

'Hot Topics' provide basic guidance on common workplace Health & Safety requirements. They use a simple 'Q&A' approach to convey key messages, but are not intended as an authoritative interpretation of every aspect of the applicable Health & Safety legislation.

## 1. What are 'Health & Safety offences'?

An offence is created when a 'duty holder' (i.e. someone with a duty created by legislation) fails to discharge that duty. Health & Safety offences are created by Section 33 of the Health and Safety at Work etc. Act 1974, the HSW Act, and include:

- breaching certain Sections of the HSW Act (such as Section 2(1) the general duty on employers towards their employees, or Section 3(1) the general duty on the self-employed towards persons not in their employ);
- breaching Health & Safety regulations made under the HSW Act (such as Regulation 3(1) of the Management of Health and Safety at Work Regulations 1999 the need to conduct suitable and sufficient risk assessments);
- failing to comply with the requirements of a prohibition notice or an improvement notice served by an appointed inspector;
- obstructing an appointed inspector in the performance of their duties or the exercising of their powers.

## 2. Other than the HSW Act, is there any legislation that relates to Health offences?

Yes. The Health and Safety (Offences) Act 2008 substituted a Schedule 3A of the HSW Act and set out new and revised penalties for Health & Safety offences which came into effect on the 16 January 2008<sup>1</sup>.

## 3. What happens if you commit a Health & Safety offence?

An appointed inspector from an enforcing authority (such as the Health and Safety Executive, HSE, or a local authority) could investigate the offence and, if sufficient evidence is available, prosecute the matter before the Court. If convicted, it can result in a fine, a term of imprisonment or both, and a criminal record.

## 4. What different penalties apply?

The penalty that can be imposed on conviction depends on the type of offence and the Court in which the matter is heard. There are three types of offences, namely:

- 'summary offences' that can only be heard in the Magistrates' Court and carry lower penalties (both the maximum fine and term of imprisonment);
- 'indictable offences' that can only be heard in the Crown Court (albeit they start the legal process in the Magistrates' Court) and carry unlimited fines and longer terms of imprisonment); and
- 'either way offences' that can be heard in either the Magistrates' Court or the Crown Court.

However, when an either way offence is heard in the Magistrates' Court it can, on conviction, be referred to the Crown Court for sentencing if in the Magistrates' Court they feel their powers of sentence are insufficient to punish the matter (such as if there had been a serious accident or previous advice had been given by the enforcing authority).

<sup>1</sup> By virtue of Section 3(3) of the Health and Safety (Offences) Act 2008 amended penalties cannot be applied retrospectively, i.e. offences committed before the implementation date.

'Hot Topics' provide basic guidance on common workplace Health & Safety requirements. They use a simple 'Q&A' approach to convey key messages, but are not intended as an authoritative interpretation of every aspect of the applicable Health & Safety legislation.

Hot Topic 05: Offences and penalties (v01, 01-Apr14)

Page 2 of 5



## **5. Why did the penalties change?**

The changes were first proposed following a joint review of the structure of penalties for Health & Safety offences which was carried out in 1999 by the Home Office, the Department of the Environment, Transport and the Regions and the Health and Safety Executive, HSE.

The objective was to change the sentences available to the Courts so that they are sufficient to deter those who are tempted to break the law and to deal more appropriately with those who do commit offences. The recommendations were made in accordance with the findings in the later 'Hampton Report'<sup>2</sup> and 'Macrory Report'<sup>3</sup>.

## **6. What is the purpose of the Health and Safety (Offences) Act 2008?**

The Act raised the maximum penalties, particularly the Magistrates' Court, for Health & Safety offences by altering the penalty framework of Section 33 of the HSW Act.

The main effects of the Act are:

- raising the maximum fines that can be imposed in the Magistrates' Courts to £20,000 for most Health & Safety offences;
- making imprisonment both in the Magistrates' Court and Crown Court an option for more Health & Safety offences; and
- making some previous summary offences into either way offences, i.e. triable in the Magistrates' Court or the Crown Court and the option of refer to the Crown Court for sentence.

The £20,000 fine in the Magistrates' Court previously only applied to certain, very specific, offences under the HSW Act (such as breaches of Sections 2 to 6). However, this level of fine has now been extended to most other Health & Safety offences.

Further, imprisonment was only an option for four specific Health & Safety offences, and this has now been extended to enable imprisonment for most Health & Safety offences.

In addition, some offences under the HSW Act, such as Sections 33(1)(e) or (f), were, previously, only triable in the Magistrates' Court, i.e. as summary offences, and these have now been made either way offences, i.e. are triable in the Magistrates' Court or Crown Court.

