1907/2006 as amended	140
Regulatory Reform (Fire Safety) Order 2005	142
Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013	155
Safety Representatives and Safety Committees Regulations 1977	160
Simple Pressure Vessels (Safety) Regulations 1991	163
Work at Height Regulations 2005	164
Workplace (Health, Safety and Welfare) Regulations 1992	170

1(d) Approved Codes of Practice	174
1(e) HSE guidance notes	176
Part 2 Health and safety management	179
2(a) Health and safety management in practice	181
Accident and incident costs	181
Accident investigation procedure	183
Benchmarking	184
Cleaning schedules	187
Competent persons	188
Consequence analysis	190
Dose record (ionising radiation)	191
Event tree analysis	192
Failure mode and effect analysis	192
Fault tree analysis	192
Health and safety file	192
Health and safety management systems:	
OHSAS 18001	194
Health and safety plans	197
Health and safety training	200
Health records	203
Health surveillance	203
Information and instruction	205
International Loss Control Institute loss causation model	206
Joint consultation	209
Local rules	210
Major incidents	210
Managing for health and safety (HSG65)	212
Method statements	214
Management oversight and risk tree (MORT)	215

OHSAS 18001: A Pro-active Approach to Health and Safety Management	218
Planned preventive maintenance	218
Risk assessment	222
Risk control hierarchy	223
Risk management	225
Safe systems of work	226
Safety monitoring systems	227
Safety signs	229
Statements of health and safety policy	230
Technique for human error rate probability (THERP)	232
Total loss control	233
2(b) Hazard checklists	236
Construction activities	236
Display screen equipment workstations	243
Electrical equipment	246
Fire safety	247
Flammable substances	249
Floors and traffic routes	250
Hazardous substances	251
Maintenance work	253
Manual handling operations	254
Mobile mechanical handling equipment (lift trucks, etc.)	255
Noise	256
Offices and commercial premises	259
Personal protective equipment (PPE)	263
Radiation hazards	265
Violence at work – personal risk checklist	266
Work equipment	267
Workplaces	268

Part 3	Health and safety information	273
3(a)	Tables and figures	275
	Accident indices	275
	Accident ratios	276
	Airborne contaminants: comparison of particle size ranges	277
	Air changes per hour (comfort ventilation)	278
	Average illuminances and minimum measured illuminances	278
	Classification, Labelling and Packaging Regulation – Hazard Classifications	279
	Decibels (addition of)	285
	Electromagnetic spectrum	285
	Fire instruction notice	286
	Hazardous substances that can be revealed by medical analysis	286
	Health and Safety (Display Screen Equipment) Regulations 1992 (a) Display screen equipment workstation – design and layout	287
	Health and Safety (Display Screen Equipment) Regulations 1992 (b) Seating and posture for typical office tasks	288
	Key elements of successful health and safety management	289
	Legal routes following an accident at work	290
	Local exhaust ventilation (LEV) systems	291
	Manual handling – lifting and lowering	292
	Manual handling operations regulations – flow chart	293
	Maximum permissible wet globe temperatures	294
	Maximum ratios of illuminance for adjacent areas	294
	Maximum safe working loads for slings at various angles	295

Noise control methods	295
Noise control programme – typical structure	296
Octave bands (standard range)	297
Optimum working temperatures	297
Personal Protective Equipment at Work	
Regulations 1992 – Specimen risk survey table for the use of personal protective equipment	298
Places of work requiring inspection by a competent person under Work at Height Regulations 2005 and CDM Regulations 2015	299
Probability index	300
Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 – reporting requirements	300
Safety data sheets – obligatory headings (REACH Regulations)	303
Safety signs	304
Severity index	305
Total working system – areas of study	306
Water closets and urinals for men (ACoP to Workplace (Health, Safety and Welfare) Regulations 1992)	307
Water closets and wash station provision (ACoP to Workplace (Health, Safety and Welfare) Regulations 1992)	307

3(b) Forms	308
Accident book entry	308
Control of Substances Hazardous to Health Regulations 2002 – Health Risk Assessment	310
Hazard report form	313
Improvement Notice	314
Job safety analysis record	315
Manual handling of loads	316

Noise exposure record	318
Occupational health:	
(a) Pre-employment health questionnaire	319
(b) Health questionnaire	322
(c) Food handler's clearance certificate	323
(d) Fitness certificate	324
Prohibition Notice	325
Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995:	
(a) Report of an injury or dangerous occurrence	326
(b) Report of a case of disease	328
Part 4 Health and safety glossary	331
Part 5 Appendices	433
Appendix A: Accredited training courses in occupational health and safety	435
Institution of Occupational Safety and Health (IOSH)	435
Chartered Institute of Environmental Health (CIEH)	435
National Examination Board in Occupational Safety and Health (NEBOSH)	436
Royal Society for Public Health (RSPH)	436
Appendix B: Documentation and record keeping requirements	437
Appendix C: Useful publications and information sources	441
Examination syllabuses and reports	441
Health and safety books	441

Health and safety periodicals	443
HSE publications and information services	445

Appendix D: Professional organisations **450**

Professional organisations	450
Examination board	451
Associations and organisations	452

Appendix E: Industries – principal legal requirements **454**

<i>Index</i>	460
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Preface to the First Edition

Health and safety is a diverse subject covering many disciplines – law, engineering, human behaviour, safety management and occupational health – each of which is an area of study in its own right.

