

H&S Legal Update 2022:
*what the woodworking sector need to
know in 2022*

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21 June 2022

IN OTHER NEWS.....

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- **Key safety challenges for manufacturers / installers / what does the law require of them as dutyholders?**
 - *Recent changes in H&S*
 - *H&S Statistics*
 - *Occupational Health issues*
 - *Legal duties (for businesses and individuals)*

 - **Legislative Reform: what is the likely impact on the manufacturing industry?**
 - *The Fire Safety Act 2021*
 - *The Building Safety Act 2022*
 - *PPE Regulations 2022*
 - *ISO 45003*
 - *The Covid-19 Inquiry*

 - **What's the worst that can happen? Update on the H&S Sentencing Guidelines**

 - **Horizon Watching – what on the 'horizon' for the manufacturing industry?**

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- Change in the regulatory climate – focus on construction and other high risk sectors
 - Increase in outsourcing
 - Advances in technology
 - Targeted enforcement action
 - Fee for intervention
 - Higher fines for getting it wrong
 - Covid-19

So why be proactive about H&S?

HSE STATISTICS CONT...

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- **25%** chance of inspection following a RIDDOR report
- **49%** chance of enforcement following an inspection
- Out of **517** prosecutions, there were 493 convictions (2018/19)
- Out of **342** prosecutions, there were **325** convictions (2019/20)
 - A **95%** strike rate for the HSE (2019/20)... *although a fall in number of prosecutions*
- Programme of approx. 20,000 proactive inspections (2018/19)
- 11,522 notices issued (2017-2018)
- £72.6million in fines (2017-2018)

Message = reduce your number of RIDDORs!



- Moral reasons: avoid injury, lost time, look after employees and non employees
 - Occupational health / mental wellbeing considerations
 - Focus on physical health / physical injury – what about occupational health / risk?
 - H&S Sentencing Guidelines – all about ‘risk’

- Civil Claims:
 - Stress / Negligence
 - Occupational Health Monitoring / Surveillance



Section 2

Duty to employees

Section 3

Duty to non-employees

Section 4

Duty of controller of premises

Duty to “ensure” the health safety and welfare of employees

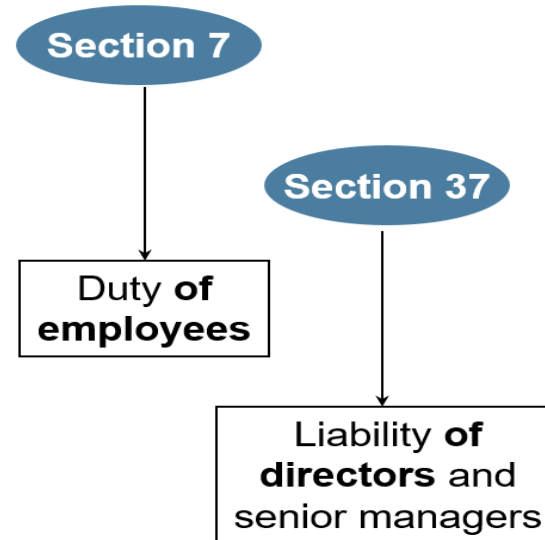
Duty to “ensure” the health and safety of non-employees

Duty of person who has, to any extent, *control* of premises to ensure premises, access and egress from premises and any plant or substance is safe and without risks to health

“So far as is reasonably practicable”

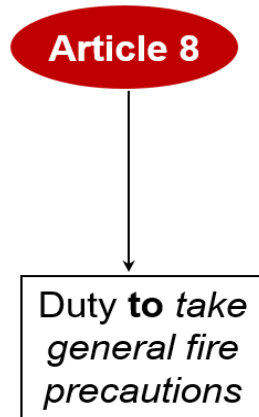
Duty to take reasonable care of self and others affected by work (**s.7**)

Where an offence... has been committed with the **consent**, **connivance**, or...attributable to any **neglect** on the part of any director, manager... or a person who purports to act in that capacity, he/she as well as the company shall be guilty of that offence (**s.37**)



