

International FIREX

The 2016 Sentencing Guidelines:
any new risks for companies /
individuals in respect of fire safety
prosecutions?

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LEGAL UPDATE - Overview

- **Key new risks in Fire Safety**
 - Who is the “responsible person”?
 - Imprisonment for individuals
 - Corporate Manslaughter and Corporate Homicide Act 2007
 - Fire Enforcement trends (LFB v Regional Fire Authorities)
 - Increased fines / 2016 Sentencing Guidelines
- **Fire Safety Case Law update / penalties**
- **How to avoid or limit liability?**



Who is the Responsible Person?

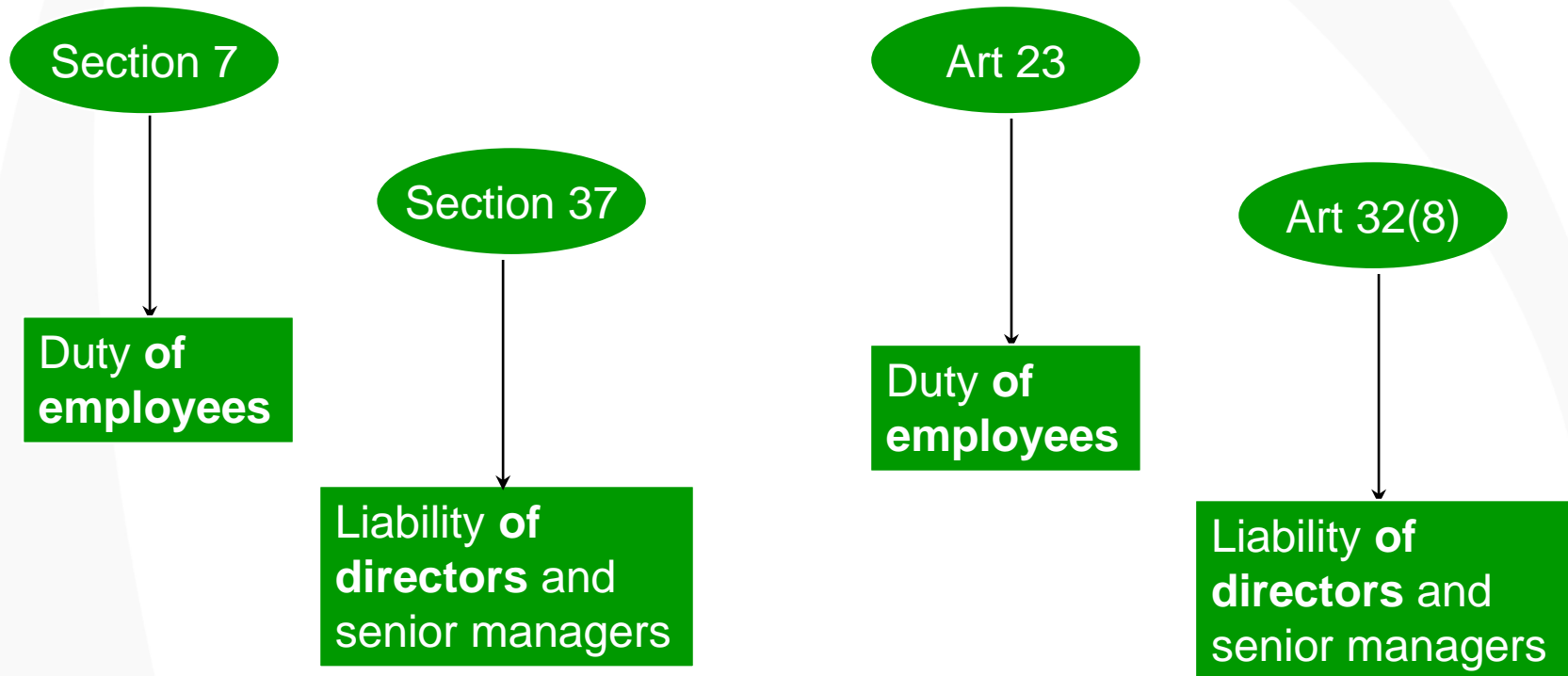
- Definition
- Problem - wider range of persons being identified as responsible
- Who has personal liability under RRO 2005?
 - Usually the Responsible Person, but.....



Individual H&S / Fire Safety duties

HSWA 1974

RRO 2005



Individual H&S duties

- **Consent** - have knowledge and endorse/direct it
- **Connivance** – have knowledge and ignore it
- **Neglect** – **should** have been aware (even if they are not) and taken action

Imprisonment for Individuals / Penalties

- **Fines / penalties**

- Art 23 (*offence is Art 32(2)(a)*) -

- Magistrates – unlimited fine (since March 2015)
 - Crown – unlimited fine

- Art 32 (1) &(8) -

- Magistrates – unlimited fine (since March 2015)
 - Crown – unlimited fine and/or
 - Imprisonment – up to 2 years



Corporate Manslaughter and Corporate Homicide Act 2007 (2)

- Prosecution must prove the way in which activities managed or organised:
 - Caused a person's **death**;
 - Amounts to a **gross breach** of a relevant duty of care owed to the deceased; and
 - **Senior management's** role in the breach was a substantial element in the breach
- Penalties
 - unlimited fine (*multi-million*);
 - remedial order; and / or
 - publicity order