The *Health and Safety Pocket Book* has been written as a unique aid to health and safety practitioners and consultants, engineers, HR managers, lawyers and employee representatives. It should also be of use to those managers, across the full scope of industry and commerce, who may have specific responsibility for health and safety, together with those studying for specific qualifications in the discipline. The main objective is to provide a ready reference text on a wide range of issues, including the principal features of health and safety law, established management systems and sources of information.

A number of checklists, which are useful in the risk assessment process, have been incorporated, together with tables, figures and forms used on a regular basis. Specific parts include a glossary of commonly used terms, a summary of the legal requirements for documentation and record keeping, along with information on accredited health and safety training courses, professional organisations in health and safety and a breakdown of the legal requirements for the various industrial groups.

The A–Z arrangement within chapters and extensive cross-referencing makes the book easy to navigate. Individual references point the reader to the original legislation and more specialised reading.

I hope all who use this book will find it helpful.

Jeremy Stranks
November 2005



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Preface to the Second Edition

The *Health and Safety Pocket Book* has proved to be a popular source of reference for health and safety practitioners, inspectors, students, HR managers and all those with an interest in the subject.

Since Jeremy Stranks wrote the first edition in 2005, however, there have been a number of changes to legislation, guidance and practice, all of which have made an updated version necessary. In providing this update, though, I have done my best to retain the original author's intention of providing a 'pocket book', which is informative, useful and accessible.

While the whole publication should be a handy resource for students pursuing one of the various qualifications in health and safety, a feature of this edition is some 'revision tips', which reinforce key facts around favourite examination questions.

I echo Jeremy's comment that all who use this book will find it helpful.

Garry Hunt
June 2017



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Abbreviations

ACoP	Approved Code of Practice
BS	British Standard
BSC	British Safety Council
CBI	Confederation of British Industry
CDM	Construction (Design and Management) Regulations
CE	Communauté Européenne
CEMFAW	Control of Electromagnetic Fields at Work Regulations
CLP	The Classification, Labelling and Packaging of Chemicals Regulations
COSHH	Control of Substances Hazardous to Health
dB	Decibel
DSE	Display screen equipment
EA	Enforcing authority
EC	European Community
EHSRs	Essential health and safety requirements
ETBA	Energy Trace and Barrier Analysis
FPA	Fire Protection Association
GHS	The UN Globally Harmonised System of Classification and Labelling of Chemicals
HAZOPS	Hazard and Operability Studies
HFL	Highly flammable liquid
HMSO	Her Majesty's Stationery Office
HPZ	Hearing protection zone
HSE	Health and Safety Executive
HSWA	Health and Safety at Work etc. Act
IOELVs	Indicative Occupational Exposure Limit Values
ISO	International Organization for Standardization
LEAV	Lower exposure action value
LEV	Local exhaust ventilation
LOLER	Lifting Operations and Lifting Equipment Regulations
LPG	Liquefied petroleum gas

Lx	Lux
MHSWR	Management of Health and Safety at Work Regulations
MORT	Management of Risk Tree
P	So far as is practicable
PHP	Personal hearing protection
PPE	Personal protective equipment
REACH	The Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (EC) No 1907/2006
RP	So far as is reasonably practicable
RPE	Respiratory protective equipment
RoSPA	Royal Society for the Prevention of Accidents
SCOEL	Scientific Committee on Occupational Exposure Limits
SHH	Substance(s) hazardous to health
THERP	Technique for Human Error Rate Probability
UEAV	Upper Exposure Action Value
WEL	Workplace Exposure Limit

PART 1

Health and safety law



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1(a)

Legal background

Health and safety law covers many aspects involving people at work, including the civil and criminal liabilities of employers towards their employees and other persons.

The following topics are of particular significance in any discussion of the principal features of health and safety law.

Absolute (strict) liability

Certain duties under health and safety laws are of an absolute or strict nature. These duties are qualified by the terms 'shall' or 'must', such as the absolute duty on employers under the Management of Health and Safety at Work Regulations to undertake a suitable and sufficient risk assessment. Generally, no defence is available, although when charged with an absolute offence, it may be possible to submit a plea in mitigation.

