

## Safety Health & Welfare at Work (Construction) Regulations 2006 Professional Indemnity Insurance

... brought against consultants under the 2005 Act or its predecessor, the Safety Health & Welfare at Work (Construction) Regulations 2006. While no prosecution is brought against a consultant under either the 2005 Act or its predecessor, the subsequent prosecutions under the 1995 Act are not affected. In such instances, the subsequent prosecutions under the 1995 Act are not affected. In such instances, the subsequent prosecutions under the 1995 Act are not affected.

**2.6** Following a preliminary investigation, the HSA will usually submit requests for information to the parties, such as design team members, contractors, subcontractors etc. Obvious information. The requests for information may relate to any files or records (either computer paper) held by the party and must be responded to. A careful record of all and any papers provided to the HSA should be retained.

**2.7** Depending on the nature and complexity of the issues involved, the HSA may decide to commission an individual or firm with specific expertise in the area or discipline under investigation to carry out an investigation into the accident and prepare a report. In such cases, the HSA and the Director of Public Prosecutions ("DPP"), which will assume responsibility for more serious offences, will use the independent report as one of its principal aids in deciding whether or not a prosecution is appropriate.

**2.8** Once the HSA has collected and collated all its materials and concluded its investigation it will, in consultation with the DPP, decide if it wishes to formally commence proceedings against any company, firm or individual.

**2.9** It is important to recall that, whilst the Construction Regulations 2006 create specific duties on all parties involved in construction, the 2005 Act creates general duties on all employers (including design practices) and employees which can be extremely relevant in the context of a construction site. Duties are owed by employees to themselves and others, and by employers to persons other than their own employees. This latter duty (Section 12) could extend to how a design practice and its activities are managed and the impact that this might have on the parties. When enforcement action is taken, this can involve charges arising from the more general duties under the 2005 Act as well as specific duties under the 2006 Regulations 2006.

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### 3. Frequently Asked Questions (FAQs)

#### 3.1 Can a designer (practice or individual) be liable to criminal prosecution in circumstances where no accident has occurred?

The vast majority of criminal prosecutions for Health & Safety offences result from accidents. A designer can, however, be criminally prosecuted for breaches of health and safety legislation, even where no accident has taken place. It is important to appreciate that the offence being prosecuted is the contravention of health and safety legislation, rather than the actual accident itself, although the latter is clearly relevant to the seriousness of the charge.

#### 3.2 Can a civil claim follow on the back of a criminal prosecution?

Yes. In practice, the commencement of civil and criminal claims arising out of a breach of health and safety legislation are unrelated. Criminal prosecutions are taken either by the HSA (in the District Court) or by the DPP on the recommendation of the HSA and give rise to the criminal sanction of a fine and/or imprisonment. Civil claims for compensation for an injury suffered are taken by the injured party (or in the case of a fatality, relatives of the injured party who has suffered loss or harm arising out of the breach of health and safety legislation in question).

#### 3.3 Is there a limit to the fines that can be imposed?

Often, civil claims will have been concluded or settled before the matter comes before criminal courts. On other occasions, typically where there are multiple defendants, a party may wait to see how the criminal courts apportion liability between the various before pursuing the matter. There is nothing to prevent an injured party from commencing civil action following a successful criminal prosecution, subject to the action being within the time limits set out under the Statute of Limitations. Under the 2005 Act, statutory duty can form the basis of a claim for damages.

#### 3.4 In what Court will the prosecution be heard?

On conviction under the 2005 Act, the maximum fine that can be imposed is £3,000,000. Both these limits apply to each and every offence in respect of which a conviction is obtained. As prosecutions are usually based upon several charges of different statutory duties, the total fine could be a multiple of these figures. There are still some prosecutions on-going under the 1989 Act which are heard in the District Court in respect of which the maximum fine is £100,000. There are still some prosecutions on-going under the 1989 Act which are heard in the District Court in respect of which the maximum fine is £100,000. There are still some prosecutions on-going under the 1989 Act which are heard in the District Court in respect of which the maximum fine is £100,000.

#### 3.5 Is the prosecution subject to a Jury trial?

Summary prosecutions will be heard in the District Court, while more serious prosecutions will be heard in the Circuit Criminal Court. Generally, less serious prosecutions will be dealt with in the District Court. Occasional cases involving a serious accident or fatality, the District Court may decide to pass the matter to the Circuit Criminal Court. The District Court may decide to pass the matter to the Circuit Criminal Court due to the complexity of the case or the decision of the Circuit Criminal Court in a trial on indictment. A prosecution in the Circuit Criminal Court is subject to a right of appeal to the Circuit Criminal Court Judge sitting in the District Court.