

**RRC
Study Text
Sample**



NEBOSH

Level 6 National Diploma for
Occupational Health and Safety
Management Professionals

Unit DN1

Know - Workplace Health and Safety Principles (UK)

Health and Safety Regulations

IN THIS SECTION...

- Outline how Regulations are created.

Statute Law

Statute law ('legislation') is written law produced at a national level through the parliamentary process, or delegated to government ministers or bodies such as the Privy Council and local authorities. Statutes (Acts of Parliament) supersede all other forms of law, and only Parliament can make, modify, revoke or amend statutes.

Acts of Parliament ('statutes') begin their life as Bills and go through several readings in the Houses of Parliament before finally becoming Acts. The **Health and Safety at Work, etc. Act 1974 (HSWA)** is an example. Some Acts of Parliament create powers to form delegated legislation, known as regulations.

Regulations are a class of statutory instrument, one of several types of delegated legislation made under the authority of an Act of Parliament. These regulations can be established quickly, which enables a rapid response to changing circumstances without taking up parliamentary time.

There are many regulations created under **HSWA**, examples include the **Control of Substances Hazardous to Health Regulations 2002 (COSHH)**, and the **Control of Noise at Work Regulations 2005 (CNAWR)**.

Creating Health and Safety Regulations

Section 15 of **HSWA** gives the power to make Regulations under the Act to the Secretary of State. The phrase 'Secretary of State' is frequently used in legislation because, in law, there is only one such position. In practice, the job is split between many different ministers, depending on the subject matter, e.g. Secretary of State for Health, Secretary of State for Defence, etc. For occupational health and safety issues, the Secretary of State for Work and Pensions has the relevant powers.

The matters that can form the subject of regulations are wide-ranging, and include:

- Securing the health, safety and welfare of people at work.
- Protecting people other than those at work against risks to their health and safety arising from work activities.
- Controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances, and generally preventing people from unlawfully having and using these substances.
- Controlling the release into the atmosphere of noxious or offensive substances from premises to be prescribed by regulations.

Section 15 also provides for the repeal or modification of any existing statutory provisions. Other areas that might be covered include:

- Rules for the handling and storage of particular substances.
- Monitoring of various aspects of the working environment.
- Provision of welfare arrangements.
- Standards for noise and other environmental problems.
- Modification of the arrangements for enforcement.



Laws regulate and control conduct

Note that the regulations may apply generally or to particular groups, or specific industries, operations, substances, materials or premises.

Section 15(6) provides that regulations may:

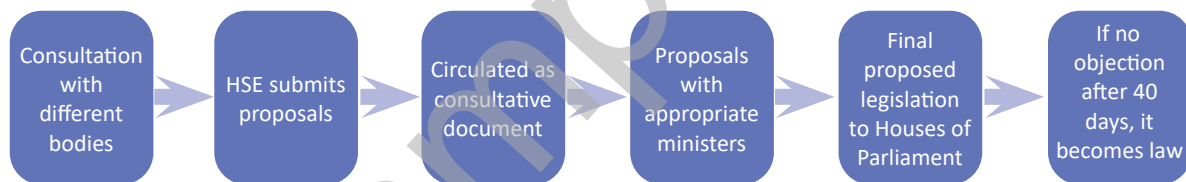
- Specify who can be prosecuted for a breach of provisions, e.g. the persons or classes of person who are to be guilty of an offence whether in addition to, or to the exclusion of, other persons or classes of person.
- Provide for any specified defence to be available in proceedings for any offence under the relevant statutory provisions.
- Exclude proceedings on indictment for contravention of a requirement or prohibition imposed by health and safety regulations.
- Restrict the punishments that may be imposed for any breach of health and safety regulations.

Section 15 is important because it demonstrates how health and safety regulations can be made, modified or repealed, and illustrates the importance of the HSE in the initiation of new health and safety regulations.

Role of the Secretary of State and the HSE in Making Regulations

Section 15 of **HSWA** gives the Secretary of State the power to make regulations for any of the general purposes of Part I of the Act, with the exception of matters relating exclusively to agriculture.