All reasonable precautions and all due diligence ('due diligence' defence)

Under certain regulations, such as the Electricity at Work Regulations and the Control of Substances Hazardous to Health (COSHH) Regulations, an employer charged with an offence may be able to submit the defence that 'he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence'.

To rely on this defence, the employer must establish that, on the balance of probabilities, he has taken *all* precautions that were reasonable and exercised *all* due diligence to ensure that these precautions were implemented in order to avoid such a contravention. It is unlikely that an employer could rely on this defence if:

- a precautions were available which had not been taken; or
- b he had not provided sufficient information, instruction and training, together with adequate supervision, to ensure that the precautions were effective.

1(a) Legal background

Defences

1(c) Principal regulations

*Control of Substances Hazardous to Health Regulations 2002
The Classification, Labelling and Packaging Regulation (EC) No
1272/2008*

Pressure Systems Safety Regulations 2000

Approved Codes of Practice

The HSE is empowered to issue and approve Codes of Practice which accompany Regulations, for example, HSE Publication L24 2013 – *Workplace health, safety and welfare*, the Approved Code of Practice (ACoP) accompanying the Workplace (Health, Safety and Welfare) Regulations 1992.

An ACoP has limited legal status. Failure to comply with the recommendations in an ACoP may be used as evidence of failure to comply with a duty under Regulations, unless it can be shown that ‘works of an equivalent nature’ (which met the requirements but in a different way) had been undertaken, proof of which rests with the defendant, on the balance of probability.

1(d) Approved Codes of Practice

Breach of statutory duty

In certain circumstances, a breach of a statutory duty, which results in injury to a person of a class which the statute was designed to protect, will give the injured person a civil cause

of action. The requirements, which have to be satisfied before such a cause of action arises, are:

- a that the statutory provision, properly construed, was intended to protect an ascertainable class of persons of whom the claimant was one;
- b that the provision has been broken;
- c that the claimant had suffered damage of a kind against which the provision was designed to give protection; and
- d that the damage was caused by the breach.

The claimant must prove their case by the ordinary standard of proof in civil actions. She must show at least that, on a balance of probabilities, the breach of duty caused, or materially contributed to, her injury.

Since 2013, the ability to take action for breach of statutory duty has been significantly limited. Section 69 of the Enterprise and Regulatory Reform Act (ERRA) 2013 amended Section 47 of the Health and Safety at Work etc. Act 1974 and excludes the ability to bring a claim in civil proceedings for breach of statutory duty UNLESS a specific exemption is allowed by the regulations.

Practically, the effect of ERRA is to bar most workers from taking a civil action under breach of statutory duty for injury or loss. They will have to rely on an action of negligence in order to seek compensation.

The one exception here is the case of new and expectant mothers. The Health and Safety at Work etc. Act 1974 (Civil Liability) (Exceptions) Regulations 2013 allows an action for breach of statutory duty under the following legislation:

- 1 The Management of Health and Safety at Work Regulations (MHSWR) 1999 Regulations 16 and 17a, to the extent that the breach causes injury or ill-health.
- 2 The Employment Rights Act (ERA) 1996, Section 72(1) which prohibits people working in the compulsory maternity leave period and allows a claim if injury or ill-health should result.

1(a) Legal background

Duty of care

Negligence

Burden of proof

This term applies to both criminal cases and civil claims.

Throughout criminal law, the burden of proof of guilt that the accused person committed an offence rests with the prosecution, who must prove guilt 'beyond a reasonable doubt'. Section 40 of the HSWA makes the task of the prosecution easier by transferring the burden of proof to the accused. It is incumbent on the accused to show either that it was not 'practicable' or 'reasonably practicable' in the particular case to satisfy the particular duty or requirement. If the accused cannot discharge this duty, the case will be considered proved against him.

In civil claims, however, the claimant must show this proof of liability on the part of the defendant 'on the balance of probabilities'.

Case law

Case law is featured in the decisions of the criminal and civil courts, and based on the doctrine of judicial precedent. These doctrines are to be found in the various Law Reports, such as the All England Reports (AER) and the Industrial Relations Law Reports (IRLR). Case law is a self-endorsing process, perpetuated either by previous binding cases or by the interpretation of legislation.

The following features of a judgement are important:

- a the *ratio decidendi* (reason for deciding) – a statement of law based on an examination of the facts and the legal issues surrounding them; this is the most important part of a judgement and contains the actual binding precedent; and

- b the *obiter dicta* (words said by the way) – may contain a statement about the law which is not based on the facts of the case under review and which will not, therefore, be part of the decision; this is often held to be of persuasive authority.

1(a) Legal background

Civil and criminal liability
Judicial precedent

Child

A person under compulsory school leaving age and under sixteen years of age.

