



### Health and Safety

- the law
- compliance
- employees - workers - self-employed
- corporate manslaughter



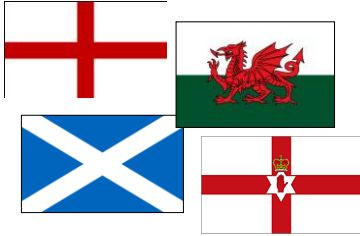
The law stated in these notes is the position, as I believe it to be, in November 2017. However, the law is complex and ever changing and the materials are intended as guidance only, to accompany a seminar. Compliance with the law remains the reader's responsibility and professional advice should be sought in the event of concerns over compliance or a legal dispute.

NB These notes relate to England and Wales. Although much of the material applies throughout the United Kingdom, those operating in Scotland or Northern Ireland will need to take local advice.



'Safety is not an intellectual exercise to keep us in work. It is a matter of life and death. It is the sum of our contributions to safety management that determines whether the people we work with live or die.'

Piper Alpha Public Inquiry, 1988-1990  
The Cullen Inquiry  
Sir Brian Appleton



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compliance - a safe business

legal framework - time

**very**

injury – fatality - big £ - prison

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RICS members stories



- ▶ Serious injury to client in house viewing
- ▶ Self employed property maintenance worker killed - small firm fined £100,000
- ▶ Unqualified gas/electrics workers - suspended prison sentence on letting agents
- ▶ Falls from height in construction, demolition, maintenance, decorating fail to decline
- ▶ Men killed moving a sofa - boss imprisoned

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# The Law

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Sources of health and safety law



- ▶ Legislation - Acts of Parliament
- ▶ Subordinate legislation
- ▶ Europe
- ▶ Cases / judicial precedent
- ▶ Approved Codes of Practice
- ▶ **Industry Guidance**

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Legislation



- ▶ Health and Safety at Work etc. Act 1974
- ▶ Construction (Design and Management) Regulations 2015
- ▶ '6 pack' (as amended)
  - Management of Health and Safety at Work Regulations 1999
  - Personal Protective Equipment at Work Regulations 1992
  - Health and Safety (Display Screen Equipment) Regulations 1992
  - Provision and Use of Work Equipment Regulations 1998
  - Manual Handling Operations Regulations 1992
  - Workplace (Health Safety and Welfare) Regulations 1992
- ▶ Other - SI's covering many issues: electricity, working at height, first aid, substance storage and handling, asbestos, fire, and much more.

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And ...



- Corporate Manslaughter and Corporate Homicide Act 2007
- Equality Act 2010

And on the civil law side :

- negligence
- occupiers' liability
  - lawful visitors - 1957 Act
  - others - 1984 Act
- Animals Act 1971
- contract law

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Consequences of criminal status



- ▶ state involvement if criminal (police / HSE, etc.)
- ▶ court procedure
- ▶ level of proof ('sure' / on balance of probabilities)
- ▶ sanctions available: prison / fine / prohibition, etc.
- ▶ public - [www.hse.gov.uk/prosecutions](http://www.hse.gov.uk/prosecutions)
- ▶ insurance implication
- ▶ personal consequence > criminal record

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Criminal sanctions



The place of work:  
Improvement Order / Prohibition Order

The business / individual:

- Fines
- Imprisonment - H & S law - max. 2 years
- manslaughter - max. **life**
- Publicity order



Regarding directors of companies:

Disqualification for up to 15 years (Company Directors Disqualification Act 1986)

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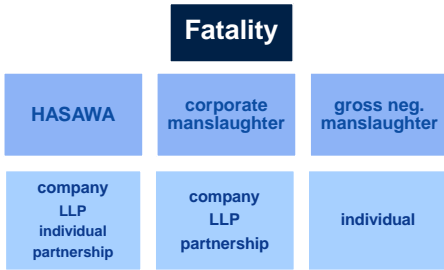
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Status of guidance



- ▶ Legislation is law
- ▶ Case law can provide binding precedent and impact the operation of legislation
- ▶ ACOPs - HSE approved with Sec. of State. Practice advice on compliance. If not following, need to evidence compliance in some other way.
- ▶ HSE, RICS, etc. guidance - not compulsory but compliance *usually* indicative of compliance.

