

**RRC
Sample
Study Text**

NEBOSH
Health and Safety Management
for Construction (UK)
Unit CN1



Morals and Money

IN THIS SECTION...

- There are two main reasons for an organisation to manage health and safety: moral and financial.
- Construction has the largest number of fatal injuries of the main United Kingdom (UK) industry groups. Although there is a downward trend in the number of deaths and major injuries, areas of high injury and ill-health incidence remain.

Moral and Societal Expectations of Good Standards of Health and Safety

To prevent workplace accidents and illnesses, companies must stop viewing safety simply as complying with the law and start treating it as an ethical or moral issue. Keeping workers safe isn't just about avoiding prosecution; it's about upholding an employer's ethical obligations. Conscientious employers accept that it is an essential part of their corporate social responsibility.

Employers (via management) control the premises, equipment and working practices used by workers to facilitate the production of goods and services. Employers, therefore, have a **moral** responsibility to provide safe and healthy working conditions.

The media and communication industry, through its various channels such as print, news broadcast, photography and video, serves to inform the public of best practices and establishes a norm that people expect. In recent years, societal attitudes to justice and respect have prompted changes that have improved standards of health and safety everywhere, not just in the workplace. Better workers will strive to work for employers who follow a moral code of practice with higher standards.

Examples of moral practice include:

- Ensuring all risk assessments are completed.
- Training all workers.
- Prioritising measures that protect the whole workforce.
- Promoting a positive safety culture.

In simple terms, the moral reason can be summarised as, 'it's the right thing to do'. It is right and proper that workers going to work to earn a living should return home in the same state, not suffering from ill health or serious physical injury. People expect this as a fundamental right. Workers expect it. Society expects it. Over time, this societal expectation has been translated into legal standards. In this way, the moral argument drives legislation.

The Financial Cost of Incidents (Insured and Uninsured Costs, Direct and Indirect Costs)

The **financial** reasons for health and safety can be difficult to calculate, but incidents cost money to the company (lost production, repair of damage, replacement workers), to the injured person (lost wages, lost opportunities) and to society (emergency services, hospitals).

Insured and Uninsured Costs

It is usually possible to take out insurance to cover some of the losses that might foreseeably occur to an organisation. It is compulsory to take out employers' liability insurance (under the **Employers' Liability (Compulsory Insurance) Act 1969**), so that if an employee is killed or injured at work there is insurance in place to pay them (or their dependants) compensation. The minimum amount of cover is currently £5 million. The current certificate must be 'displayed' for the benefit of employees (though this can be made available in electronic form) and produced if required by an inspector.

Similarly, it is usual for an employer to insure their premises and stock against fire. However, it is not possible to insure against all losses. Some losses are uninsurable by their very nature. For example, an organisation cannot take out an insurance policy to pay out if they were prosecuted and fined in the criminal law courts, as it would no longer act as an effective deterrent. Other losses are not insured against because the loss is too difficult to quantify or because the insurance would be too expensive to consider. For example, organisations cannot insure themselves against loss of revenue if their business reputation is damaged through a major workplace accident. There is no law that prevents this type of insurance, it is simply impossible to obtain.



Fire can be insured against

Many of the direct and indirect costs associated with workplace accidents are uninsured for these reasons. The Health and Safety Executive (HSE) have estimated that uninsured losses are between 8 and 36 times greater than insured losses. They provide a rough average figure of 10 times. This is sometimes referred to as the 'uninsured loss iceberg' because the greater losses are below the waterline and cannot be seen (but are quite capable of sinking the ship).

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Examples of possible insured and uninsured costs include:

Insured Costs	Uninsured Costs
<ul style="list-style-type: none"> • Damage to plant, buildings and equipment. • Compensation paid to workers. • Medical costs. • Legal costs associated with a claim for compensation. 	<ul style="list-style-type: none"> • Production delays or down time. • Loss of raw materials due to accidents. • Accident investigation time. • Criminal fines and legal costs. • Sick pay for injured workers. • Overtime to make up for lost production. • Hiring and training new employees. • Loss of business reputation.

It is worth remembering that, even if a loss is covered by insurance, most insurance policies come with an excess and with a limit. The excess is the amount of money that will be payable by the organisation before any payment is forthcoming from the insurer (e.g. it might be the first £5,000 of any claim). The limit is the cap above which the insurer will not pay (for example, if a business has £2 million building and contents fire insurance but it costs £3 million to rebuild and restock the premises, then the insurer will only pay the first £2 million; the remaining sum is uninsured).

Direct and Indirect Costs

When an accident occurs, the organisation will face both direct and indirect costs:

- **Direct costs** – the measurable costs arising directly from the accident.
- **Indirect costs** – those which arise indirectly as a consequence of the event. Indirect costs are often difficult to quantify precisely and may be hard to identify. In certain circumstances they may be extremely high.

Examples of direct costs:

- First-aid treatment.
- Worker sick pay.
- Repairs to, or replacement of, damaged equipment and buildings.
- Lost or damaged product.
- Lost production time while dealing with the injury.