1(c) Principal regulations

Management of Health and Safety at Work Regulations 1999

Civil and criminal liability

Breaches of health and safety law by employers and others can incur both criminal and civil liability.

Civil liability

Civil liability refers to the 'penalty' that can be imposed by a civil court, for example, County Court, High Court, Court of Appeal (Civil Division) and the Supreme Court.

A civil action generally involves a claim of negligence or breach of statutory duty (see above – now limited) by a claimant against a defendant. In such actions, the claimant sues the defendant for a remedy that is beneficial to the claimant. In most cases, this remedy takes the form of damages, a form of financial compensation. In many cases, the claimant will agree to settle out of court.

Civil cases are decided on 'the balance of probabilities'.

Criminal liability

A crime is an offence against the State. Criminal liability refers to the duties and responsibilities of:

- a employers;
- b occupiers and controllers of premises;
- c manufacturers, designers and suppliers of articles and substances for use at work; and
- d employees,

under, principally, the HSWA, and regulations made under the HSWA, and to the penalties that can be imposed by the criminal courts, namely, fines and imprisonment. The criminal courts involved are the Magistrates' Courts, which handle the bulk of cases, the Crown Court, the Court of Appeal (Criminal Division) and the Supreme Court.

Health and safety criminal law is based on a system of enforcement by the HSE, local authorities and fire authorities. A person charged with an offence is innocent until proved guilty 'beyond reasonable doubt'.

1(a) Legal background

Courts and tribunals

Duty of care

Negligence

1(b) Principal statutes

Health and Safety at Work etc. Act 1974

3(a) Tables and figures

Legal routes following an accident at work

Common law and statute law

Common law is unwritten law, in that it is not written down in Statutes and Regulations. It is the body of accumulated case law (see separate entry), which is based on the decisions of the courts over many years, whereby precedents (see 'Judicial precedent') are established. It is of universal application and recorded in the various Law Reports. It is applicable to the decisions made by courts at their own level and in directions from superior courts.

Statute law, on the other hand, is the written law produced as a result of the parliamentary process. Statutes supersede all other forms of law and only Parliament can make, modify, revoke or amend statutes.

A statute may give the Minister or Secretary of State power to produce subordinate or delegated legislation, which generally takes the form of Regulations, for example, the Control of Substances Hazardous to Health Regulations made under the HSWA.



Revision Tip – A comparison of civil and criminal liability

Criminal liability	Civil liability
Based on Statutes – written law made by Parliament.	Based largely on Common Law, which establishes legal precedent.
Burden of Proof is – ‘beyond all reasonable doubt’.	Burden of Proof is – ‘on the balance of probabilities’.
Outcome of an action where proved will be primarily punitive: imprisonment, fines, orders, etc.	Outcome of an action where proved will be compensatory – i.e. award of damages for the loss suffered.
Proceeds through the criminal courts system: Magistrates’ Court – Crown Court – High Court* – Court of Appeal* – Supreme Court.	Proceeds through the Civil Courts system: County Court – High Court* – Court of Appeal* – Supreme Court.
Action is initiated by the State (HSE/ Local Authority/Fire Authority for health and safety matters).	Action can be initiated by anyone.
Criminal liability is not insurable.	Civil liability is insurable and, in some cases, insurance must be carried (e.g. Employer’s Liability Insurance).
Action under criminal law must usually commence within six months of the offence being committed.	Civil action for negligence must usually commence within three years of the harm or loss being realised.

Note

* The High Court and the Court of Appeal have separate divisions for Criminal and Civil matters.



1(a) Legal background

Civil and criminal liability



3(a) Tables and figures

Legal routes following an accident at work

Contractor

A person engaged to perform a certain task without direction from the person employing him, and implies a certain degree of independence from that person. The basic test of whether a person is an independent contractor is one of control over the undertaking of the work specified in the contract.

1(c) Principal regulations

Construction (Design and Management) Regulations 2015

1(d) HSE guidance notes

Fire safety in construction: Guidance for clients, designers and those managing and carrying out construction work involving significant risks [HSG168]

Health and safety in construction [HSG150]

Excavations: What you need to know as a busy builder [CIS64]

Health and safety in roof work [HSG33]

Managing contractors: A guide for employers [HSG159]

The safe use of vehicles on construction sites [HSG144]

Appendix B: Documentation and record keeping requirements

Contributory negligence

Where a person suffers injury as the result – partly of his own fault and partly due to the fault of another person or persons – a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable will be reduced to such extent as a court considers just and equitable having regard to the claimant's share in the responsibility for the damage.

1(a) Legal background

Duty of care
Negligence

Controlling (guilty) mind (*mens rea*)

1(a) Legal background

Corporate liability

Corporate liability

Corporate liability refers to the liability of all those directing an undertaking, that is, the corporate body.

