

## **ANNEX 1 to Paper HSC/05/90**

### **CURRENT LEGISLATION AND CHRONOLOGY OF DIRECTORS DUTIES**

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## **1A. LEGISLATION**

### **(i) Background**

It has long been established that directors have a key role in securing good health and safety management and performance. Commitment by directors to health and safety is vital to ensuring prosperity and the well being of individuals and organisations. They also act as exemplars to employees and others.

Currently The Health and Safety at Work etc. Act 1974 (HASAW Act 1974), imposes its main obligations upon employers. The duties imposed are direct duties, requiring compliance. Only Section 37(1) of the Act explicitly mentions directors, accruing criminal liability when a corporate body is found to have committed an offence with their 'consent or connivance' or to have stemmed from their 'neglect.' The duty is an indirect duty, existing only in the context of prosecution.

Duties may also be placed on directors under Section 7, imposing duties as if they were employees.

HSC guidance note INDG343 "Directors responsibilities for health and safety" aims to ensure board members of all types of organisations properly manage health and safety. Under company legislation two directors form a board. Several types of directors exist in law – executive, non-executive and shadow director. Directors responsibilities, skills and competence vary throughout sectors, organisations and boards. Governance outside the jurisdiction of Great Britain may also influence private sector boards. Collectively a range of levers can act as a driver for director compliance.

## **(ii) Legislation**

### **Health and Safety at Work etc. Act 1974, Section 37(1) – Offence of Directors**

“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.”

#### **N.B.**

Difficult to link to this section an ACOP that would describe the health and safety duties required of directors.

### **Health and Safety at Work etc. Act 1974, Section 7 – Offence of employees.**

- “It shall be the duty of every employee while 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 any of 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.”

### **The Management of Health and Safety at Work Regulations 1999, Regulation 5(1)**

Health and Safety arrangements – Offence of an employer.

“(1) Every employer shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.

(2) Where the employer employs five or more employees, he shall record the arrangements referred to in paragraph (1).”

#### **N.B.**

This could be used to attach guidance, for employers having boards, on appropriate arrangements to fulfill this duty.

## **1B. CHRONOLOGY**

In June 2000, the then Department for the Environment, Transport and the Regions (DETR) and the Health and Safety Commission (HSC) jointly produced the Revitalising health and safety strategy statement. It was suggested that the lack of explicit directors duties should be addressed. Following the publication of INDG343 in June 2001 it was later decided in October 2003 to continue with a voluntary approach. HSC wrote to the Minister in January 2004 advising the continuation of the voluntary approach.

The Work and Pensions Select committee recommendation and subsequent Government response in 2004, committed HSC to advise Ministers by the end of 2005 of the effectiveness and progress of current measures in place, legislative and voluntary.

Consequently following the government response, HSE evaluated the effectiveness of current directors responsibilities in law and possible improvements via commissioned and non-commissioned research. Two stakeholder gatherings were held in September and October 2005 to put forward the evidence and gather stakeholder opinion.

A brief summary of events is below.

### **Directors Duties - A Brief Chronology**

|   |  |
|---|--|
| Revitalising Health and Safety- Action point 11 - Develop ACoP. Introduce legislation when parliamentary time allows. | June 2000  |
| Consultation Exercise   | March 2001   |
| HSC Review – produce Guidance   | May 2001   |
| HSC published guidance “Directors’ responsibilities for health and safety” – INDG 343.                                | July 2001  |
| Greenstreet Berman Research – assessing whether guidance and the voluntary approach works.                            | July 2001 (baseline survey) and July 2003 (follow up survey) |
| Ross Cranston Bill – introducing statutory duties via Companies Act 1985 – failed.                                    | Summer 2003  |
| HSC Review - continue with current voluntary approach.  | October 2003   |
| HSC advises Minister to continue voluntary approach   | January 2004   |

|   |                            |
|---|----------------------------|
| Select Committee Report – recommended Government reconsider decision not to legislate and bring forward proposals for pre-legislative scrutiny.   | July 2004                  |
| Government Response – continue with legislative and non-legislative mix, but will evaluate it and report back December 2005.  | October 2004               |
| Hepburn Bill – introducing statutory duties introducing statutory duties via Companies Act 1985 – failed.   | March 2005                 |
| Evidence base ready for analysis:   | September 2005             |
| <ul style="list-style-type: none"> <li>• Making companies safe: what works - Centre for Corporate Accountability (CCA)</li> <li>• A response to the CCA report "Making companies safe: what works?" - Greenstreet Berman</li> <li>• Director leadership of health and safety - review of literature - Health and Safety Laboratory (HSL)</li> <li>• Directors' responsibilities for Health and Safety - a peer review of three key pieces of published research - Middlesex University Business School</li> <li>• Directors' responsibilities for Health and Safety - a peer review of three key pieces of published research (interim report) - University of Salford</li> <li>• Use and effectiveness of the Company Directors' Disqualification Act 1986 as a legal sanction against directors convicted of health and safety offences (interim report) - University of Warwick</li> <li>• Health and safety responsibilities of company directors and management board members: 2001, 2003 and 2005 surveys 9 (interim report) - Greenstreet Berman</li> <li>• International comparison of health and safety responsibilities of company directors - Centre for Corporate Accountability</li> </ul> |                            |
| HSE publicly shared the evidence at two conferences, and made the reports available to the public through the HSE website.  | September and October 2005 |
| Commission consider evidence to evaluate current legislative and non-legislative measures.  | December 2005              |
| HSC advise Minister.  | December 2005              |