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# Association For Public Service Excellence

Local Authorities, housing and the legal perspective

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# Introduction

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- Overview of legal framework
  - Regulatory Reform (Fire Safety) Order 2005
  - Health and Safety at Work etc Act 1974
  - Specific Regulations
- Corporate Manslaughter
- Gross Negligence Manslaughter

# RR(FS)O 2005

- Fire safety in occupied premises principally governed by the Regulatory Reform (Fire safety) Order 2005 (**RRO**)
- RRO does not apply to individual domestic residences
- RRO places duties on the Responsible Person to conduct risk assessments and implement appropriate fire safety measures to minimise risk;

# Responsible person

Article 3 of the RRO defines the term “responsible person” into three categories:

- a) Employer
- b) Person in control of the premises
- c) Owner

# Responsible person

- The responsible person must ensure duties imposed by articles 8-22 are complied with (Article 5)
- Article 5(3) RRO extends above duties to every person...who has, to any extent, control of the premises
- A person's obligations under a tenancy agreement (or contract) in respect of maintenance, repair or safety will be treated as "control"

# RRO duties

Duties include:

- General fire precautions (Art 8)
- Risk assessment (Art 9)
- Fire safety arrangements (Art 11)
- Emergency routes and exits (Art 14)
- Maintenance (Art 17)
- Co-operation and co-ordination (Art 22)

# RRO offences

## Article 32

- It is an offence for a responsible person (or other duty-holder) to fail to comply with a requirement or prohibition imposed by articles 8-22, where that failure puts one or more persons at risk of death or serious injury in the case of fire

## Article 32(8)

- consent, connivance and neglect provisions impose liability on directors/managers for a corporate offence

# Health and Safety



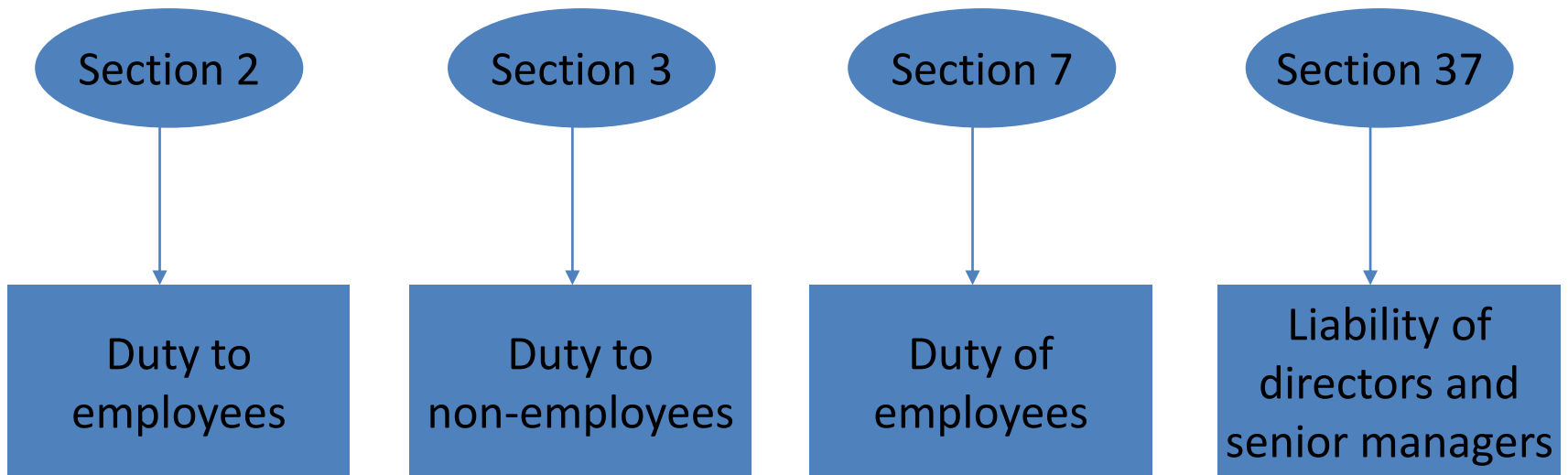


# Health and Safety

Numerous relevant regulations:

- Construction (Design and Management) Regulations 2015
- Control of Asbestos Regulations 2012
- Management of Health and Safety at Work Regulations 1999
- Gas/electricity/Legionella/LOLER

# Health and Safety at Work Act 1974



# HSWA 1974

Section 2 HSWA imposes duty on all employers:

*“to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees”*

# HSWA 1974

Section 3 imposes a duty on an employer

*“to conduct his undertaking in such a way to ensure, so far as is reasonably practicable, that persons not in his employment .... are not exposed to risks to their health and safety”*

# Individual responsibilities

## Section 7

“It shall be the duty of every employee whilst at work –

(a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and

(b) as regards any duty or requirement imposed on his employer or any other person by or under the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.”