A corporate body, for example, the Board of Directors, chief executive, managing director, etc. of an organisation, may be liable for most criminal offences, providing a fine is specified for the offence, the offence is committed by a 'controlling mind', such as a managing director or chief executive, and is committed in the course of his corporate duties.

Under the HSWA, directors, managers, company secretaries and similar officers of the body corporate have both general and specific duties. Breaches of these duties can result in individuals being prosecuted.

Offences by bodies corporate (HSWA Sec 37(1))

Where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

1(a) Legal background

Controlling (guilty) mind (mens rea)

1(b) Principal statutes

Health and Safety at Work etc. Act 1974

Corporate manslaughter

The Corporate Manslaughter and Corporate Homicide Act 2007 established the offence of corporate manslaughter in England, Wales and Northern Ireland, and corporate homicide in Scotland.

The offence applies to corporations, government departments (crown bodies are NOT immune from prosecution under the Act), police forces, partnerships, trades unions and employer associations.

Such organisations are guilty of an offence if they owe a duty of care to a victim under the law of negligence, and the way in which they organise or manage their activities causes a death and this amounts to a gross breach of a relevant duty of care owed to the victim.

It can apply to deaths in detention and custody.

The Act abolishes the common law offence of gross negligence manslaughter in relation to corporations.

An organisation found guilty of corporate manslaughter or corporate homicide will face an unlimited fine, and the courts have the power to make remedial and publicity orders.

1(b) Principal statutes

The Corporate Manslaughter and Corporate Homicide Act 2007

Courts and tribunals

There are two distinct systems whereby the courts deal with criminal offences and civil actions respectively. Some courts have both criminal and civil jurisdiction, however.

Criminal Courts

The Magistrates' Courts (or Courts of Summary Jurisdiction) in England and Wales, and the Sheriff Court in Scotland, are the courts of first instance for all criminal offences. Lay Justices of the Peace (JPs) or stipendiary magistrates (now called District Judges) determine and sentence for the majority of the less serious offences. They also hold preliminary examinations into other (more serious – indictable) offences to ascertain whether the prosecution can show a prima facie case on which the accused may be committed for trial at a higher court. The Sheriff Court performs a parallel function in Scotland, although procedures differ from those of the Magistrates' Courts.

Serious indictable criminal charges and cases where the accused has the right to trial before a jury are heard on indictment in the Crown Court before a judge and jury. This court is empowered to impose unlimited fines and/or a maximum of two years' imprisonment for health and safety-related offences. The Crown Court also hears appeals from the Magistrates' Courts.

Most health and safety offences are 'triable either way'. This means that the case can either be heard in the Magistrates' Court (Summarily) or in the Crown Court (On Indictment), the initial decision being that of the Magistrates' Court in question. However, if the lower court accepts jurisdiction it is still possible for the defendant to elect to be heard in the higher court before judge and jury.

The Health and Safety (Offences) Act 2008 increased penalties for some offences committed post-16 January 2009 (by

increasing the maximum fine and introducing imprisonment for certain offences) and Section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (which came into force on 12 March 2015) had the effect of increasing the level of most fines available for magistrates' courts to an unlimited fine (previously limited to £20,000 for most health and safety offences). However, the increase only applies in respect of offences committed after 12 March 2015.

With the higher sentencing powers now available to Magistrates, we are likely to see an increase in the number of cases dealt with in the lower court.

Civil Courts

County Courts operate on an area basis and deal in the first instance with a wide range of civil matters, such as claims for negligence. They are limited, however, in the remedies that can be applied. Cases are generally heard before a circuit judge or registrar, the latter having limited jurisdiction. A County Court judge can award compensation up to £50,000, though this figure can be increased with the consent of both parties.

More important civil matters, because of the sums involved (compensation likely to exceed £50,000) or legal complexity, will start in the High Court of Justice before a High Court judge. The High Court has three divisions:

- a Queen's Bench – deals with contracts and torts; claims in excess of that within the County Court's power. The Queen's Bench Division hears appeals on matters of law:
 - i from Magistrates' Courts and from the Crown Court on a procedure called 'case stated'; and
 - ii from some tribunals, for example the finding of an employment tribunal on an enforcement notice under the HSWA;

It also has some supervisory functions over the lower courts and tribunals if they exceed their powers or fail to undertake their functions properly.

- b Chancery – deals with matters relating to, for example, land, wills, bankruptcy, partnerships and companies;
- c Family – deals with matters involving, for example, adoption of children, marital property and disputes.

The Court of Appeal

The Court of Appeal has two divisions:

- a the Civil Division, which hears appeals from the County Courts and the High Court; and
- b the Criminal Division, which hears appeals from the Crown Court.