Proposals for regulations are submitted to the appropriate minister by the HSE after consultation with government departments, local authorities and other interested bodies. The proposals are often published and circulated in the form of a consultative document. Consultation would include such organisations as the CBI, TUC, local authority associations, individual employer associations, trade unions and bodies representing professional opinion. In some cases, the Executive may invite comment from individuals, but this is discretionary. In its final form, the proposed regulation is laid before both Houses of Parliament for 40 days, and if there are no objections, it will become law. There are three significant drafts relating to regulations: made, laid and coming into force.



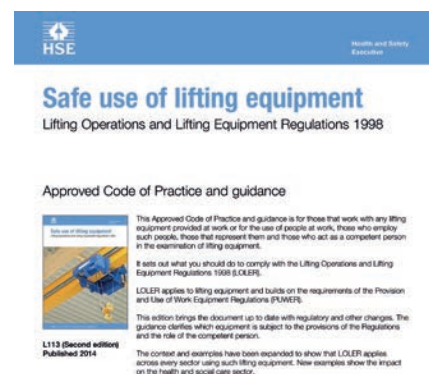
The stages of consultation

Approved Codes of Practice

Regulations provide the detailed requirements – that is, they outline what the employer must do. Regulations do not themselves specify how employers and others should meet those requirements. This is the role of ACoPs; they detail how to comply with the legal requirements.

ACoPs are issued by the HSE under **Section 16** of **HSWA** but require the consent of the relevant Secretary of State. They are published after consultation with government departments, employers' and employees' organisations, and expert opinions in the subject area.

(Note: You may still see some ACoPs approved by the 'Health and Safety Commission' (HSC). Both the HSC and HSE were originally established by **HSWA** but, in 2008, the HSC and HSE merged to become a unitary body, known as the Health and Safety Executive (HSE)).



ACoPs are issued by the HSE

Before an ACoP is issued, the HSE:

- Consults extensively with industry-interested parties, such as employers, to establish the need for the ACoP.
- Prepares a draft ACoP, which it makes available to everybody via the HSE for further consultation.
- Revises the ACoP and then obtains the consent of the Secretary of State to its issue.

ACoPs accompany some of the health and safety regulations and they have a particular significance, in addition to simply providing guidance, on how to comply with the requirements of the regulations. This is because contravention of the advice in an ACoP is admissible in evidence to prove a breach of the statutory provisions as set out in **Section 17, HSWA** itself and the associated regulations. The introduction to ACoPs contains the following statement:

'Although failure to comply with any provision of the code is not in itself an offence, such a failure may be used in criminal proceedings as evidence that a person has contravened a regulation to which the provision relates. In such a case, however, it will be open to that person to satisfy the court that he has complied with the regulation in some other way.'

Be careful not to confuse 'Regulations' with 'Approved Codes of Practice'. ACoPs do not lay down legal requirements so you cannot be prosecuted for failing to comply with the guidance contained in them. However, **not** complying with them may be evidence of non-compliance with the regulations, unless you can prove otherwise.

There are a number of regulations that are accompanied by an ACoP, such as the **Workplace (Health, Safety and Welfare) Regulations 1992 (WHSWR)**.

Regulation 8 of WHSWR states that every workplace shall have suitable and sufficient lighting. The accompanying ACoP gives practical advice on how to achieve it.

Not all regulations have an ACoP. Some, like the **Manual Handling Operations Regulations**, are accompanied by HSE guidance. Others, the **Safety Representatives and Safety Committees Regulations** for example, have both HSE guidance and an ACoP attached.

The HSE set out its intentions about ACoPs in a statement in 1996. They are usually published in a booklet that also contains regulations and guidance, distinguished by distinctive typefaces.

The practice of putting the detail of measures appropriate to comply with the legislation into a code of practice is a sensible one. It is designed to curtail the amount of legislation, the detail it would need to go into and the many changes that would be required to keep it up-to-date.

STUDY QUESTION

1. Does non-compliance with an ACoP constitute a criminal offence?

(Suggested Answer is at the end.)

Prosecutions

IN THIS SECTION...

- Describe the possible routes that a case could take through the UK court system and the basic procedure for bringing prosecutions.

