

# **Regulatory Perspectives and Safety Trends in the United Kingdom and International Arena**



**NEW DIRECTIONS IN SAFETY & HEALTH FROM A GLOBAL / ENTERPRISE PERSPECTIVE**

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# EMPLOYER DUTY OF CARE AND LEGAL COMPLIANCE

- The legal concept of Duty of Care presumes that individuals and organizations have legal obligations to act toward others and the public in a prudent and cautious manner to avoid the risk of reasonably foreseeable injury to others.
- Duty of Care may be imposed by statute (legislation) and common law.
- Some countries have more stringent employer Duty of Care statutes such as the 'Manslaughter Act' in the U.K. and the French Labor Code in France.
- Case law continues to refine and define Duty of Care in different countries.
- Employers should standardize their Duty of Care responsibilities at the highest and most stringent level, to ensure legal compliance to the level of moral and corporate social responsibility.

# MAJOR OCCUPATIONAL HEALTH AND SAFETY MANAGEMENT SYSTEMS

- There are three major occupational health & safety management systems that are used globally:
  - **HSG 65 – Developed by the U.K. Health & Safety Executive (HSE)**
  - **OHSAS 18001 – Developed by the British Standards Institute in conjunction with the ISO 9000 series (Quality Management) and ISO 14000 (Environmental)**
  - **ILO-OSH 2001 – Developed by the International Labour Organization (ILO) (Not certifiable)**
- Whichever system is adopted, there must be continual improvement in health and safety performance if the application of the occupational health and safety management system is to succeed in the long term.
- A structured and well-organized occupational health and safety management system is essential for the maintenance of high health and safety standards within all organizations and countries.

# UNITED KINGDOM (U.K.) – LEGAL REQUIREMENTS

## □ Health and Safety at Work etc Act of 1974 (“HSW Act”)

- The Health and Safety at Work etc Act 1974 , is the primary piece of legislation covering occupational health and safety in the United Kingdom.
- The Health and Safety Executive (HSE) is responsible for enforcing the Act and a number of other Acts and Statutory Instruments relevant to the working environment.
- Employers in the U.K. can be held liable for injury caused to employees working for the employer outside the U.K.
- Self-regulation is the authorities’ primary mechanism for managing workplace health and safety, with a strong emphasis on risk assessment.
- The HSE supports the Government’s strategic aims and current targets for health and safety at work.

# UNITED KINGDOM (U.K.) – LEGAL REQUIREMENTS

## □ Corporate Manslaughter and Corporate Homicide Act 2007

- The “Manslaughter Act” is a landmark in law. For the first time, companies and organizations can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care.
- The Act, which came into force on 6 April 2008, clarifies the criminal liabilities of companies including large organizations where serious failures in the management of health and safety result in a fatality.
- U.K. companies may be held criminally liable for negligence that results in the death of an employee outside of the U.K.
- The offence of corporate manslaughter will involve a fine seldom less than £500,000 and may be measured in millions of pounds.
- Courts can order the company to publish the findings of the court, and acknowledge that they were negligent and what actions will be taken to correct the situation.

# UNITED KINGDOM (U.K.) – LEGAL REQUIREMENTS

## □ Construction (Design and Management) Regulations 2007

- Construction remains a disproportionately dangerous industry
  - 57 fatalities (2008/2009)
- CDM 1994 Regulations were complex and bureaucratic
- CDM 2007 Regulations came into force on 6 April 2007 to:
  - ✓ Improve health and safety in the industry
  - ✓ Have the right people for the right job at the right time to manage risks
  - ✓ Focus on effective planning and managing risk
- The Approved Code of Practice (ACoP) (CDM 2007 Regulations)
  - ✓ Legal duties placed on clients, CDM co-ordinators, designers, principal contractors, contractors, self-employed and workers
  - ✓ Recording information in construction health and safety plans
  - ✓ Improve co-operation and co-ordination between the project and the workforce
  - ✓ Assess the competence of organizations and individuals involved in construction work
  - ✓ Notifications to the Health & Safety Executive (HSE)

# UNITED KINGDOM (U.K.) – LEGAL REQUIREMENTS

## □ The Health and Safety Offences Act 2008

- Increasing penalties and providing the courts with greater sentencing powers has been Government and HSE policy since June 2000.
- The 2008 Act raises the maximum summary fine from £5,000 to £20,000 and introduces a term of 12 months imprisonment on summary trial.
- The 2008 Act will make imprisonment more widely available for a number of breaches of the HSWA related to individual liability.
- A term of 2 years imprisonment and/or an unlimited fine will be available on indictment.
- When viewed in conjunction with the Corporate Manslaughter legislation, this new Act sends a clear message to employers to take their health and safety responsibilities seriously.