The Supreme Court

The Supreme Court, as well as being the final court of appeal, plays an important role in the development of United Kingdom law.

As an appeal court, The Supreme Court cannot consider a case unless a relevant order has been made in a lower court.

The Supreme Court:

- is the final court of appeal for all United Kingdom civil cases, and criminal cases from England, Wales and Northern Ireland;
- hears appeals on arguable points of law of general public importance;
- concentrates on cases of the greatest public and constitutional importance;
- maintains and develops the role of the highest court in the United Kingdom as a leader in the common law world.

The European Court of Justice

This is the supreme law court whose decisions on the interpretation of European Community law are sacrosanct. These decisions are enforceable through the network of courts and

tribunals in all Member States. The ECJ has jurisdiction in the following areas:

- a Preliminary Ruling Jurisdiction – this enables the court to hear cases referred by the national courts of Member States in matters relating to the interpretation and application of Community law.
- b Plenary Jurisdiction – this gives the court the right to award damages for unlawful acts committed by Community institutions.
- c Contentious Jurisdiction – this gives the court the right to hear actions between Member States and Community institutions.

Cases can only be brought before the ECJ by organisations or individuals representing organisations.

The ECJ may also give advisory opinion to the Council of Ministers and the European Commission on legal matters.

Note: at the time of writing (June 2017) the United Kingdom had given notice under Article 50 of the Lisbon Treaty of its intention to withdraw from the European Union. It is not known currently what effect withdrawal will have on the UK's future relationship with the EU and with the ECJ.

Employment tribunals

Employment tribunals deal with many employment matters, including industrial relations issues and cases involving unfair dismissal, equal pay and sex discrimination.

Each tribunal consists of a legally qualified chairman appointed by the Lord Chancellor and two lay members, one representing employers and one from a trade union, selected from panels maintained by the Department of Work and Pensions following nominations from employers' organisations and trade unions.

When all three members of a tribunal are sitting, the majority view prevails.

Employment tribunals deal with the following health and safety-related issues:

- a appeals against Improvement and Prohibition Notices served by the enforcement agencies;
- b time off for the training of safety representatives;
- c failure of an employer to pay safety representatives for time off for undertaking their functions and for training;
- d failure of an employer to make a medical suspension payment; and
- e dismissal, actual or constructive, following a breach of health and safety law, regulation and/or term of employment contract.

Employment appeals tribunals, presided over by a judge, hear appeals on points of law from employment tribunals.

1(c) Principal regulations

Safety Representatives and Safety Committees Regulations 1977

3(a) Tables and figures

Legal routes following an accident at work

Damages

Civil liability may result in an award of damages for injury, disease or death at work in circumstances disclosing a breach of common law and/or statutory duty on the part of an employer/occupier of premises and arising out of and in the course of employment.

General damages relate to losses incurred after the hearing of an action, namely actual and probable loss of future earnings following an accident.

Special damages relate to quantifiable losses incurred before the hearing of the case, and consist mainly of medical expenses and loss of earnings.

In the case of fatal injury, compensation for death negligently caused is payable under the Fatal Accidents Act 1976, and a fixed lump sum is payable under the Administration of Justice Act 1982 in respect of bereavement.

1(a) Legal background

Contributory negligence
Duty of care
Negligence

Defences

Civil actions

Where presented with a civil claim based on negligence or breach of statutory duty, a defendant may deny liability on the following grounds:

- a that the duty alleged to have been breached was never owed to the claimant in the first place;
- b that the nature of the duty was different from that pleaded by the defendant – that the duty was complied with;
- c that the breach of duty did not lead to the injury, damage or loss in question;
- d that the claimant was partly to blame, that is, was guilty of contributory negligence, which resulted in injury damage or loss.



Revision Tip – Negligence

Questions about the requirements for a case of negligence to be found, or the defences available to a defendant presented with a claim, are a favourite with examiners. Essentially, the three proofs required for negligence are that:

- 1 The defendant owed the plaintiff a duty of care;
- 2 The duty of care was breached; and
- 3 The breach directly led to the injury, damage or loss.

The defences are primarily to argue against the three proofs:

- 1 No duty of care was owed;
- 2 The duty of care was owed but not breached; and
- 3 The duty of care was breached but the breach did not cause the injury, damage or loss.

Other defences against a civil claim of negligence may include:

Out of time – the time limit for taking a civil action is three years from **when the harm was realised** – an action which is not commenced within three years may be ruled out of time by the court. The court may, however, extend the three-year period on application from the plaintiff.

Volenti non fit injuria – literally ‘to the willing no harm can be done’ is a common law principal which disallows a claim by a person who has consented to a risk and is then injured. The principle is not, however, applicable in an employer/employee context.

Not reasonably foreseeable – this is really an extension of the ‘no duty owed’ principle above since, if one could not ‘reasonably foresee’ that harm would result from his act or omission, then a duty of care is not owed.