The Possible Routes that a Case Could Take (including appeals) Through the Court System in the UK

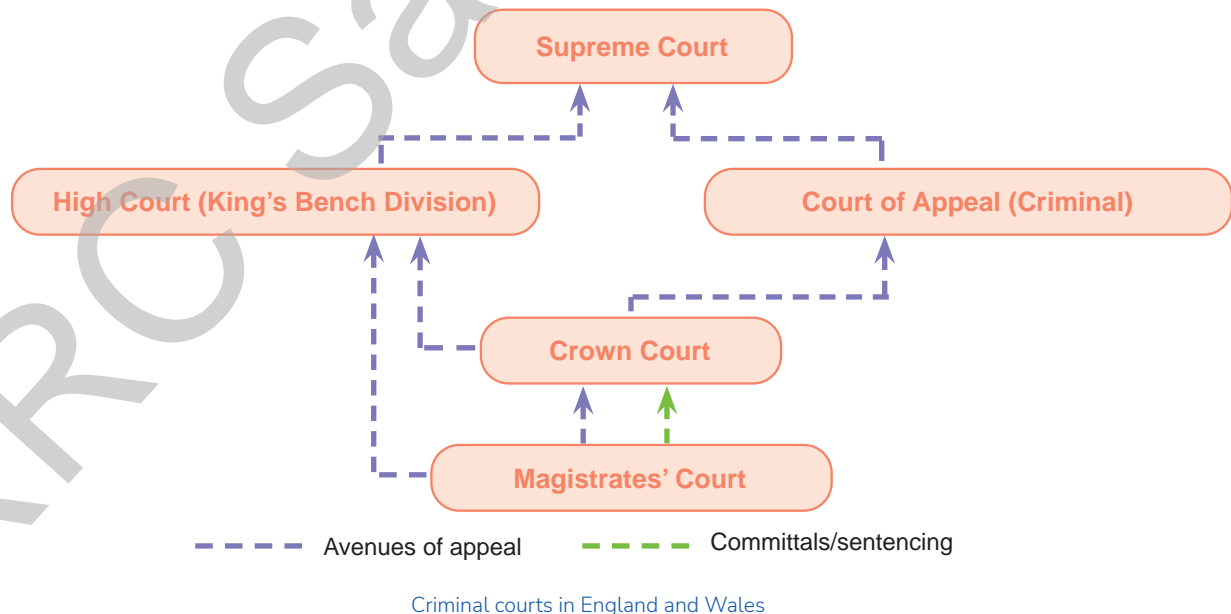
There are two distinct systems – although some courts deal with both criminal matters and civil matters:

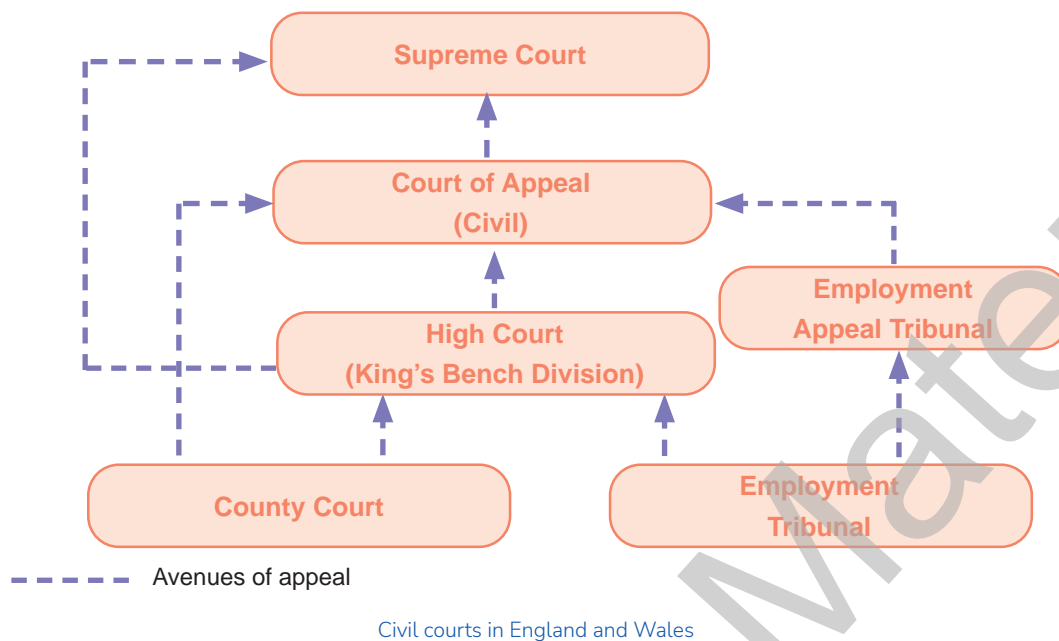
- Criminal cases are all heard initially in the Magistrates' Court and may be referred to the Crown Court (in England and Wales):
 - The Magistrates' Court is the lowest of the courts; magistrates hear cases and pass sentences for less serious offences. They also hold preliminary examinations into other offences to establish whether the prosecution can show a '*prima facie*' (at first sight) case, as a result of which the accused may be committed for trial at a higher court.
 - The Crown Courts deal with serious criminal charges and appeals from Magistrates' Courts.
- Civil matters, e.g. civil claims in respect of personal injury, are dealt with in the County Courts or by the High Court, according to the magnitude of the claim.