- Responsible Person? **Definition (Art 3)**
- Who has personal liability under RRO 2005?
 - Usually the Responsible Person, but.....
 - Has been interpreted broadly
- Problem - wider range of persons being identified as responsible (Art 5(3) & (4)):
 - Every person who has control of the premises **TO ANY EXTENT** so far as the requirements relate to matters **WITHIN THEIR CONTROL**
 - By virtue of a contract or tenancy who has obligations re: maintenance & repair and/or safety





Duty to “take such general fire precautions as will ensure, **so far as is reasonably practicable**, the safety of any of his employees”

Duty to, “in relation to relevant persons who are not his employees, take such general fire precautions as may **reasonably** be required in the circumstances of the case to ensure that the premises are safe”

Compare to Sections 2 & 3 HSWA

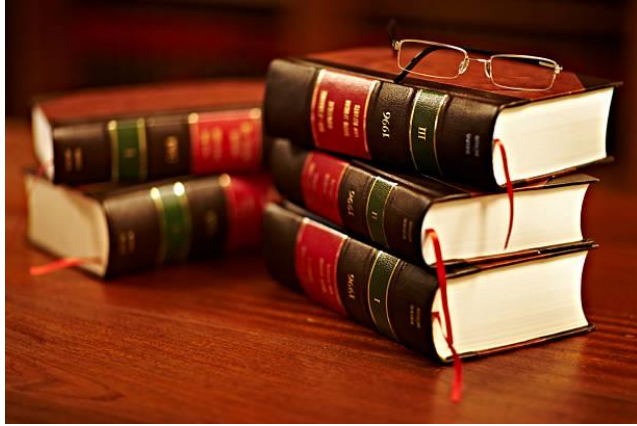
SECTION 6 HSWA – MANUFACTURE OR SUPPLY

Duty of any person who designs, manufactures, imports or supplies any article for use at work:

- (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being set, used, cleaned or maintained by a person at work;

- (a) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him;

LEGISLATIVE REFORM



What is the impact likely to be on the manufacturing industry?



- Now in force – since 12 May 2022
- Clarifies and extends the scope of the Regulatory Reform (Fire Safety) Order 2005 (RRO) to the following parts of a multi-occupied residential buildings
 - *the building's structure, external walls and any common parts.*
 - *The external walls include doors or windows in those walls, and anything attached to the exterior of those walls, e.g. balconies and cladding.*
 - *all doors between the domestic premises and common parts*
- Responsible Person – who is in control?
- Requires update of the risk assessment



New set of regulations proposed for higher-risk, multiple occupancy residential buildings of 18 metres or more in height, or 7 or more storeys (whichever figure is reached first) – but now wider in scope



Higher Risk Buildings

The Three Key Stages of a Development (Planning, Construction and Occupation)

“Golden Thread” Rule

Right to Redress

Regulation of Construction Products



WHAT ELSE DOES BSA 2022 MEAN FOR MANUFACTURERS?

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- Significant step to resolve the building safety crisis - makes some retrospective changes to the law
- Focus on manufacturers and suppliers and the potential consequences in the claims arena for existing residential buildings:
- **Liabilities and Limitation periods:** Section 149: Liability Relating to Construction Products:
 - *Retrospective limitation period of **30 years** (for cladding products only) and a prospective limitation of **15 years**, dependent on whether the ‘right of action’ accrued before or after that date*
 - *Construction Products Regulations 2022*
- **Contribution claims?** Defendant contractors and consultants embroiled in ‘cladding disputes’ to pursue cladding manufacturers and suppliers in contribution
 - *the manufacturer/supplier must be liable for the same damage suffered by the Claimant (for which the Defendant is also liable)*
 - *Claims to be brought under the Act rather than in contract?*

- New PPE duties from 6 April for casual/ service contract workers
- [Personal Protective Equipment at Work \(Amendment\) Regulations 2022](#)
- Extend but not change employer and employee duties regarding PPE to include limb (b) workers
- Definition of “Worker”:

“an individual who has entered into or works under

(a) a contract of employment; or

b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any references to a worker’s contract shall be construed accordingly.”