Contributory negligence – that is, that the plaintiff contributed to their injury or loss through their own negligence, is only a partial defence. It may, if accepted by the court, result in a reduction of compensation on a percentage basis.

1(a) Legal background

Duty of care

Contributory negligence

Negligence

Res ipsa loquitur

Volente non fit injuria

Criminal charges

Where charged with an offence under the HSWA or any of the relevant statutory provisions, a defendant may submit a defence on the basis that he had taken all ‘practicable’ or ‘reasonably practicable’ measures to comply with the requirement.

In other cases, regulations such as the Pressure Systems Safety Regulations 2000 provide the defence of having taken all reasonable precautions and exercised all due diligence to prevent the commission of an offence.

1(a) Legal background

All reasonable precautions and all due diligence

Burden of proof

Duties (hierarchy of)

1(b) Principal statutes

Health and Safety at Work etc. Act 1974

1(c) Principal regulations

Control of Substances Hazardous to Health Regulations 2002
The Classification, Labelling and Packaging Regulation 2015
Pressure Systems Safety Regulations 2000

Delegated legislation

A statute may delegate to the Minister or Secretary of State power to make specific and detailed legislation on requirements covered in the statute. Delegated or subordinate legislation is exercised through Statutory Instruments (SIs) and generally takes the form of Regulations, such as the Provision and Use of Work Equipment Regulations and the Control of Substances Hazardous to Health (COSHH) Regulations. Many Regulations are now introduced to meet the requirements of various European Directives.

As a Member State of the European Union, the United Kingdom is required to adopt the provisions of an EU directive into its own legislation. As at June 2017 the United Kingdom had given notice under Article 50 of the Lisbon Treaty of its intention to withdraw from the EU. It is not known, at present, exactly what impact withdrawal will have on the UK's regulatory framework.

1(b) Principal statutes

Health and Safety at Work etc. Act 1974

1(c) Principal regulations

Regulations made under the Health and Safety at Work etc. Act 1974

Disclosure of information

Section 28 of the HSWA requires that no person shall disclose any information obtained by him or her as a result of the exercise of any power conferred by Sections 14 or 20 (including, in particular, any information with respect to any trade secret obtained by him or her in any premises entered by him or her by virtue of any such power) except:

- a for the purpose of his functions;
- b for the purpose of any legal proceedings, investigation or inquiry, for the purpose of a report of any such proceedings or inquiry or of a special report made by virtue of Section 14; or
- c with the relevant consent.

Information must not normally be disclosed except with the consent of the person providing it. Disclosure may be made in certain cases:

- a for the purpose of any legal proceedings, investigation or inquiry held at the request of the HSE;
- b with the relevant consent;
- c for providing employees or their representatives with health and safety-related information.

1(b) Principal statutes

Health and Safety at Work etc. Act 1974

Due diligence

1(a) Legal background

All reasonable precautions and all due diligence defences

Duties (hierarchy of)

Duties on employers and others under health and safety law may be absolute or strict, or qualified by the terms 'so far as is practicable' or 'so far as is reasonably practicable'.

Absolute requirements

Where risk of death, injury or disease is inevitable if health and safety requirements are not complied with, a statutory duty may well be strict or absolute. An example of an absolute duty is to be found in Regulation 5(1) of the Provision and Use of Work Equipment Regulations which states:

Every employer **shall ensure** that work equipment is so constructed or adapted as to be suitable for the purpose for which it is to be used or provided.

Absolute duties are qualified by the term 'shall' or 'must' and there is little or no defence available when charged with such an offence, other than to show that the legal duty has been met.

'Practicable' requirements

A duty qualified by the term 'so far as is practicable' implies that if in the light of current knowledge or invention, or in the light of the current state of the art, it is feasible to comply with the requirement then, irrespective of cost or sacrifice involved, such a requirement must be complied with. [*Schwalb v. Fass H & son (1946) 175 LT 345*]

'Practicable' means more than physically possible and implies a higher duty of care than a duty qualified by 'so far as is reasonably practicable'.

An example is the duty under *Regulation 11 of The Provision and Use of Work Equipment Regulations 1998* to 'Prevent access to any dangerous part of machinery or any rotating

stock-bar' to the extent that it is practicable and in accordance with the hierarchy in Reg 11(2).

'Reasonably practicable' requirements

'Reasonably practicable' is a narrower term than 'physically possible' (i.e. 'practicable') and implies that a computation must be made in which the quantum of risk is placed in one scale and the sacrifice involved in the measures necessary for averting the risk is placed in the other. If it can be shown that there is a gross disproportion between these two factors, that is, the risk being insignificant in relation to the sacrifice, then a defendant discharges the onus upon himself. [*Edwards v. National Coal Board (1949) 1 AER 743*] Most duties under the HSWA are qualified by the term 'so far as is reasonably practicable'.

