



Department
for Work &
Pensions

Health and Safety (Offences) Act 2008: Post-legislative scrutiny Memorandum to the Work and Pensions Select Committee

Presented to Parliament by the Secretary of State
for Work and Pensions by Command of Her Majesty
January 2014



Health and Safety (Offences) Act 2008: Post-legislative scrutiny Memorandum to the Work and Pensions Select Committee

Presented to Parliament by the Secretary of State
for Work and Pensions by Command of Her Majesty
January 2014.

© Crown Copyright 2014

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or email: psi@nationalarchives.gsi.gov.uk

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication can be accessed online at:
www.gov.uk

For more information about this publication, contact:

**The Health and Safety Stewardship Team
Health and Wellbeing Directorate
Department for Work and Pensions
2nd Floor
Caxton House
Tothill Street
London
SW1H 9NA**

Copies of this publication can be made available in alternative formats if required.

ISBN: 9780101876421

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2615006 01/14

Printed on paper containing 75% recycled fibre content minimum.

Contents

Chapter 1	Introduction	4
Chapter 2	Summary of the objectives of the Act	5
Chapter 3	Implementation	8
Chapter 4	Secondary legislation and guidance	10
Chapter 5	Other reviews of health and safety legislation	12
Chapter 6	Preliminary assessment of the Act	14
Annex A	Illustrative examples – Use of the new sentencing powers	19

Introduction

1

1. This Memorandum has been prepared by the Health and Safety Executive on behalf of the Department for Work and Pensions (DWP), and reports on the post-legislative scrutiny of the Health and Safety (Offences) Act 2008 ('the Act'). This has been carried out in accordance with Chapter 40 of the *Cabinet Office Guide to Making Legislation*, published April 2013¹.
2. The Act arose from a Government-sponsored Private Member's Bill (Ballot Bill), taken up by Keith Hill MP in 2008. The Act received Royal Assent on 16 October 2008, and its provisions came into force on 16 January 2009. The Act's Public Bill page can be found online².

¹ Cabinet Office Guide to Making Legislation.

² The Act's Public Bill page.

Summary of the objectives of the Act

2

3. The Act's purpose was to increase the maximum penalties available for most of those workplace health and safety offences which could be presented before both the lower and higher courts. The primary intention was to ensure that the lower courts had access to a level of penalty which was proportionate and which fully reflected the seriousness of these offences. It was anticipated that the increased penalties would provide a greater deterrent against irresponsible behaviour and further encourage employers and others to comply with the law. This reflects the purposes of sentencing as set out in Section 142 of the Criminal Justice Act 2003.
4. The Act was also intended to help ensure greater efficiency in the dispensation of justice. One intended effect of the Act was that more cases would be resolved in the lower courts. This would be facilitated by making imprisonment an option, and also extending the availability of a £20,000 maximum fine to the lower courts. Increasing the proportion of cases heard in the lower courts would allow justice to be delivered in a faster, less costly and more efficient manner. Such efficiency gains would also make the delivery of justice more proportionate, by avoiding the imposition of financial burdens purely associated with the process of delivering justice, i.e. lower courts would have less need to refer cases to the higher courts simply for sentencing, thereby avoiding the extra costs entailed by such court appearances. This would also free up the higher courts to focus on the most serious cases.
5. The Act covers England, Wales, Scotland and Northern Ireland. The sentences which it introduced applied to offences committed under the Health and Safety at Work etc Act 1974 (HSWA) and the Health and Safety at Work (Northern Ireland) Order 1978 (HSW(NI)O) and also to offences created by virtue of secondary legislation made under those Statutes. It did not introduce any changes to other health and safety legislation's³ sentencing regimes, nor did it modify the sentencing regimes in legislation made under other Statutes, e.g. Statutory Instruments made under the European Communities Act, (which includes its own limitations on maximum penalties). Such legislation is enforced by various bodies including the Health and Safety Executive (HSE), its Northern Irish equivalent, the Health and Safety Executive Northern Ireland (HSENI), the Office of Rail Regulation (ORR), and local authorities.

³ The Corporate Manslaughter and Corporate Homicide Act 2007 defines 'health and safety legislation' as meaning any statutory provision dealing with health and safety matters, including, in particular, provisions contained in the Health and Safety at Work etc. Act 1974 (c.37) and the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9)). UK health and safety legislation is therefore not solely comprised of the HSWA and HSW(NI)O.