The three divisions of the High Court are King's Bench (contracts and torts), Chancery (land, wills, partnerships, companies, etc.) and Family. The King's Bench Division (KBD) has supervisory functions over the lower courts and tribunals (i.e. conducts judicial reviews). Presiding over both of these court systems is the Court of Appeal which has two divisions: the Criminal Division, which hears appeals from the Crown Courts, and the Civil Division, which hears appeals from County Courts and the High Court.

The Supreme Court only hears cases where there is an important point of law to be established.





Criminal Courts in England and Wales

• Magistrates' Court

Committal hearings were a procedural part of the court process, used to officially transfer a case from the Magistrates' Courts, where lower level crimes are dealt with, to the Crown Court, which handles the most serious offences. These were abolished in 2001 for 'indictable only' and in 2013 for 'either-way' offences. Cases are now sent to the Crown Court as soon as it is clear the matter is serious enough, without the need for a separate committal hearing.

Cases are heard by three lay magistrates or, in some courts, by a district judge (formerly known as a 'stipendiary magistrate') who is a legally qualified professional judge. Each Magistrates' Court has a legally qualified clerk who advises lay magistrates on points of law.

Procedurally, there are three types of offence that can be dealt with:

- A summary offence: can only be dealt with by a court of summary jurisdiction, i.e. a Magistrates' Court. Minor offences such as drunkenness, road traffic offences, etc. are dealt with without reference to another court.
- An indictable offence: results in a formal document, the indictment, being drawn up. The magistrates decide whether sufficient evidence exists (a '*prima facie*' case) to commit the accused to the Crown Court for trial. The magistrates therefore carry out committal proceedings. Magistrates' Courts act as courts of investigation for all cases, even murder cases. Indictable offences are the most serious and include murder, manslaughter and rape.
- Triable either way: depending on the option exercised by the accused and the gravity of the offence. Most health and safety offences fall into this category.

In addition to their criminal jurisdiction, the Magistrates' Courts spend much of their time in civil matters. For example, they have power to make separation orders (but not to grant divorces) and maintenance orders, and to make affiliation orders in cases concerning a child's legitimacy. They deal also with certain licensing appeals and the enforcement of payment of local authority council tax.

- **Crown Court**

The Crown Court hears all trials on indictment (the more serious crimes). It may sit anywhere in England and Wales. Crown Court cases are heard by a judge and jury; in England and Wales, there are 12 members of the public on the jury. For the purposes of trial in the Crown Court, you should note the following points:

- Class 1 offences – the most serious offences, such as murder, must be tried by a High Court judge.
- Class 2 offences – e.g. rape or manslaughter, must also be tried by a High Court judge, unless the presiding judges release any particular cases to be tried before a circuit judge or recorder.
- Class 3 offences – all other offences which must be tried on indictment. These may be listed for trial by a High Court judge or by a circuit judge or recorder.
- Class 4 offences – all offences which may be tried on indictment or summarily, those which are both indictable and summary, those which carry more than three months' imprisonment on summary conviction, and certain specified offences, e.g. burglary, causing death by dangerous driving, and robbery.