1(b) Principal statutes

Health and Safety at Work etc. Act 1974

1(c) Principal regulations

Construction (Design and Management) Regulations 2015
Control of Substances Hazardous to Health Regulations 2002
Management of Health and Safety at Work Regulations 1999
Manual Handling Operations Regulations 1992
Provision and Use of Work Equipment Regulations 1998

Duty holders

A term used in certain Regulations, such as the Electricity at Work Regulations and the Construction (Design and Management) Regulations, specifying classes of person on whom duties are imposed, such as employers, self-employed persons, clients and contractors.

1(c) Principal regulations

Construction (Design and Management) Regulations 2015
Electricity at Work Regulations 1989

Duty of care

The common duty of care between one person and another, such as an employer and employee, occupier of premises and visitor, or the manufacturer of a product and the user of that product, is a key principle of common law. Fundamentally, everyone owes a duty to everyone else to take reasonable care so as not to cause them foreseeable injury.

The effect of this requirement is that if an employer knows of a risk to the health and safety of his employees, or ought, in the light of knowledge current at that time, to have known of the existence of such a risk, he will be liable if an employee is injured or suffers death as a result of that risk, or if the employer failed to take reasonable care to avoid the risk arising.

1(a) Legal background

Common law and statute law
Contributory negligence
Negligence

Employers' duties (common law)

The duties of an employer under the common law were established in general terms in *Wilson's & Clyde Coal Co. Ltd. v. English (1938) AC 57 2 AER 68*. Under the common law all employers must provide and maintain:

- a a safe place of work with safe means of access to and egress from same;
- b safe appliances and equipment and plant for doing the work;

- c a safe system for doing the work; and
- d competent and safety-conscious personnel.



Revision Tip – Duties of employers

Note the relationship between the duties placed on an employer under Common Law and those in Section 2(2) of HSAWA 1974. They are summarised in the table below.

Common law employer duties	Duties under s2(2) of HSAWA 1974
A safe place of work with safe access and egress.	d) SFARP as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks.
Safe appliances and equipment and plant for doing the work.	a) The provision and maintenance of plant and systems of work that are SFARP safe and without risk to health.
A safe system for doing the work.	See a) above
Competent and safety-conscious personnel.	<ul style="list-style-type: none"> c) the provision of such information, instruction, training and supervision as is necessary to ensure SFARP the health and safety at work of his employees. b) arrangements for ensuring SFARP safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances. e) the provision and maintenance of a working environment for his employees that is SFARP safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

1(a) Legal background

Case law

Common law and statute law

Contributory negligence

Duty of care

Negligence

Employers' liability

Employers are **vicariously** liable for the actions of their employees. This liability must be insured against under the Employers' Liability (Compulsory Insurance) Act 1969. Employers cannot contract out of this liability as such practices are prohibited by the Law Reform (Personal Injuries) Act 1948 and the Unfair Contract Terms Act 1977.

1(a) Legal background

Vicarious liability

1(b) Principal statutes

Health and Safety at Work etc. Act 1974

Unfair Contract Terms Act 1977

Enforcement arrangements – powers of inspectors

Enforcement authorities, such as the HSE, appoint inspectors who have specific powers under the HSWA. These powers are specified in section 20 of the HSWA thus:

- a to enter premises at any reasonable time and, where obstruction is anticipated, to enlist the support of a police officer;
- b on entering premises:
 - i to take with him any person duly authorised by his enforcing authority; and

- ii any equipment or materials required for any purpose for which the power of entry is being exercised.
- c to make such examination and investigation as may be necessary;
- d to direct that premises or any part of such premises, or anything therein, shall remain undisturbed for so long as is reasonably necessary for the purposes of examination or investigation;
- e to take such measurements and photographs and make such recordings as he considers necessary for the purposes of any examination or investigation;
- f to take samples of any articles or substances found in any premises, and of the atmosphere in or in the vicinity of such premises;
- g where it appears to him that any article or substance has caused or is likely to cause danger to health or safety, to cause it to be dismantled or subjected to any process or test;
- h to take possession of any article or substance and to detain same for so long as is necessary:
 - i to examine same;
 - ii to ensure it is not tampered with before his examination is completed; and
 - iii to ensure it is available for use as evidence in any proceedings for an offence under the relevant statutory provisions.
- i to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation to answer such questions as the inspector thinks fit and to sign a declaration of the truth of his answers;
- j to require the production of, inspect and take copies of, any entry in:
 - i any books or documents which by virtue of the relevant statutory provisions are required to be kept; and
 - ii any other books or documents which it is necessary for him to see for the purposes of any examination or investigation.