6 Summary of the objectives of the Act

6. The purposes of the Act were formally set out in the Explanatory Notes to the Act as follows:

From the Explanatory Notes to the Health and Safety (Offences) Act 2008 ('the Act'):

The purpose of the Act is to raise the maximum penalties available to the courts in respect of certain health and safety offences by altering the penalty framework set out in Section 33 of the Health and Safety at Work etc. Act 1974 ('the 1974 Act'). The Act also makes similar changes to the Health and Safety at Work (Northern Ireland) Order 1978 ('the 1978 Order'). In what follows, references to provisions of the 1974 Act should (where necessary) be read as including references to the corresponding provisions of the 1978 Order.

The changes made by the Act were first proposed following a joint review of the current maximum penalties for health and safety offences, which was carried out between February and September 1999 by the Home Office, the then Department of the Environment, Transport and the Regions, and the Health and Safety Executive.

The objective behind the changes is that sentences for health and safety offences be sufficient to deter those tempted to break the law, and sufficient to deal appropriately with those who do commit offences, in accordance with the Hampton⁴ and Macrory⁵ reports.

The effect of the Act is to:

- (a) raise the maximum fine which may be imposed in the lower courts to £20,000 for most health and safety offences;
- (b) make imprisonment an option for more health and safety offences in both the lower and higher courts;
- (c) make certain offences, which are currently triable only in the lower courts, triable in either the lower or higher courts.

The power to impose a fine of up to £20,000 is already available in respect of some offences under the 1974 Act, such as breaches of the general duties arising under sections 2 to 6. The Act extends this power to other offences that are considered to be comparable (for example, a breach of regulations made under the 1974 Act).

At present, imprisonment is an option only in certain cases. The Act will make imprisonment available for most health and safety offences.

Under the 1974 Act, it is an offence under section 33(1)(e) to contravene any requirement imposed by an inspector under section 20 (for example, a requirement to give information relevant to an investigation or to leave premises undisturbed after an incident). It is also an offence to prevent another person from appearing before an inspector or from answering an inspector's questions (section 33(1)(f)). Both offences are currently triable only in the lower courts. The Act makes them triable in the lower or higher courts.

⁴ Hampton P, 2005, *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury.

⁵ Macrory R B, 2006, *Regulating Justice: Making Sanctions Effective: Final report*.

Previous sentencing regime

7. To put these changes into context, it is necessary to compare the new regime with that available prior to the Act coming into force.
8. The HSWA allowed the lower courts (magistrates) in England and Wales, and summarily before the Sheriff alone in Scotland, to fine up to £20,000 for breaches of its general duties to safeguard people's health and safety (Sections 2 to 6 of the Act); or for failure to comply with an improvement or prohibition notice, or court remedial order. Similar levels of penalties were available under the HSW(NI)O, for breaches of Articles 4 to 7, failure to comply with enforcement notices and court remedial orders.
9. Imprisonment was only available to the lower courts in relation to a failure to comply with an improvement or prohibition notice, or court remedial orders (and offshore offences). In the higher courts, imprisonment was also available in relation to a failure to comply with licensing requirements or explosives provisions, or disclosure of information in breach of the HSWA. Similar provisions applied under the HSW(NI)O.
10. The previous maximum lower court penalty for breaches of health and safety regulations (which might be just as serious as breaches of the general duties) was a fine not exceeding £5,000.

Implementation

3

11. The Act received Royal Assent on 16 October 2008, its provisions all coming into force three months later on 16 January 2009. (Schedule 1: in relation to the HSWA; Schedule 2 in relation to the HSW(NI)O; Schedule 3 in relation to consequential amendments; and Schedule 4 in relation to necessary repeals.)
12. The new sentencing options introduced by the Act applied only to offences committed on, or after 16 January 2009. The sentencing options did not apply retrospectively and offences committed before that date were to be sentenced under the previous regime.