Fire Enforcement Trends

- London Fire Brigade v Regional Fire Authorities
- Level of Enforcement – still lacks consistency?
- Primary Authority Scheme
- Challenging Enforcement Notices



New Sentencing Guidelines for H&S

- Sentencing Council consultation on draft guidelines for health and safety offences, corporate manslaughter, food safety and hygiene offences
- Consultation began on 13 November 2014 and ended on 18 February 2015
- Definitive guidelines published in November 2015, with implementation on 1 Feb 2016



New Sentencing Guidelines

- Firstly, determine Culpability – 4 Categories:
 - Very high – deliberate or flagrant breach
 - High “fell far short of the appropriate standard”, “evidence of serious systemic failings ...”
 - Medium – fell short, but between High and Low categories
 - Low – “did not fall far short of the appropriate standard”, “evidence that failings were minor and not systemic”

New Sentencing Guidelines

- Then determine the Harm – 4 Categories based on seriousness and likelihood:

		Seriousness of harm risked		
		Level A	Level B	Level C
Likelihood of harm		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
	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)

New Sentencing Guidelines

- Then decide the Organisation Category based on TURNOVER:
 - Very large organisations: “turnover ... greatly exceeds £50m”
 - Large (>£50m t/o)
 - Medium (£10-£50m t/o)
 - Small (£2-£10m t/o)
 - Micro (<£2m t/o)

What may the fines look like?

- **EXAMPLE: Large Company (£50million + turnover):**
 - **Very High Culpability / Harm =**
 - Starting point £4m (range £2.6m to £10m)
 - **Low Culpability / Harm =**
 - Starting point £130K (range £50k to £350K)
 - **Corporate Manslaughter =**
 - Starting point £7.5m (range £4.8m to £20m)
 - NB – there are also sentencing guidelines for individuals with custody thresholds set at “neglect”
(e.g.very high culpability / harm = Starting point 18 mths custody)

What does this mean?

- Fines for large/very large companies are going to be substantially increased
- Establishing whether culpability was “low” will be very important in setting fines
- Even more important to show existing procedures are in place/what does industry do?
- Very large companies may fall outside the ranges in the Guidelines and “all bets are off”

**Not strictly applicable to Fire Safety legislation yet,
but.....**

Fire – Significant Fines

R v Shell International Ltd (2009)

- Fine of £300k + £45k costs
- No death / injuries and no causation
- Guilty plea - Failure to review risk assessment and failure to maintain premises and equipment (originally 13 charges)



R v New Look Retailers Limited (2010)

- Court of Appeal – June 2010
- Upheld fine of £400k – severe but not disproportionate
- No death/injuries
- No causation but failed to manage risks

Fire – Risk of individual prosecution

Craig Stonelake - March 2015

- Private fire risk assessor found guilty of failing to provide an adequate risk assessment for large restaurant
- **G plea** in the Magistrates' Court - fines and costs of £7,383.
- Risk assessment was unsuitable – it ignored the inadequate means of escape, lack of suitable fire doors, inadequate fire alarm system, and firefighting equipment
- He serviced the firefighting equipment and was not trained to do so

Fire - Article 5 (3) duty holders

Christopher Morris - January 2011

- Prosecution of fire alarm engineer (first of its kind)
- Former fire fighter failed to maintain fire alarm system in care home and failed to inform home owners of systems deficiencies
- £5,000 fine plus costs of £6,000



O'Rourke – September 2011

- 2 offences of failing to make suitable and sufficient risk assessment
- O'Rourke purported to carry out fire risk assessments on both properties – “cut and paste job”
- G plea – 8 months imprisonment on each count (concurrent)
- Owner also sentenced to 8 months imprisonment



Landlord Jay Liptrot jailed for fire deaths – November 2015

- Neighbour dispute in Prestatyn – Melanie Smith set pushchair alight following row with upstairs neighbour
- Jailed for murdering Lee-Anna Shiers, boyfriend, son, niece and nephew – 5 life sentences imposed (min 30 yrs)
- Landlord – firefighter with 15 years experience, made brave efforts to save the occupants
- Failed to put reasonable “basic safety precautions” in place
- Charged with **manslaughter**, but admitted one count of failing to take general fire precautions (Art 8 RRO 2005),
- **15 months imprisonment** imposed

Post Feb 2016.....

“Landlord prosecuted for fire safety breaches after fatal fire”

Andrew Tunstall - **£1,500 fine**

“Businessmen given prison sentences for fire in HMO”

Edward Smith – **2 mths imprisonment (susp) + costs**

Gareth Wilson – **4 mths imprisonment (susp) + costs**

“Dance party leads to fire prosecution”

Andrew Jones – **8 mths imprisonment (susp for 2 years) + 2 year supervision order**



Top tips to reduce exposure to liability (1)

Responding to Incidents

- Is there a duty to investigate accidents?
- Privilege – reports **do not have to be disclosed** to Police, Fire Authority, Coroner or PI claimants
- Understanding powers of Fire Authority (PACE interviews / Issuing of Notices)

Top tips to reduce exposure to liability (2)

- Competent persons – accreditation
 - No need for specific qualifications
 - Must understand relevant fire safety legislation
 - Appropriate training and experience
- Guide on choosing a risk assessor: <http://www.london-fire.gov.uk/Documents/guidance-choosing-a-competent-fire-risk-assessor.pdf>
- IoD Guidance on safety leadership

ANY QUESTIONS?



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