The Civil Courts in England and Wales

- **County Courts**

These courts do not exercise any criminal jurisdiction. England and Wales are divided into County Court circuits, and for the hearing the County Court judge sits alone.

A County Court has jurisdiction in many matters, but we are principally concerned with actions in contract and tort, when the court will hear cases where the compensation claimed does not exceed £50,000.

- **High Court of Justice**

The High Court of Justice consists of three divisions:

- The Family Division.
- The Chancery Division.
- The King's Bench Division (KBD).

In theory, they all have common jurisdiction but in practice, each division exercises its own jurisdiction.

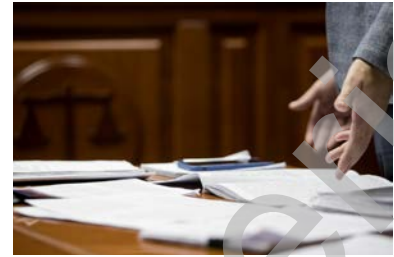
Health and safety matters are referred to the KBD, which is presided over by the Lord Chief Justice.

The KBD deals with many different types of action, ranging from those concerning commercial law and admiralty matters to contract and tort. Apart from hearing cases (a court of first instance), it may also sit as an appeal court known as the Divisional Court of the KBD. It hears appeals by way of case stated from the Magistrates' Court or Crown Court. Either party to the proceedings in the lower courts can challenge the decision of the magistrates or the Crown Court judge on appeal from the magistrates, on a point of law, by stating a case to the High Court for their opinion. Should the Divisional Court disagree with the decision of the magistrates or the judge, it may:

- Reverse or amend the decision.
- Remit the case to the Magistrates' or Crown Court with instructions to reconsider the matter to discharge or convict the accused.

Employment Tribunals

Employment tribunals (which are just specialist courts) were formerly known as industrial tribunals. These tribunals were established under the **Industrial Training Act 1964** and now deal mainly with unfair dismissals and redundancy payment claims. Employment tribunals have the power to hear and adjudicate on matters relating to sex discrimination, race relations, trade unions, equal pay, employment protection, industrial relations issues and certain areas of health and safety.



Employment tribunals deal with unfair dismissals, redundancy claims and discrimination

MORE...

You will find further information on the role of employment tribunals at:

www.gov.uk/courts-tribunals/employment-tribunal

Format

DEFINITION

LAYPERSON

(Also layman or laywoman) is a person who is not qualified in a given profession and/or does not have specific knowledge of a certain subject. In the context of specialised professions, the term 'lay' is often used to refer to those who are not members of that profession.

An employment tribunal is made up of a legally qualified chairperson, and two lay members (laypeople), drawn from a panel of people with experience in industry, business, industrial relations and so on. Wherever possible, the lay members sitting on any case will be representative of both employers and employees. When all three members of a tribunal are sitting, the majority view prevails.

Functions of Tribunals

Employment tribunals are basically for dispute resolution between employer and employee. They have the power to hear and adjudicate on matters relating to sex discrimination, race relations, trade unions, equal pay, employment protection, industrial relations issues and certain areas of health and safety. With regard to health and safety, tribunals have authority in the following main areas:

- Time off for the training of safety representatives.
- Failure to pay a safety representative for time off for carrying out their functions and training.
- Failure of an employer to make a medical suspension payment.
- Dismissal, actual or constructive, following a breach of health and safety law and/or a term of an employment contract.
- Appeals against Improvement and Prohibition Notices.

The Appeals Process

Criminal Courts

If an appeal is made against a conviction or sentence in the magistrates court, this is usually made as an appeal to the Crown Court. However, if the appeal is made on a point of law (for example, that a law was incorrectly applied) then this appeal can be made 'by way of case stated' to the high court (King's Bench Division).

