



# Surveying Safely

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## Overview



### Aims and objectives of the session:

1. Understand your legal duties as a surveyor to ensure safety
2. Discuss the implications of getting it wrong
3. Identify steps you can take to minimise risk



## Overarching legal duties on your employer



- **Duty to keep employees safe** - s2(1) HSWA 1974
  - duty to ensure the safety of employees, so far as reasonably practicable
  
- **Duty to keep members of the public safe** - s3(1) HSWA 1974
  - duty to ensure the safety of those affected by your undertaking, so far as reasonably practicable
  
- **Duty on those in control of premises (to any extent) to keep non-employees safe** – s4 HSWA 1974
  - Duty to take such measures as are reasonable to ensure the premises are safe and without risks to health, so far as is reasonably practicable

## Overarching legal duties on you



- **Employee?** - s7 Health and Safety at Work etc. Act 1974
  - take reasonable care for the health and safety of yourself and other persons who may be affected by your acts or omissions at work;
  - and
  - to co-operate with your employer so far as is necessary to enable their duty to be complied with
  
- **Director/senior manager?** - s37 Health and Safety at Work etc. Act 1974
  - "*consent, connivance or neglect*"

## Core H&S regulations sitting under HSWA



- ▶ **The "6 pack" regulations** – includes core obligations including duty to prepare written risk assessments (Reg. 3 Management of H&S Regulations 1999)
- ▶ **Construction (Design and Management) Regulations 2015**
  - ▶ Apply to all construction work
  - ▶ Place duties on all parties in construction projects
  - ▶ New trigger for formal appointments and paperwork
  - ▶ Greater duty on CDM client
  - ▶ CDMC role replaced by Principal Designer



## In the event of a death.... Additional offences



### Corporate Manslaughter and Corporate Homicide Act 2007

An offence will be committed if it can be proved

- the way in which its activities are managed or organised by senior management
- cause a person's death and
- amounts to a gross breach of a relevant duty of care

### Gross negligence manslaughter (common law manslaughter)

The old law remains in place for individuals.

To successfully prosecute, there must be evidence of (1) gross breach of a duty of care (2) which causes a death.

## Who regulates and enforces health and safety?



## Legal ramifications of a health and safety breach



	Penalties	Other potential consequences
Companies	<p><b>Unlimited fines</b> under HSWA and Corporate Manslaughter Act</p> <p>Remedial order and publicity order possible under Corporate Manslaughter Act</p>	<p>Civil claim (likely, insured)</p> <p>Reputational risk</p> <p>Delays and commercial costs</p>
Individuals	<p><b>Unlimited fines</b> or</p> <p>Imprisonment of <b>up to 2 years</b> for individuals (HSWA) and life for gross negligence manslaughter</p>	<p>Civil claim (possible, may be insured under business policy)</p> <p>Reputational risk</p> <p>Directors disqualification</p>

## Penalties are soaring since introduction of new guidelines

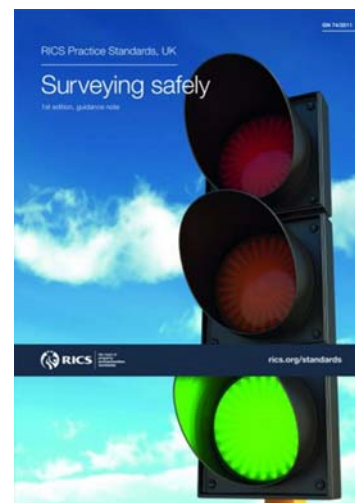
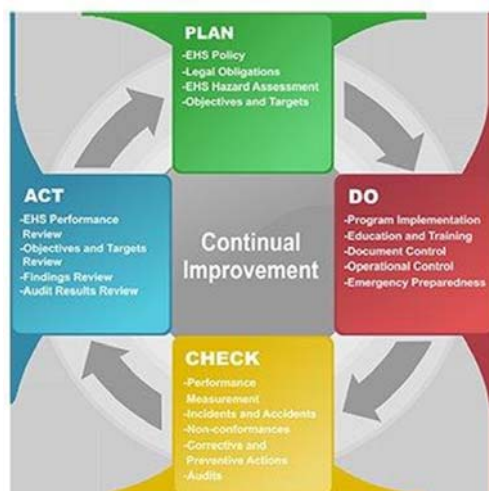