ISO 45003 / MENTAL HEALTH CONSIDERATIONS

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- First global standard giving practical guidance and a framework for how organisations can manage psychosocial risks and embed psychological safety to better support employees
- Focuses on the “mental health” and “wellbeing” aspects of health and safety
- Published as a full International Standard in June 2021.
- Not designed to replace existing initiatives - unite existing measures to better support employees:
 - Prevent work-related injury
 - Promote wellbeing at work within an occupational health and safety management system
- No ISO 45003 certification, but compliance will assist with **ISO 45001 compliance**
- 2022 Mental Health & Wellbeing Plan – Government’s call for evidence.....

Independent public enquiry to examine the UK's preparedness and response to the pandemic and to learn lessons for the future

- Core Participants / Chair
- Legal Representatives
- Phases of the inquiry
- Report
- Other considerations?

- Sentencing Council consultation on draft guidelines for health and safety offences, corporate manslaughter, food safety and hygiene offences
- Definitive guidelines published in November 2015, with implementation on 1 Feb 2016
- Where are we 6 years later?



STEP I - CULPABILITY

Level of culpability extremely important

Very High
Deliberate breach or
flagrant disregard of the
law

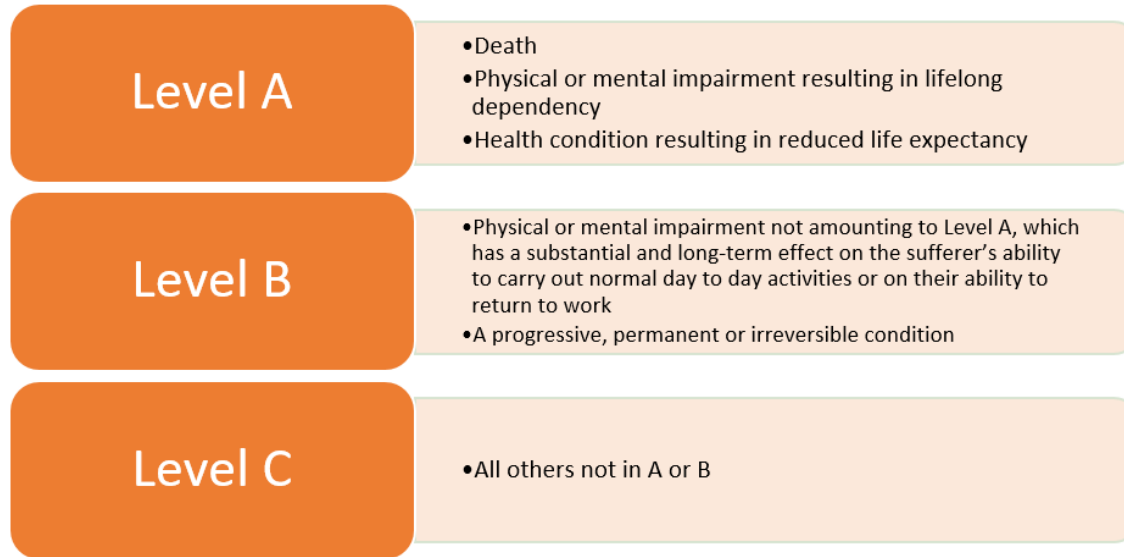
High
Fell far short of the
appropriate standard

Medium
Fell short of standard in
a manner that falls
between descriptions in
high and low culpability

Low
Did not fall far short of
appropriate standard

STEP 2 - CATEGORIES OF HARM

- Seriousness of harm risked + likelihood of harm = Harm Categories 1-4 (NB: Risk of harm – not actual harm)
- Seriousness of harm risked classified as:



CATEGORIES OF HARM

		Seriousness of harm risked		
		Level A <ul style="list-style-type: none">• Death• Physical or mental impairment resulting in lifelong dependency on third party care for basic needs• Health condition resulting in significantly reduced life expectancy	Level B <ul style="list-style-type: none">• Physical or mental impairment, not amounting to Level A, which has a substantial and long-term effect on the sufferer's ability to carry out normal day-to-day activities or on their ability to return to work• A progressive, permanent or irreversible condition	Level C <ul style="list-style-type: none">• All other cases not falling within Level A or Level B
Likelihood of harm	High	Harm category 1	Harm category 2	Harm category 3
	Medium	Harm category 2	Harm category 3	Harm category 4
	Remote	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)

Large Turnover or equivalent: £50 million and over		
	Starting point	Category range
Very high culpability		
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
High culpability		
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
Medium culpability		
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
Low culpability		
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

Please refer to the guideline(s)
on the Sentencing Council website
www.sentencingcouncil.org.uk

Small			
Turnover or equivalent: between £2 million and £10 million			
	Starting point	Category range	
Very high culpability			
Harm category 1	£450,000	£300,000 –	£1,600,000
Harm category 2	£200,000	£100,000 –	£800,000
Harm category 3	£100,000	£50,000 –	£400,000
Harm category 4	£50,000	£20,000 –	£190,000
High culpability			
Harm category 1	£250,000	£170,000 –	£1,000,000
Harm category 2	£100,000	£50,000 –	£450,000
Harm category 3	£54,000	£25,000 –	£210,000
Harm category 4	£24,000	£12,000 –	£100,000
Medium culpability			
Harm category 1	£160,000	£100,000 –	£600,000
Harm category 2	£54,000	£25,000 –	£230,000
Harm category 3	£24,000	£12,000 –	£100,000
Harm category 4	£12,000	£4,000 –	£50,000
Low culpability			
Harm category 1	£45,000	£25,000 –	£130,000
Harm category 2	£9,000	£3,000 –	£40,000
Harm category 3	£3,000	£700 –	£14,000
Harm category 4	£700	£100 –	£5,000

- Company that manufactures adhesive tape - worker suffered fatal crush injuries while operating a rewind slitting machine in its factory in April 2018
- Worker drawn into machine designed to cut a large roll of adhesive material into narrower rolls
- HSE found the worker was required to work close to an unguarded in-running nip whilst the machine was in operation, presenting a hazard due to rotating parts
- Risk Assessment : failed to identify hazards and machine operators provided with inadequate information and training - severe risk of injury
- Scapa UK Limited received previous advice in 2012 from both HSE and an external consultant re: guarding of machinery on site, but they failed to take appropriate action.
- Found **Guilty** of breaching Section 2 of the Health and Safety at Work etc. Act 1974
- **Fine? £120,000** and ordered to pay full costs

- Metal fabrication company sentenced for H&S breaches - workers diagnosed with hand arm vibration syndrome (HAVS) or carpal tunnel syndrome
- HSE visited workshop in March 2018 following employee concerns, which resulted in company being issued with Improvement Notices
- HSE found systemic failings to recognise the risk of HAVS or to take appropriate action to control exposure
 - accounts from employees of pain and tingling in their fingers / no limits on their use of vibrating tools
- MTL Advanced Limited: pleaded **Guilty** to breaching Section 2 (1) of the Health & Safety at Work etc Act 1974
- **Fine? £90,000** and ordered to pay **£14,061** in costs

- More Covid H&S related prosecutions – future of hybrid working?
- **Accountability** – with Building Safety / HSWA / Fire Safety and other related Regs (CDM, Asbestos etc)
- High fines still an issue
- Focus on HSE and other regulator initiatives – ‘enforcement plans’
- Individuals vs Organisations
- Importance of proactive approach – training, reviews, assistance from “competent” consultants
- Other issues: ESG, Modern Slavery, Procurement Bill

THANK YOU!

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