Court of Appeal

The Court of Appeal deals with appeals from the decisions or findings of the lower courts. The Court of Appeal ranks next to and below the Supreme Court. There are two divisions of the Court of Appeal:

- **Court of Appeal Criminal Division**

This deals with appeals against sentences and convictions for offences dealt with at Crown Court – an application to seek permission to appeal must be made first and permission to appeal is not always an automatic right.

- **Court of Appeal Civil Division**

This deals with appeals from the High Court of Justice and the County Courts. The Civil Division cannot deal with criminal matters. It hears appeals from judgments or orders of the High Court, appeals from the County Court and certain other appeals.

Supreme Court

In most cases, this is the highest court in the land. Before October 2009, this role was undertaken by the appellate committee of the House of Lords, so you will still see many references to previous legal judgments of the House of Lords in case law. Each case is heard by five or, in very important cases, seven Law Lords. In England, Wales and Northern Ireland, they hear appeals from the Court of Appeal and occasionally directly from the High Court on both criminal and civil matters. They also hear civil cases from the Scottish Courts of Session.

Only cases on a point of law will be allowed permission to appeal to the Supreme Court.

MORE...

You will find further details on the structure and functions of the courts at:

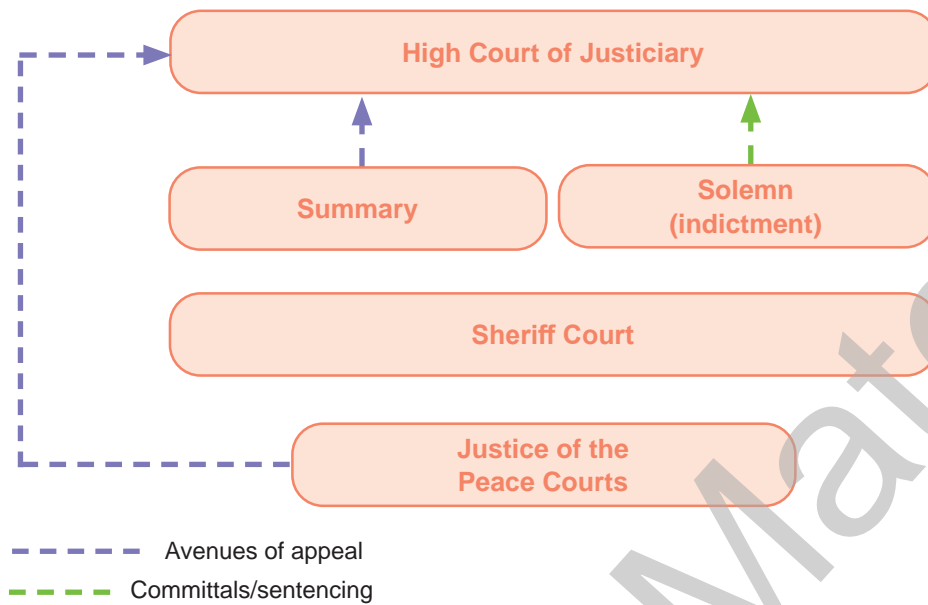
www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about