Availability of penalties

13. Two issues have been identified in relation to the ability of the lower courts in England and Wales to fully make use of the increased penalties and, in particular, the wider availability of custodial sentences introduced by the Act.
14. Firstly, under the terms of the amended sentencing options provided for in the HSWA and HSW(NI)O, custodial sentences are now available to the courts for most health and safety offences. The maximum sentence under the HSWA and HSW(NI)O is two years' imprisonment for offences tried on indictment, or sentenced in a higher court. For relevant cases heard summarily, the available custodial sentences vary across the devolved administrations. In Northern Ireland, England and Wales, the maximum sentence is six months, whereas in Scotland, sentences of up to 12 months are available.
15. The limitation of a six-month custodial sentence on summary conviction is written into the Northern Irish Statute (as amended by the Act). However, in England and Wales, Magistrates' Courts are prevented from making use of the 12-month sentences theoretically available to them under the amended HSWA, due to the fact that Section 154(1) of the Criminal Justice Act 2003 has not yet been enacted. This limitation applies to the sentencing of all similar offences that might be tried summarily in England and Wales, and not only those arising from the HSWA.

16. Secondly, following amendment, summary prosecution for a breach of Section 33(1)(j) of the HSWA⁶ now attracts a maximum custodial sentence of 12 months (subject to the restriction on Magistrates' Courts in England and Wales referred to above), or a fine not exceeding the statutory maximum. The related offence under the HSW(NI)O, Article 31(1)(j), attracts a custodial sentence of up to six months or, again, a fine not exceeding the statutory maximum. However, following amendment in recent years, the term 'statutory maximum' is defined as £5,000 in England, Wales and Northern Ireland, but £10,000 in Scotland. There is therefore a further discrepancy in the implementation of the new sentencing powers of the lower courts across the UK in relation to these specific offences.
17. In relation to each of the above issues, if a lower court believes that its sentencing powers are inadequate to deal with a particular offence, they are able to refer the case to a higher court for sentencing.⁷ The higher court will then have access to the full range of penalties appropriate to that offence, the overarching maximum being up to two years' custodial sentence and/or an unlimited fine. The overall impact is, nevertheless, one of somewhat inconsistent implementation of the full objectives of the Act across the UK.

⁶ The two offences dealt with in S33(1)(j) relate to the inappropriate disclosure of information in breach of S27(4) and 28 HSWA. A similar offence arises from Article 30 HSW(NI)O.

⁷ A small number of offences under the amended HSWA and HS(NI)O remain triable 'summary only', which means they can only be tried in the lower courts, and cannot be referred to a higher court for trial or sentencing.

Secondary legislation and guidance

4

Secondary legislation

18. The Act did not contain any powers to make secondary legislation, although such powers do exist under the HSWA and HSW(NI)O, which the Act amended. No secondary legislation has therefore been made under the Act, nor has any been made under other legislation with an impact on the Act or the changes it made.

Guidance

19. Following the coming into force of the Act, guidance was produced, as appropriate, by the various regulators and prosecutors that enforced the amended legislation. Examples of this include the HSE Enforcement Guides for England and Wales⁸, and for Scotland⁹. These guides have been specifically developed to meet the legal requirements of those involved in health and safety enforcement work. They reflect the current legal position and are regularly updated, as required. The guides have particular relevance to HSE, local authority and other agency enforcement officers, including inspectors, environmental health officers, visiting officers, working time officers, disclosure officers, as well as the Crown prosecutors.
20. Both HSE Enforcement Guides make reference to the changes in sentencing options introduced by the Act, and to the actions which prosecutors can take to bring them to the court's attention. (This can be done by prosecutors in England and Wales, but not in Scotland). The sections of the Guides that refer to the new sentencing regime can be found online^{10, 11}.

⁸ HSE Enforcement Guide for England and Wales.

⁹ HSE Enforcement Guide for Scotland.

¹⁰ The new sentencing regime.

¹¹ The new sentencing regime.