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Professional standards	Compliant	Kripps	Hacker PK Finans Craneheath Allied Trust Bank Platform Funding Hubbard Titan
	Non-compliant	Banque Bruxelles SAAMCO Izard Merivale Montlake 7 <sup>th</sup> Earl of Malmesbury K/S Lincoln Blomain Capita Webb Aurora Redstone Mortgages E.Surv .... and more	Obiter in PK Finans
		Negligent	Not Negligent

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Michael Ogden QC:

‘... of course, these guidance notes [Red Book] are not to be regarded as a statute. I suspect that they are as much for the protection of surveyors as anything else, in that they set out various recommendations which, if followed, it is hoped will protect the surveyor from the unpleasantness of being sued. In any event, mere failure to comply with the guidance notes does not necessarily constitute negligence.’

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*Surveying safely*, June 2011 [note consultation]

*Health and safety for residential property managers*, January 2016

*Asbestos and its implications for surveyors and their clients*, October 2011

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**Compliance**

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Risk assessment




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Risk assessment guidance and templates



HSE website has templates, interactive tools and worked examples e.g.

- Estate agency
- Office-based business
- Maintenance of flats
- Plastering
- Contract bricklayers
- Woodworking
- Office cleaning
- Poultry farm

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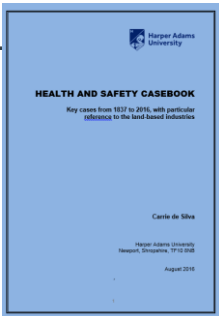
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Cases listed under subject matter / point of law

- Agriculture and fishing
- Animals Act 1971
- Causation
- Codes of Practice, etc.
- Competent staff
- Contributory negligence
- Control of Substances Hazardous to Health (COSHH)
- Corporate Manslaughter
- Display screen equipment regulations
- Due diligence
- Employer status
- .....

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Particular consideration



- Young people
- Older people
- Expectant mothers
- Lone working
- Overseas workers
- Disabled workers

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- ▶ **Employee?**
- ▶ **Worker?**
- ▶ **Self-employed?**

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Governmental consideration of worker status



*Employment Status Review*  
 Dept. for Business Innovation and Skills, December 2015

*Self-employment Review*  
 Julie Deane - independent report for government, February 2016

*The Entrepreneurial Audit*  
 Benedict Delloit and Fabian Wallace-Stephens, RSA and Crunch, February 2017

*Good Work: The Taylor Review of Modern Working Practices*  
 Matthew Taylor, RSA CEO, et al., July 2017

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Determining status of workers



*Autoclenz Ltd v Belcher* [2011] SC  
*Dewhurst v City Spring (UK)* [2017] ET  
*Pimlico Plumbers and Mullins v Gary Smith* [2017] CA

HMRC have useful information and tools to check worker status:

<http://tools.hmrc.gov.uk/esi/screen/ESI/en-GB/summary?user=guest>

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Liability regarding sub-contractors



*R v Associated Octel Co. Ltd* [1996] HL  
*Uren v Corporate Leisure and MoD* [2011] CA  
*R v Huntley Mount Engineering Ltd and Lime People Training Solutions* [ 2015] Manchester Crown Court

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*R v Morris, Marshall & Poole* [2011] Crown Court



- > Welshpool letting agents engaged handyman, Roger Jary.
- > Employee reviewed work on property to be done, which included some work on car port in Welshpool.
- > They instructed their handyman (aged 79, but still fit and agile).

Agents were convicted under s3(1) after his fatal fall.