- **Network Rail** – fined £4m (September 2016)
  - **Merlin Attractions** – fined £5m (September 2016)
  - **Cristal Pigmant UK Ltd** – fined £3m (November 2016)
  - **Wilko** – fined £2.2 million (January 2017)
  - **Warburtons** – fined £2 million (January 2017)
  - **Bakkavor Foods** – fined £2 million (April 2017)
- **Prosecutions of individuals and custodial sentences are on the rise**
  - **Consultation on GNM – custodial sentences set to increase substantially**

## How can these duties be met?



### HSE's Guidance Note – HSG65



## How can these duties be met?



### 1. Proper planning of visits



**Costain Limited**

**Fine: £250,000 (pre-new sentencing guidelines – likely to be seven figures now)**

## How can these duties be met?



- 1) Collect as much information as possible from the person who has requested the visit or the organisation in control of the site.
- 2) Use this information to carry out a written risk assessment
  - **Generic** risk assessment – for visiting property under your company's management where a wealth of information is available
  - **Specific** risk assessment – for unknown sites
  - **Detailed** risk assessment for higher risk sites - e.g. where access equipment may need to be used or work will be carried out in a confined space

## How can these duties be met?



3) Ensure risk assessment covers common risk areas, for example:

- Condition of property
- Structural stability
- Occupation
- Roof/scaffold/other work at height work required
- Dangerous substances
- Diseases
- Site rules
- Lone working

## How can these duties be met?



Assessing occupancy and risks of lone working



## How can these duties be met?



**2. Scope the service you are providing carefully (including limitations)... and stick to the scope!**

## The story of the helpful surveyor



## How can these duties be met?



**3. Ensure the advice in your report identifies all hazards/risks and is communicated to the right people**



**Landslide -  
Looe,  
Cornwall**



## How can these duties be met?



### 4. Consider whether you have responsibilities under CDM 2015 and ensure responsibilities are clear in scoping

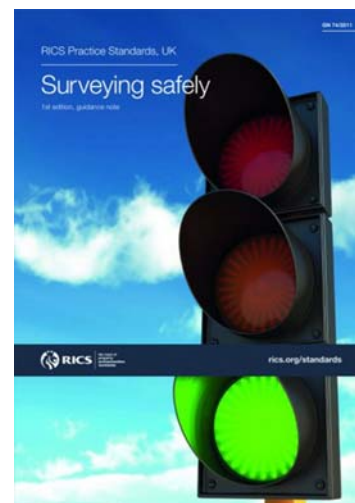
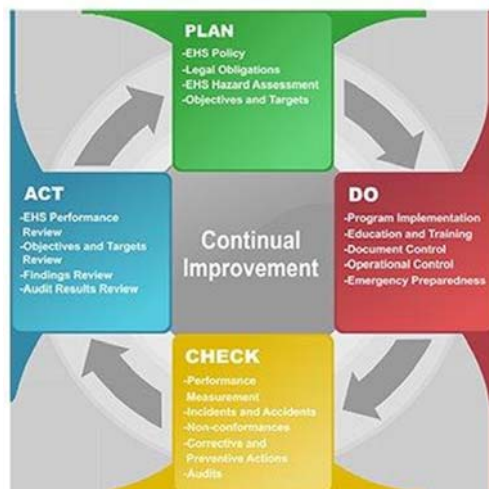
- Client?
- Principal Designer?
- Other?

### 5. Communicate and cooperate effectively with other duty holders on site on safety matters

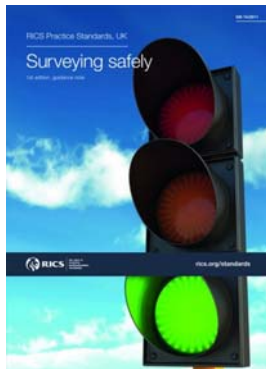
## How can these duties be met?



### HSE's Guidance Note – HSG65



## How can these duties be met?



### But... needs to be updated as follows:

- To refer to the new sentencing guidelines for H&S offences
- HSE Guidance on risk assessment ("Five Steps to Risk Assessment") has been replaced by "Risk Assessment – A Brief Guide to Controlling Risks in the Workplace" INDG163 (rev 4)
- CDM Regulations – Reference should be made to the CDM 2015 Regulations rather than the 2007 Regulations.

## Questions?



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