Sentencing guidelines

21. Following the Act coming into force, the Sentencing Guidelines Council (SGC) for England and Wales (the SGC has been replaced by the Sentencing Council (SC) for England and Wales) undertook to revise its Definitive Guideline: Magistrates' Courts Sentencing Guidelines. The guidelines refer to health and safety offences from page 181 onwards (page 202 of the online PDF)¹². The table setting out the major offences under the HSWA was amended to take account of the increased penalties now available. Further guidance was also inserted into the guideline as pages 183a and 183b (pages 205 and 206 of the PDF). This supplementary guidance was produced to assist magistrates in dealing with the much wider range of offences for which a custodial sentence would now be available. Whilst focusing on offences under the HSWA, these sentencing guidelines were intended to apply to all similar health and safety offences.
22. Further sentencing guidance can be found in case law relevant to health and safety legislation, and in the SGC guidance on sentencing in cases of corporate manslaughter and health and safety offences causing death. However, these deal with the principles of the law, assessing seriousness, etc and specifically, in the latter case, corporate sentencing for which no custodial sentencing is available. This is because the custodial sentences available under the HSWA and HSW(NI)O can only be awarded against individuals, not businesses or companies, even though they are all legal entities that might owe the same duties in law.
23. HSE's view is that cases involving a fatality will not be suitable for sentence in the Magistrates' Court when the prosecution allege that the offence was a significant cause of the death, as in such cases the appropriate fine may be measured in hundreds of thousands of pounds or more. (See reference to SGC sentencing guideline, paragraph 21 above.)
24. It is understood that the SC for England and Wales is currently considering an overarching review of sentencing guidelines for health and safety offences.
25. There is provision for an SC for Scotland in the Criminal Justice and Licensing (Scotland) Act 2010, (Part 1 refers)¹³, but this Part has not yet been brought into force.

¹² Definitive Guideline: Magistrates' Courts Sentencing Guidelines.

¹³ Criminal Justice and Licensing (Scotland) Act 2010.

Other reviews of health and safety legislation

5

26. A number of reviews have been carried out in recent years which examine the work of HSE, and the operation of its legislation. However, none of the published recommendations have made any reference to penalties or sentencing. The most significant recent reviews are summarised below:

i) Common Sense, Common Safety

27. The Prime Minister commissioned The Rt Hon. the Lord Young of Graffham DL, to conduct a Whitehall wide review of the operation of health and safety laws, and the growth of the compensation culture. This was entitled *Common Sense, Common Safety*.

28. Lord Young published the report of his review in 2010. The report made 36 recommendations, covering a wide range of issues, including legislation, enforcement, the role of insurers and compensation claims procedures. The review recommended a general consolidation of health and safety regulations, which later formed part of the remit of Professor Löfstedt's review (see below). The report, and updates on progress with implementing its recommendations, can be found online¹⁴.

ii) Reclaiming health and safety for all: An independent review of health and safety legislation

29. In March 2011, Professor Ragnar Löfstedt, Director of the King's Centre for Risk Management at King's College London, conducted an independent review of health and safety regulations to identify opportunities to simplify the rules. On 28 November 2011, the DWP published his report, *Reclaiming health and safety for all: An independent review of health and safety legislation* (Cm 8219), which made recommendations for the fundamental overhaul of the UK health and safety regulatory system. Details of the review, its report and the Government's reports on implementing its recommendations, can be found online¹⁵.

¹⁴ Lord Young's review of the operation of health and safety laws, and the growth of the compensation culture.

¹⁵ Details of Professor Löfstedt's review, its report and the Government's reports.

iii) Triennial Review of HSE

30. On 25 April 2013, Minister for Employment, Mark Hoban, announced a Triennial Review of HSE. The press release issued by DWP stated:
- ‘The first stage of the review will identify and examine the key functions of HSE. The review will assess how the functions contribute to the core business of HSE and DWP, and whether these functions are still needed.’
31. The review was conducted by Mr Martin Temple, Chair of EEF – The Manufacturers’ Organisation. On 9 January 2014 DWP published the report of Mr Temple’s review. The review concluded that the functions performed by HSE are still required and that it should be retained as a Non-Departmental Public Body. Details of the review and its report can be found online¹⁶.

¹⁶ Temple M, 2014, *Triennial Review Report: Health and Safety Executive - An independent review of the function, form and governance of the Health and Safety Executive (HSE)*.

Preliminary assessment of the Act

6

32. Consideration of the implementation of the Act, and analysis of the available enforcement and sentencing data suggests that the fundamental objectives of the Act have largely been achieved.
33. As is set out in Section 2 above, and in the Explanatory Notes, the fundamental purpose of the Act was:

‘... to raise the maximum penalties available to the courts in respect of certain health and safety offences by altering the penalty framework set out in Section 33 of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”). The Act also makes similar changes to the Health and Safety at Work (Northern Ireland) Order 1978 (“the 1978 Order”).’
34. This has clearly been achieved, as the HSWA and HSW(NI)O were both successfully amended by the Act when it came into force in January 2009. The UK courts now have a wider range of sentencing options available to them to deal with offences under these two Statutes. The only identified issues associated with implementation of the revised sentences are the discrepancies across the devolved administrations, discussed in paragraphs 13 to 17 above.
35. The Explanatory Notes went on to say that;