www.judiciary.uk/you-and-the-judiciary/going-to-court/court-of-appeal-home

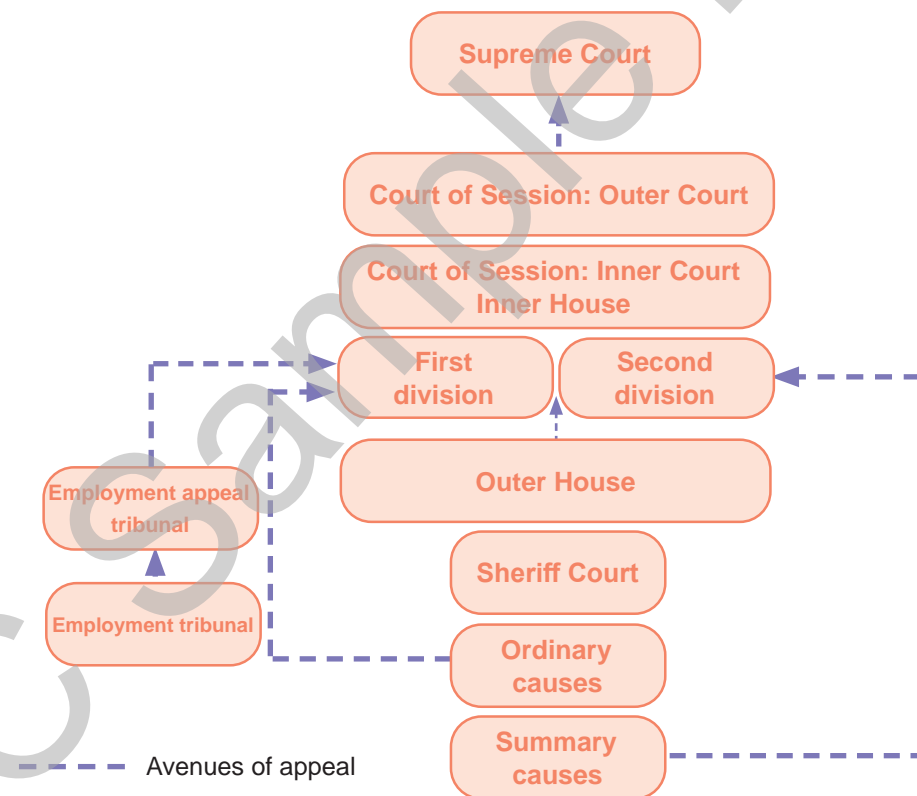
The Court System in Scotland

(Note that this section is relevant only to Scottish courts. If you are not studying in Scotland, you may like to compare the differences between the two systems.)

The following figures outline the corresponding court structure for Scotland.



Criminal courts in Scotland



Civil courts in Scotland

• Criminal

On the criminal side, the lowest courts are the Justice of the Peace Courts, dealing with Summary (minor) offences. The Sheriff Court is the main criminal court and can deal with all crimes that take place within its geographical jurisdiction except treason, murder, rape and incest, which are dealt with only by the High Court of Justiciary. The Sheriff Court is divided into Summary (minor offences) and Solemn (indictable offences). Appeals from both lie to the High Court of Justiciary, which is Scotland's Supreme criminal court.

Enforcement of breaches of health and safety law in the Scottish courts differs from English and Welsh procedures. In Scotland, the enforcement inspector collects the evidence and passes it to the Procurator Fiscal who decides whether to bring criminal proceedings. The maximum punishment in the Sheriff Court is normally a fine of £20,000 and 12 months' imprisonment. However, unlimited fines and two years' imprisonment can be imposed under the 'Solemn' procedure.

- **Civil**

On the civil side, there is an Employment Appeal Tribunal but rather than a Magistrates' Court, Scotland's Sheriff Court deals with 'summary' and 'ordinary' causes according to the financial sums involved. The higher courts are within a system known as the Court of Session, divided into two houses: the Inner and Outer. The Outer House is similar to a County Court and the Inner House deals mainly with appeals.

Appeals from the Sheriff Court dealing with summary causes (amounts under £1,500) go to the Second Division. Ordinary cause appeals (amounts over £1,500) go to the First Division.

Note: One major difference between the English and Welsh, and Scottish legal systems is that the Supreme Court is not part of the Scottish criminal court structure (except in relation to devolution issues, which are outside the scope of this course). The High Court of Justiciary also sits as the Scottish Court of Criminal Appeal, hearing appeals from the Sheriff and Justice of the Peace Courts. There is no appeal to the Supreme Court from their decisions.

The Basic Procedures for Bringing Prosecutions for Breaches of Health and Safety Legislation and for Pursuing Civil Actions

Prosecutions

Proceedings for any offence under **HSWA** can only be initiated by an inspector (or in Scotland by the Procurator Fiscal), or with the consent of the Director of Public Prosecutions (DPP). In important or complex cases, the DPP may undertake the actual proceedings, particularly where the 'public good' is concerned. Offences under the Act can be prosecuted as:

- Triable only summarily – Magistrates' Court.
- Triable only on indictment – Crown Court.
- Triable either way – Magistrates' or Crown Court.