## **7. What are the new penalties which can be imposed for Health & Safety offences?**

Appendix A provides a summary of the revised penalties.

## **8. Where can I find out more about Health & Safety offences and penalties?**

The HSE has not published any specific information or guidance on the changes to Health & Safety offences.

<sup>2</sup> 'Reducing administrative burdens: Effective inspection and enforcement' (Philip Hampton, HM Treasury, March 2005).

<sup>3</sup> 'Regulating Justice: Making sanctions effective' (Final Report, Prof Richard B Macrory, November 2006).

'Hot Topics' provide basic guidance on common workplace Health & Safety requirements. They use a simple 'Q&A' approach to convey key messages, but are not intended as an authoritative interpretation of every aspect of the applicable Health & Safety legislation.

Hot Topic 05: Offences and penalties (v01, 01-Apr14)

Page 3 of 5



However, HSE does have general information and guidance about prosecutions, HSE41: 'Enforcement Policy Statement', a copy of which can be downloaded from the HSE website.

'Hot Topics' provide basic guidance on common workplace Health & Safety requirements. They use a simple 'Q&A' approach to convey key messages, but are not intended as an authoritative interpretation of every aspect of the applicable Health & Safety legislation.

Hot Topic 05: Offences and penalties (v01, 01-Apr14)

Page 4 of 5

Appendix A: Summary of offences, modes of trial and penalties for Health & Safety offences under Section 33 of the Health and Safety at Work etc. Act 1974.

Offence	Mode of trial	Penalty on summary conviction	Penalty on conviction on indictment
An offence under Section 33(1)(a) consisting of a failure to discharge a duty to which a person is subject by virtue of Sections 2 to 6.	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or an unlimited fine, or both.
An offence under Section 33(1)(a) consisting of a failure to discharge a duty to which a person is subject by virtue of Section 7.	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum <sup>4</sup> , or both.	Imprisonment for a term not exceeding two years, or an unlimited fine, or both.
An offence under section 33(1)(b) consisting of a contravention of Section 8.	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or an unlimited fine, or both.
An offence under section 33(1)(b) consisting of a contravention of Section 9.	Summarily or on indictment.	A fine not exceeding £20,000.	An unlimited fine.
An offence under Section 33(1)(c) (i.e. contravening Health & Safety regulations, licences or authorisations).	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or an unlimited fine, or both.
An offence under Section 33(1)(d) (i.e. contravening requirements imposed specifically in relation to public inquiries or special investigations).	Summarily only	A fine not exceeding level 5 on the standard scale <sup>5</sup> .	
An offence under Section 33(1)(e), (f) or (g) (Contravening any requirement imposed by an inspector under Section 20, offences under Section 25 and contravening an improvement or prohibition notice).	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or an unlimited fine, or both.
An offence under Section 33(1)(h) (Obstructing an inspector).	Summarily only	Imprisonment for a term not exceeding 51 weeks (in England and Wales) or 12 months (in Scotland), or a fine not exceeding level 5 on the standard scale, or both.	
An offence under Section 33(1)(i) (Contravening any notice issued under Section	Summarily or on indictment.	A fine not exceeding the statutory maximum.	An unlimited fine.

<sup>4</sup> Currently £5,000.

<sup>5</sup> Currently £5,000.

'Hot Topics' provide basic guidance on common workplace Health & Safety requirements. They use a simple 'Q&A' approach to convey key messages, but are not intended as an authoritative interpretation of every aspect of the applicable Health & Safety legislation.

Hot Topic 05: Offences and penalties (v01, 01-Apr14)

Page 5 of 5

Offence	Mode of trial	Penalty on summary conviction	Penalty on conviction on indictment
27(1) the general powers of Health and Safety Executive to obtain information).			
An offence under Section 33(1)(j) (Disclosing information in breach of Section 27(4) or 28).	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both.	Imprisonment for a term not exceeding two years, or an unlimited fine, or both.
An offence under Section 33(1)(k), (l) or (m) (Offences relating to deception).	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or an unlimited fine, or both.
An offence under Section 33(1)(n) (Falsely pretending to be an inspector).	Summarily only	A fine not exceeding level 5 on the standard scale.	
An offence under Section 33(1)(o) (Failure to comply with a Court Order issued under Section 42 of the HSW Act).	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or an unlimited fine, or both.
An offence under the existing statutory provisions for which no other penalty is specified.	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or an unlimited fine, or both.