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R v Morris, Marshall & Poole [2011] Crown Court



- ▶ No risk assessment or inadequate risk assessment by agent.
- ▶ Nothing required of sub-contractors - method statements / risk assessment / details of insurance, etc.
- ▶ Relevant guidance not consulted : working at height, fragile roofs, etc.

Many businesses would probably act in similar way when engaging a self-employer worker but it is apparent that more careful management is required.

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'If your business is managing properties then you must ensure that anyone you engage to maintain those properties is competent and carries out their work safely to ensure their safety and that of others.'

HSE Inspector on *Morris, Marshall and Poole* case.

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Working with contractors



- ▶ HSE guidance:
  - ▶ *Using contractors: a brief guide.*
  - ▶ *Managing contractors: a guide for employers.*
  - ▶ *Managing health and safety in construction: Construction (Design and Management) Regulations 2015*

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# Corporate Manslaughter

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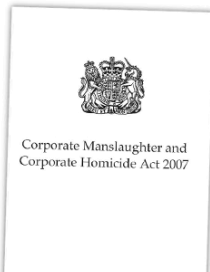
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Operative from April 2008.

Conviction if death results from 'systems failure',  
i.e. if the way a business manages and organises its activities amount to a gross breach of duty of care.



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Position for smaller businesses largely unchanged and the common law of involuntary (gross negligence) manslaughter is available where a clear link to an individual can be seen.

Surprisingly, the first corporate manslaughter convictions were of small companies.

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Corporate manslaughter penalties



- Unlimited fine
- Remedial order
- Publicity order

· Consultation on sentencing closed 10<sup>th</sup> October 2017.

*Health and safety offences, corporate manslaughter and food safety and hygiene offences: definitive guideline* – November 2015, operative from February 2016.

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Sentencing



**Aggravating circumstances?**

- ▶ more than one death
- ▶ failure to heed prior warnings (internal or external)
- ▶ deliberate cost cutting
- ▶ deliberate flouting of law, e.g. failure to obtain licences
- ▶ vulnerable persons

**Mitigating circumstances?**

- ▶ prompt acceptance of responsibility
- ▶ high level of co-operation with investigation
- ▶ genuine efforts to remedy the defect
- ▶ a good health and safety record and responsible attitude

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Falling sofa killing two workers



- ▶ Two young Polish men working for up-market interiors company killed when sofa fell from balcony in Cadogan Square, Knightsbridge.
- ▶ Martinisation Ltd - £1.2m fine for corporate manslaughter and s2(1) HASAWA offences.
- ▶ MD, Martin Gutaj - 14 months imprisonment, s2(1), and 4 year directorship bar.

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# Property Case Roundup

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**November 2016 Leeds Magistrates' Court**

IPH Investments Ltd, a lettings agency, fined £53,000 for breach of s3(1) when self-employed electrician badly burned in renovating and converting shop premises.

**January 2017 Preston Crown Court**

Mrs Pritpal Kaur Singh, landlord, received a suspended jail sentence for breach of s33(1)(g)\* - failure to comply with improvement notice and the Gas Safety (Installation and Use) Regulations 1998. [\* failure to comply with prohibition/improvement notice]

**February 2017 Manchester Crown Court**

Saleem Hussain jailed for 8 months on death of 45 year old sub-contractor working at height on roofing repairs. s3(1).

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R v Strakers Estate Agents (2017) Swindon Magistrates Court 

- Woman fell down garden well during house viewing in Malmesbury, Wiltshire.
  - Estate agents fined £200k (reduced from £300k on guilty plea) plus costs.
- No written risk assessment  
Agent alerted to well but made inadequate checks.  
Uninhabited property, so no alerts from resident.

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So ... 

- ▶ **Be informed.**
- ▶ **Don't assume it's someone else's responsibility, even when engaging the self-employed.**
- ▶ **Develop and evidence systems to ensure a safe and legally compliant business.**
- ▶ **Don't panic but do plan.**

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