‘...The objective behind the changes is that sentences for health and safety offences be sufficient to deter those tempted to break the law, and sufficient to deal appropriately with those who do commit offences, in accordance with the Hampton and Macrory Reports.’
36. The punishment of offenders, and the reduction of crime (including its reduction by deterrence), represent two of the fundamental purposes of sentencing, as set out in Section 142 of The Criminal Justice Act 2003. Determining the precise deterrent effects of the changes introduced by the Act are not straightforward, but what can be said is that the purpose of the Act of putting into place a sentencing regime sufficient to deter those tempted to break the law has been achieved, subject to the issues of inconsistent sentencing regimes across the UK.

37. Whilst a full review of the impact of the Act is beyond the scope of this memorandum, it is appropriate to consider the available evidence for indications of any changes in sentencing practice associated with the availability of higher penalties. There are three questions of particular relevance to the aims and objectives of the Act discussed in Section 2:
- Has the increase in available penalties resulted in a greater proportion of cases being sentenced in the lower courts?
 - Has there been any discernible increase in the levels of fines imposed by the lower courts?
 - Has the wider availability of custodial sentences resulted in their increased use for health and safety breaches?
38. The following analysis is based on HSE data regarding prosecutions brought across England, Scotland and Wales.¹⁷ It considers an approximate three-year period prior to the Act coming into force on 16 January 2009, and the subsequent period to March 2013 which include a similar number of cases. During this period, the HSE enforcement policy principles governing decisions to prosecute have remained consistent. Prosecution decision makers have also been bound by the requirements of the Code for Crown Prosecutors, which have similarly remained broadly consistent throughout.
- Proportion of cases sentenced in the lower courts**

Table 1: Venue for regulatory offence sentencing

Venue	Period			
	01.04.2006 – 15.01.2009		16.01.2009 – 31.03.2013	
	Number of cases	Number of offences	Number of cases	Number of offences
Higher courts: Crown and Sheriff Solemn Procedure	521	939	232	423
Lower courts: Magistrate and Sheriff Summary Procedure	1,227	2,399	1,477	2,619
Total:	1,748	3,338	1,709	3,042

39. From 1 April 2006 to 15 January 2009, HSE records show a total of 1,748 cases being brought, of which approximately 70 per cent were heard in the lower courts. This amounts to some 3,338 specific offences being charged, approximately 72 per cent of which were sentenced in the lower courts.
40. From 16 January 2009 to 31 March 2013, 1,709 cases were brought, of which approximately 86 per cent were heard in the lower courts. This amounts to 3,042 specific offences, approximately 86 per cent of which were sentenced in the lower courts.

¹⁷ Only limited sentencing data is available to HSE regarding prosecutions brought by local authorities and other prosecutors of health and safety offences. Collation and analysis of this data is beyond the scope of this review.

16 Response to recommendations and conclusions

41. From a similar number of cases heard before and after the Act coming into force, HSE records are strongly indicative of a rise in the proportion of cases being discharged in the lower courts. This suggests that the Act has been successful in its objective to facilitate greater efficiency in the dispensation of justice.

b. Level of fines imposed by the lower courts

42. Prior to the Act coming into force, the maximum fine available for offences under regulations heard summarily was £5,000 per offence, unless the case was referred to a higher court for sentencing. The Act raised the maximum fine level for such offences to £20,000. The Act did not alter the financial penalties available to the higher courts, which remain an unlimited fine.

43. Cases may be brought to court which include offences under the general duties of HSWA, breaches of health and safety regulations, or a combination of the two. The increased financial penalties introduced by the Act are primarily relevant to breaches of regulations, as a £20,000 maximum fine was already available with respect to most breaches prosecuted under HSWA provisions.

Table 2: Cases involving breaches of HSWA, regulations or a combination

Venue	Period					
	01.04.2006 – 15.01.2009			16.01.2009 – 31.03.2013		
	Number of HSWA only cases	Number of regulation only cases	HSWA and regulation cases	Number of HSWA only cases	Number of regulation only cases	HSWA and regulation cases
Higher courts: Crown and Sheriff Solemn Procedure	270	100	151	117	54	61
Lower courts: Magistrate and Sheriff Summary Procedure	451	430	346	466	694	317
Total:	721	530	497	583	748	378

44. The figures in Table 2 indicate that the proportion of cases only involving breaches of health and safety regulations has risen since the Act came into force, from approximately 30 per cent of all cases brought to approximately 44 per cent. This may be attributable to the availability of increased penalties, which allow a proportionate sentence to be passed in relation to the more serious breaches of regulations. Previously, such breaches may have resulted in a prosecution under HSWA general duties in order to ensure the availability of appropriate sentencing powers.