Triable on 'indictment only' is the default position, i.e. unless a statute specifically states anything else, an offence is presumed triable on indictment. Generally, though, minor offences are dealt with by the Magistrates' Court and serious offences by the Crown Court. The determining factors are the:

- Gravity of the offence.
- Complexity of the case.
- Degree of punishment involved.

In offences 'triable either way' (also known as 'hybrid' offences), the defendant can elect for either trial in a Magistrates' Court or by 'judge and jury' in a Crown Court. Most 'either way' offences are dealt with summarily (Magistrates' Court). The decision is based on the following factors:

- Magistrates may feel that the offence merits a heavier penalty than they can impose and therefore send the case to the Crown Court for trial.
- Prosecution may ask for trial on indictment (Crown Court).
- Accused may elect for trial by jury (Crown Court).

Procedure in Prosecution

TOPIC FOCUS

The procedure for prosecution is well established as set out below, but initiatives to make the justice system swifter have resulted in the following recent changes:

- 'Indictable only' offences being dealt with directly by the Crown Court because of their seriousness.
- 'Either-way' offences to be sent to the Crown Court as soon as it is clear that the matter is serious enough, without the need for a separate committal hearing.

When the enforcing authority identifies that an offence has been committed and decides to prosecute, the procedure is that:

- Information is laid before the magistrate (or clerk of the justice).
- A summons to appear before magistrates is served on the person or corporate body, or on a partner in a partnership.
- The examining magistrate decides whether there is a charge to be answered. It is not a trial in the accepted sense as the accused does not plead to the allegations. A single justice of the peace can sit as an 'examining magistrate'.
- The decision rests initially with the magistrate as to whether an offence will be tried summarily or on indictment. The court will take into account all the circumstances and any representations made by the prosecution and defence. This is called a 'mode of trial' hearing.
- If it is decided that it can be dealt with summarily, the decision is explained to the defendant and they have to consent to summary trial, i.e. the defendant retains the right to elect for trial by 'judge and jury' (Crown Court).
- If an offence is to be tried on indictment, the Magistrates' Court proceedings are known as committal proceedings.
- Magistrates may change their minds during the course of a trial or committal proceedings, for example:
 - A case starts as summary proceedings. Up to the time of the conclusion of the prosecution evidence, the magistrates can decide that the matter should be dealt with on indictment. The magistrates then become 'examining magistrates'.
 - A case starts as committal proceedings. The magistrates decide that the case can be dealt with summarily. The consent of the defendant is necessary in such cases.

MORE...

The operational procedure for prosecutions can be found on the HSE website at:

www.hse.gov.uk/foi/internalops/og/ogprocedures/prosecutions/index.htm

Civil Procedures

From your prior learning, you will be aware that in the event a person suffers a loss due to the fault of another, they could seek remedy for this – this is a civil claim.

A civil action generally involves individuals – a **claimant** suing a **defendant** for a remedy or remedies. In most cases, the remedy takes the form of **damages**, a form of financial compensation. Remember that a civil case must be proved on the 'balance of probabilities', which is a lesser standard than that of 'beyond reasonable doubt' required in a criminal case.

The civil courts are the County Court and the High Court, and much of their work is concerned with claims for injuries sustained at work, although some claims may be settled out of court.

Following an accident at work, the injured person or their dependants may choose to sue the person they consider responsible for the harm. The two ways of doing this are by suing in either of the following torts:

- Negligence.
- Breach of statutory duty.

Both statute and common law create torts. The equivalent in Scotland is known as a 'delict'. Examples of torts are defamation, nuisance and trespass, and, in this context, the most important is the tort of negligence.

In civil procedures for personal injury, a claimant sues a defendant(s) for negligence and/or breach of statutory duty. We will cover the protocols for bringing such a claim later in Learning Outcome 1.

STUDY QUESTION

2. Which division of the High Court deals with personal injury cases?
 3. Most health and safety offences are said to be 'triable either way'. What does this mean?
 4. What health and safety issues does an employment tribunal decide?(Suggested Answer is at the end.)
- (Suggested Answers are at the end.)