# Directors'/officers' responsibilities

## Section 37

“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.”

# The Guidelines

<b>Large</b>			
Turnover or equivalent: £50 million and over			
	Starting point	Category range	
<b>Very high culpability</b>			
Harm category 1	£4,000,000	£2,600,000 – £10,000,000	
Harm category 2	£2,000,000	£1,000,000 – £5,250,000	
Harm category 3	£1,000,000	£500,000 – £2,700,000	
Harm category 4	£500,000	£240,000 – £1,300,000	
<b>High culpability</b>			
Harm category 1	£2,400,000	£1,500,000 – £6,000,000	
Harm category 2	£1,100,000	£550,000 – £2,900,000	
Harm category 3	£540,000	£250,000 – £1,450,000	
Harm category 4	£240,000	£120,000 – £700,000	
<b>Medium culpability</b>			
Harm category 1	£1,300,000	£800,000 – £3,250,000	
Harm category 2	£600,000	£300,000 – £1,500,000	
Harm category 3	£300,000	£130,000 – £750,000	
Harm category 4	£130,000	£50,000 – £350,000	
<b>Low culpability</b>			
Harm category 1	£300,000	£180,000 – £700,000	
Harm category 2	£100,000	£35,000 – £250,000	
Harm category 3	£35,000	£10,000 – £140,000	
Harm category 4	£10,000	£3,000 – £60,000	



# Corporate Manslaughter and Corporate Homicide Act 2007



# Corporate manslaughter

- An organisation to which this section applies is guilty of an offence if the way in which its activities are managed or organised:
  - a) Causes a person's death; and
  - b) Amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.
  
- An organisation is guilty of an offence only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach.

# What do you need to prove?

- The defendant is a qualifying organisation;
- The organisation **causes** a person's death;
- There was a **relevant duty of care** owed by the organisation to the deceased;
- There was a **gross breach** of that duty;
- A substantial element of the breach was in the way those activities were managed or organised by **senior management**; and
- The defendant must not fall within one of the **exemptions** from prosecution contained in the Act.

# Relevant duty of care

## Section 2: Meaning of “relevant duty of care”

- (1) *A “relevant duty of care”, in relation to an organisation, means any of the following duties owed by it under the law of negligence—*
- (a) *a duty owed to its employees or to other persons working for the organisation or performing services for it;*
  - (b) *a duty owed as occupier of premises;*
  - (c) *a duty owed in connection with—*
    - (i) *the supply by the organisation of goods or services (whether for consideration or not),*
    - (ii) *the carrying on by the organisation of any construction or maintenance operations,*
    - (iii) *the carrying on by the organisation of any other activity on a commercial basis, or*
    - (iv) *the use or keeping by the organisation of any plant, vehicle or other thing;*

# Liability of an organisation

- Conviction on indictment – unlimited fine
- Fines calculated using the *Sentencing Council Guidelines for Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences*
- (see <https://www.sentencingcouncil.org.uk/wp-content/uploads/HS-offences-definitive-guideline-FINAL-web.pdf>)
- Negative PR
- Criminal conviction

**Large organisation**

Turnover more than £50 million

Offence category	Starting point	Category range
A	£7,500,000	£4,800,000 – £20,000,000
B	£5,000,000	£3,000,000 – £12,500,000

**Medium organisation**

Turnover £10 million to £50 million

Offence category	Starting point	Category range
A	£3,000,000	£1,800,000 – £7,500,000
B	£2,000,000	£1,200,000 – £5,000,000

**Small organisation**

Turnover £2 million to £10 million

Offence category	Starting point	Category range
A	£800,000	£540,000 – £2,800,000
B	£540,000	£350,000 – £2,000,000

# Individual liability

- The offence of corporate manslaughter is only applicable to organisations and cannot be committed by individuals.
- Individuals can only be prosecuted for an offence of **gross negligence manslaughter**
- This arises in circumstances where a death is the result of a grossly negligent (though otherwise lawful) act or omission on the part of an individual defendant.
- *R v Adomako* (1994)

# Gross negligence manslaughter

- The House of Lords in *Adomako* outlined a four stage test. For the offence to be committed there must be:
  - The existence of a duty of care to the deceased;
  - A breach of that duty which;
  - Causes (or significantly contributes) to the death of the victim; and
  - The breach should be characterised as gross negligence and therefore a crime.
- Maximum penalty: life imprisonment

# Are you compliant?

- Only you can answer that!
- The Courts have given a clear indication of how regulatory compliance will be enforced
- Culpability remains the most decisive factor in sentencing – the importance of achieving high standards of compliance has never been greater
- Consider what a fine at the level set out in the Sentencing Guidelines could mean to you
- **Take action:**
  - Make your organisation aware of the increased ‘boardroom risk’ – get trained up!
  - Provide internal and external assurance of EHS systems
  - Consider legal compliance audit, gap analysis, stress-testing of systems and behavioural safety programmes







Questions?



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