45. Considering exclusively those cases resolved in the lower courts, HSE figures indicate that the average level of fine imposed has risen since the Act came into force. For cases involving breaches of regulations only, a rise of approximately 60 per cent in the average level of fine per offence is recorded, from £4,577 to £7,310. For cases involving breaches of both regulations and the HSWA, the measured rise is approximately 25 per cent, from an average of £13,334 per offence to £16,730. For cases involving breaches of HSWA only, where the available penalties were largely unaltered by the Act, the average rise per offence is approximately 9 per cent, from

£10,908 to £11,920. The data therefore shows a proportionately greater rise in the average fines imposed by the lower courts for those offences where the available penalties were increased by the Act, than for those offences where the available penalties remained unchanged.

Table 3: Average fine per offence charged in the lower courts

	Period					
	01.04.2006 – 15.01.2009			16.01.2009 – 31.03.2013		
	HSWA only cases	Regulation only cases	HSWA and regulation cases	HSWA only cases	Regulation only cases	HSWA and regulation cases
Average fine per offence	£10,908	£4,577	£13,334	£11,920	£7,310	£16,730

46. It addition to the measured rise in average fine level, HSE data also indicates that the lower courts are, indeed, making use of the increased maximum penalties available to them.¹⁸ Prior to 16 January 2009, fines of over £5,000 for offences arising from breaches of regulations were not available. Since the Act came into force, a total of 346 such breaches have attracted fines in excess of £5,000. Table 4 illustrates the use of the increased penalties in cases involving breaches of regulations only, where a total of 261 offences have attracted fines in excess of £5,000.¹⁹

**Table 4: Fine level per offence in the lower courts
(cases involving breaches of regulations only)**

	Period						
	01.04.2006 – 15.01.2009			16.01.2009 – 31.03.2013			
Level of fine	£0 – £3,000	£3,001 – £5,000	Over £5,000	£0 – £3,000	£3,001 – £5,000	£5,001 – £10,000	£10,001– £20,000
Number of offences	480	114	N/A	369	148	183	78

47. It is therefore clear that the lower courts are making use of the increased sentencing powers made available to them, and there are strong indications from the HSE data that the average level of penalty imposed by the lower courts has also increased as a consequence of the Act.

c. Use of custodial sentences

48. In addition to increasing the maximum financial penalties available in the lower courts, the Act also made custodial sentences an option for a much wider range of offences. Previously, custodial sentences in both the higher and lower courts were only available for a small number of specific offences. These included: failure to comply with enforcement notices (improvement notices and prohibition notices); failure to comply with a court remedial order; carrying out work in breach of licencing requirements; certain provisions relating to the disclosure of information; and certain provisions relating to acquiring, possessing and using explosives. Similar groups of offences exist under both the HSWA and HSW(NI)O.

¹⁸ Illustrative examples are provided in Annex A.

¹⁹ In a small number of cases, it is not possible to determine the specific fine imposed in relation to an offence, e.g. where multiple breaches have attracted a single, aggregated fine.

18 Response to recommendations and conclusions

49. Clearly, custodial sentences are only relevant for prosecutions involving individuals, rather than corporate bodies. HSE data suggests that prior to the sentencing changes, custodial sentences had predominantly been applied following the prosecution of individuals for failures to comply with enforcement notices, and to a lesser extent for failures to comply with court remedial orders. Following the introduction of the Act, HSE records indicate the more frequent use of custodial sentences (Table 5 below), with such sentences being imposed in relation to a wider range of offences. In particular, custodial sentences are recorded for breaches of the Gas Safety (Installation and Use) Regulations 1998, Section 3 HSWA (which deals with public safety) and, as previously, failure to comply with enforcement notices.
50. The use of custodial sentences in gas safety cases is particularly relevant in relation to the intended purpose of the Act. In progressing the Private Member's Bill through Parliament, one of the major arguments used in support of the wider availability of custodial sentences, was judicial demand for the ability to issue prison sentences in such cases, where the public had been put at significant risk by rogue gas fitters. HSE records indicate that such gas-safety cases frequently cite breaches of both the Gas Safety Regulations, and Section 3 HSWA.²⁰