Examples of indirect costs:

- Reduction in staff morale (which impacts on productivity and efficiency).
- General difficulties in recruiting and retaining staff as an indirect result of the accident.
- Loss of goodwill of customers following delays in production and fulfilling orders.
- Activation of penalty clauses for failing to meet delivery dates.
- Damage to public image and business reputation.
- Damage to industrial relations, perhaps leading to industrial action (e.g. strikes).

From the examples given you can see that, though more difficult to identify, the indirect costs associated with a workplace accident can be very large indeed.

Companies have gone out of business after major incidents. Insurance companies often now take considerable interest in health and safety performance and employers who fail to identify hazards and manage risks properly may well find their insurance premiums significantly increased. Following prosecutions, fines imposed by the criminal courts can only be met from the employer's own funds as insurance cover is not possible against criminal penalties.

Although there has been a downward trend in the number of deaths and major injuries in GB's construction industry in the last few years, recent statistics show that:

- Construction is a relatively small sector for employment.
- The fatal injury rate is significantly higher than the All Industry rate.
- Construction consistently accounts for a high number of work-related fatalities.
- A significant cause of a fatal injury is a fall from height.
- Typically, injury or illness caused by construction activities accounts for one day's absence for everyone in the industry.



Manual handling injuries remain a cause for concern for inspectors on construction sites

Good construction health and safety is a large contributor to the fall in the number of injuries, but it must be maintained to ensure the number continues to fall. The hazards and risks of construction activities must be recognised and management systems put in place to eliminate or reduce those risks. Typical areas of high-injury incidence are:

- **Falls from height** - still a prime cause of fatalities and major injuries.
- **Slips, trips and falls occurring on the same level** - still causing a significant number of over-seven-day injuries.
- **Being struck by falling/moving objects** - materials and objects dropped from access equipment and buildings is also a significant cause of fatalities and specified injuries for construction workers.
- **Manual handling** - lifting and carrying on construction sites - a major cause of lost work days due to specified injuries or over-seven-day injuries.

For the latest set of published statistics see:

<https://www.hse.gov.uk/statistics/assets/docs/construction.pdf>

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Despite major advances in health and safety culture and awareness, the construction industry continues to deliver the highest single industry fatality rate in the annual HSE statistics bulletin. Since 1 February 2016, the Sentencing Council has issued guidelines on fines for health and safety offences, including corporate manslaughter, which apply to all sentences. These can be very substantial.

If the court establishes there was a deliberate breach of, or flagrant disregard for, the law, then this is regarded very seriously (high culpability) and large organisations in particular could be presented with an unlimited fine on conviction, or one at least ranging from £500,000 to £10 million.

Even small organisations that are convicted of causing death or injury to their employees by allowing them to work in an unsafe or negligent manner can now be fined up to £1.6 million.

So as you can see, the enforcing agencies and the judiciary are now drawing a clear link between the poor statistics of the construction industry and the punishments awarded. Any organisation, large or small, will, if convicted, now find itself appropriately and proportionately punished.

The Financial Impact of Non-Conformances and Reworks

Non-conformances and rework can lead to significant financial losses, including increased material waste, labour costs, and production delays. When defects occur, additional resources are required to identify, repair, or replace faulty products, disrupting operations and reducing efficiency. These direct costs, combined with the impact of missed deadlines, can strain profitability and operational effectiveness.

Beyond immediate expenses, non-conformances can damage customer trust, lead to regulatory fines, and harm a company's reputation. Persistent quality issues may result in lost sales, increased returns, and reduced market competitiveness. To mitigate these financial risks, businesses must invest in robust quality control measures, employee training, and process improvements, ensuring long-term cost savings and sustainability.

Powers of HSE Inspectors

There are several authorities who have a role in enforcing health and safety law in the UK. First among these is the HSE and its equivalent body in Northern Ireland, the Health and Safety Executive for Northern Ireland (HSENI).

The HSE enforces health and safety law in a wide range of workplaces. These include factories, mines, quarries, construction sites, off-shore oil and gas facilities, chemical plants and agriculture. These might be described as the medium- and high-risk workplaces. The HSE does not, however, enforce in all workplaces and it does not generally enforce fire safety legislation.

The HSE has a number of roles:

- Enforcement of the **Health and Safety at Work, etc. Act 1974 (HSWA)** and associated law.
- Reviewing existing legislation and making recommendations for changes.
- Providing information and guidance.
- Conducting research.

The HSE is the enforcing authority when the only activities being undertaken are:

- Construction work, or activities directly related to it (e.g. ground clearance).
- Work defined by the **CDM regulations** as notifiable.
- A contractor is working, in whole or in part, on the external fabric of a building or structure.
- Construction work is being carried out in a physically segregated area of a premises.

MORE...

The HSE website is an excellent source of information on legal standards and best practice:

www.hse.gov.uk

Powers of Inspectors Under HSWA

Inspectors appointed under **HSWA** have wide-ranging powers to enter and inspect premises, including construction sites, to ensure that activities are being carried out in accordance with statute law.

