

## HSE and the prosecutions process in Scotland

In England and Wales HSE can both investigate offences under health and safety legislation and institute criminal proceedings where the public interest and evidential sufficiency tests are met in accordance with the HSE Enforcement Policy Statement.

In Scotland HSE investigates potential offences but cannot institute proceedings. Where, in the view of HSE officers the evidential and public interest tests are met, HSE sends a report to the Crown Office and Procurator Fiscal Service (COPFS) with the evidence, analysis of that evidence and HSE's recommendations as to the most appropriate charges to bring.

COPFS will consider the HSE report and then make its own decision as to what action to take. COPFS is not bound to follow HSE's recommendations. Once a report has been submitted COPFS have entire responsibility for managing the prosecution process.

In any HSE investigation it is highly likely that a range of potential offences will be identified so that a final decision must be taken by the prosecutor as to which charges to bring. In England and Wales HSE is the prosecutor and decides, in Scotland it is COPFS. It is therefore more likely that there will be a disparity between charges recommended and charges taken in Scotland than in England and Wales.

Procurators Fiscal, while preparing cases, will normally engage in dialogue with the legal representatives of the suspect where there is scope for agreeing suitable charges that meet public expectation of justice but avoid a trial. Although HSE will normally be consulted during this process the decision on charging is entirely for the procurator fiscal.

Arrangements are in place for consultation and dialogue between the dedicated Health and Safety Division of COPFS and HSE both during the investigation of potential offences and after submission of the HSE report.