# UNITED KINGDOM (U.K.) – NUCLEAR INDUSTRY

- Prime Minister Gordon Brown has recognized the importance of nuclear power in providing clean and secure energy for the UK.
- The government has proposed the restructuring of HSE's Nuclear Directorate (ND) to improve further its organizational framework for the sustained delivery of robust, effective and efficient regulation and in so doing meet the anticipated challenges facing the UK nuclear sector in the future.
- The proposals make for the creation of a new independent Nuclear Statutory Corporation (NSC) under the auspices of HSE.
- The Nuclear Directorate is responsible for the U.K. safety regulation of nuclear power stations, nuclear chemical plants, decommissioning, defence nuclear facilities, nuclear safety research and strategy and for civil nuclear operational security and safeguard matters.

# EUROPEAN UNION (EU) LEGISLATION



- Two EU legislative actions related to employer Duty of Care for workers are directives related to the safety and health of workers and the directives / treaties related to jurisdiction and applicable law:
  - The Safety and Health of Workers and Work Directive (Council Directive 89/391/EEC, 1989) imposes a general Duty of Care on employers and requires that specific measures be taken. Member states have transposed this directive within their national legislations, resulting in a diversity of applications by the different EU countries.
  - Improving quality and productivity at work: Community strategy 2007-2012 on health and safety at work is a strategy to increase worker productivity in the EU by reducing work-related deaths, injuries and diseases. This is done through the implementation and strengthening of EU legislation, development of national strategies, and promotion of health and safety at the international level.

# 'EUROPEAN HSE APPROACH'

- **US approach vs. EU approach**
  - Code based vs. risk based
  - ALARP Principle
  - Permitting process
  - Demonstrating compliance through risk assessments, safety cases, area safety reviews, fire protection studies, etc.
- To comply with EU regulations and directives it is required that an operator demonstrates that all risks associated with the facility are identified and reduced to an As Low As Reasonably Practicable level.

# CODE BASED

- **Application of safety systems in the United States is dominated by industry codes and standards:**
  - National Fire Protection Association (NFPA)
  - American Petroleum Institute (API)
  - Factory Mutual (FM)
  - Underwriters Laboratories (UL)
- **These standards give detailed instructions on the selection of protection systems.**

# CODE BASED

## PRO'S:

- Clear overview of requirements.
- Consistency throughout the industry.
- Compliance can be easily demonstrated.
- Reduces reliability in case of an incident.

## CONS:

- No tailor made solutions.
- Expensive, codes tend to stay on the safe side.
- Specific risks could be overlooked since codes are of general nature.

# RISK BASED

- Application of safety systems in the EU is dominated by risk assessment.
- All risks associated to the design, construction and operation of a plant are identified in a systematic way.
- Based on these risks measures are identified to reduce both the likelihood and the consequences of hazardous events.

		Risk Matrix				
L I K E L I H O O D	5	II 5	II 10	III 15	IV 20	IV 25
	4	I 4	II 8	III 12	III 16	IV 20
	3	I 3	II 6	II 9	III 12	III 15
	2	I 2	I 4	II 6	II 8	II 10
	1	I 1	I 2	I 3	I 4	II 5
		1	2	3	4	5
		CONSEQUENCE				

Risk:  
 (Likelihood X  
 Consequence)

# RISK BASED

## PRO's:

- Tailor made solutions
- Cost effective application of safety systems.

## CONS:

- Requires experienced HSE personnel and cooperation of other disciplines.
- Could lead to inconsistency because of interpretation differences.
- Significant effort to demonstrate compliance.

# SUMMARY

- Employers should be aware of their legal and corporate social responsibilities related to their Duty of Care to employees who cross borders as international business travellers, short term assignees, or expatriates.
- Duty of Care legislation and case law continue to evolve in order to meet international workplace challenges.
- Internationally, legal issues become more complex as a result of the complexity of establishing jurisdiction and the appropriate law.
- The responsibility for developing an integrated risk management strategy that is embedded in the corporate culture cannot be delegated or outsourced.