Table 5: Use of custodial sentences or equivalent (suspended or community order)

Venue	Period			
	01.04.2006 – 15.01.2009		16.01.2009 – 31.03.2013	
	Number of offences	Custodial sentence or equivalent	Number of offences	Custodial sentence or equivalent
Higher courts: Crown and Sheriff Solemn Procedure	939	42 (4%)	423	77 (18%)
Lower courts: Magistrate and Sheriff Summary Procedure	2,399	36 (1%)	2,619	144 (5%)
Total:	3,338	78 (2%)	3,042	221 (7%)

51. HSE figures represented in Table 5 indicate an increase in the proportion of health and safety offences attracting a custodial sentence (or equivalent) since the Act came into force. This increase is particularly evident in the higher courts, where the most serious cases are heard, such as those involving work-related deaths.
52. In summary, HSE data supports the proposition that the Act has succeeded in its overall aim to facilitate the imposition of proportionate penalties for serious health and safety offences, and to thereby increase the deterrent effect against irresponsible behaviour. The level of recorded fines imposed by the lower courts has increased, and custodial sentences are being used more frequently in relation to a greater range of health and safety breaches. The data also suggests that a greater proportion of health and safety cases are being sentenced in the lower courts, as intended by the Act to help ensure greater efficiency in the dispensation of justice.

²⁰ Illustrative examples are provided in Annex A.

Annex A

Illustrative examples – Use of the new sentencing powers

1. Listed below are hyperlinks to HSE press releases that refer to cases where the courts have made use of their new sentencing powers.
2. Prosecutions for breaches of regulations where Magistrates' Courts fined more than £5,000:
 - Wirral Metropolitan Borough Council were prosecuted in Wirral Magistrates' Court, after employees developed hand-arm vibration syndrome. Wirral Metropolitan Borough Council were found guilty of two offences under the Control of Vibration Regulations 2005 and fined a total of £25,000 plus costs²¹.
 - Exova (UK) Limited, of Newbridge, Midlothian, was fined a total of £36,000 (£12,000 for each offence) and ordered to pay £8,000 costs after it pleaded guilty to three breaches of the Control of Asbestos Regulations 2006 in Newcastle Magistrates' Court²².
 - Ancient House Press plc of Ipswich, admitted breaching regulation 11(1) of the Provision and Use of Work Equipment Regulations. Ipswich Magistrates' Court fined the company £7,500 with £8,272 costs²³.
3. Prosecutions where courts issued custodial sentences for offences where they were previously not able to do so:

The director of a Norwich giftware manufacturing company was given a suspended six-month prison sentence and 180 hours of community service for safety failings in relation to electrical systems at the company's premises, after being prosecuted for breaches of Section 3(2) HSWA²⁴.

 - An unregistered gas engineer was sent to prison for two years by Burnley Crown Court for endangering people's lives, including a baby boy, at two properties in Lancashire. He was prosecuted for committing four offences under the Gas Safety (Installation and Use) Regulations 1998 and two under the HSWA²⁵.

²¹ HSE press release.

²² HSE press release.

²³ HSE press release.

²⁴ HSE press release.

²⁵ HSE press release.



information & publishing solutions

Published by TSO (The Stationery Office)
and available from:

Online

www.tsoshop.co.uk

Mail, telephone fax and email

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/general enquiries

0870 600 5522

Order through the Parliamentary Hotline

Lo-Call 0845 7 023474

Fax orders: 0870 600 5533

Email: customer.services@tso.co.uk

Textphone: 0870 240 3701

The Houses of Parliament shop

12 Bridge Street, Parliament Square,
London SW1A 2JX

Telephone orders/general enquiries:

020 7219 3890

Fax orders: 020 7219 3866

Email: shop@parliament.uk

Internet: <http://www.shop.parliament.uk>

TSO@Blackwell and other Accredited Agents

This publication can be accessed online at:

www.gov.uk

For more information about this publication,
contact:

The Health and Safety Stewardship Team

Health and Wellbeing Directorate

Department for Work and Pensions

2nd Floor

Caxton House

Tothill Street

London

SW1H 9NA

Copies of this publication can be made
available in alternative formats if required.

Department for Work and Pensions

January 2014

www.gov.uk

ISBN 978-0-10-187642-1



9 780101 876421