While the general policy is to promote compliance through co-operation and discussion, inspectors do have the power to issue enforcement notices and, if necessary, prosecute offenders.

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Under Section 20 of **HSWA** inspectors have the following powers:

- To enter premises, at any reasonable time.
- To take along a police officer if they believe they are going to be obstructed.
- To take along technical assistance or equipment if necessary.
- To carry out any necessary examinations and investigations.
- To direct that premises (in whole or in part) or items within the premises are left undisturbed.
- To take photographs, drawings and measurements.
- To take samples of articles or substances and of the atmosphere.
- To dismantle and/or test any item or substance which they think is dangerous.
- To take possession of articles and substances for examination or test, or as evidence in proceedings.
- To take statements from any person who might be able to help in their investigation. Interviewees must answer any questions and sign a statement of their answers (although these are not admissible as evidence in any subsequent proceedings against that person).
- To inspect and copy any document or record considered relevant.
- To receive access to reasonable facilities and assistance in conducting their investigation.
- Any other power necessary to fulfil the duty of their enforcement authority.

Section 25 of **HSWA** adds an additional power:

To seize and render harmless (by destruction if necessary) any article or substance that gives rise to imminent danger of serious personal injury.

Enforcement Notices

There are two types of enforcement notices issued by inspectors: **improvement notices** and **prohibition notices**.

Conditions for Serving

Improvement Notices

- An improvement notice is issued where the inspector thinks that health and safety law is being **breached** or a breach has occurred and is likely to be repeated.
- It will only be issued if the inspector does not think there is a risk of serious personal injury.
- The improvement notice will state that an improvement must be made to achieve minimum legal standards and will impose a **timescale** that the inspector thinks is appropriate.
- The timescale for the improvement cannot be fewer than **21 days**.
- The inspector may state the specific action needed to achieve legal compliance and make reference to any relevant ACoP or guidance.
- The improvement notice is served on the person in charge of the workplace or activity that is in breach; this is normally the employer.
- Any appeal against the notice must be made within **21 days**.

When on construction sites, workers often have to use temporary welfare facilities which may require improvements. For example, consider an inspector visiting a construction site where 10 workers were refurbishing the inside of a retail premises. If the inspector found that the water system had been isolated to prevent leaks, however this prevented the toilets flushing or sinks working properly to wash hands, then the inspector would be entitled to issue an improvement notice. This would require the employer to ensure adequate welfare facilities were provided. The improvement notice would specify to the contractor what is required (e.g. clean and working toilets and washbasins with hot and cold running water) and give a timescale to comply with the notice.

In this case, an improvement notice would be issued because:

- The relevant legislation is being breached.
- It is not a trivial matter.
- There is no imminent risk of serious personal injury.

Prohibition Notices

- A prohibition notice is issued where the inspector thinks that there is an imminent risk of **serious personal injury**.
- The prohibition notice will state that the activity must **stop** until such time as it has been remedied.
- No timescale is specified.
- The inspector does not need to see a breach of health and safety law.
- The prohibition notice is served on the person in control of the activity; this is often the employer.
- Any appeal against the notice must be made within **21 days**.

For example, if an inspector investigating a construction site found that a guard to cover a circular saw was missing, they might issue a prohibition notice. This is because any person coming into contact with the moving saw blade may suffer a very serious injury or even be killed. The machine must immediately be taken out of use and cannot be re-used until it has been made safe by fitting the relevant guards.

Rights and Effects of Appeal

Appeals against notices are made to an **employment tribunal**. The appeal must be made **within 21 days** of the notice being served and must be in writing and state the grounds for the appeal.

For an improvement notice, bringing an appeal **suspends** the notice until the appeal is heard or withdrawn.

For a prohibition notice, bringing an appeal means the prohibition **remains in place** unless the tribunal directs otherwise.

The decision of the tribunal may be to:

- Cancel the notice.
- Affirm (uphold) the notice.
- Affirm but modify the notice (e.g. by extending the timescale).

The emphasis is upon simplicity and speed. Often, in order to speed up the procedure, a tribunal will order a preliminary hearing to see if the matter can be resolved between the parties without a full tribunal taking place.

Penalties or Failure to Comply

Failure to comply with an enforcement notice is an offence under **HSWA** that might lead to prosecution by the enforcing authority. The penalties following successful prosecution are a fine and/or a prison sentence. Maximum penalties are:

- **Magistrates' Court:**
 - unlimited fine; and/or
 - 12 months' prison.
- **Crown Court:**
 - unlimited fine; and/or
 - two years' prison.



Breaching health and safety law can lead to criminal prosecution

Fee for Intervention (FFI)

The **Health and Safety and Nuclear (Fees) Regulations 2022** allow the HSE to recover its costs for carrying out its regulatory functions from those found to be in **material breach** of health and safety law.

A material breach is when, in the opinion of the HSE inspector, there is or has been a contravention of health and safety law that requires them to issue either:

- a notification of contravention (a letter that does not constitute formal enforcement action);
- an improvement or prohibition notice; or
- a prosecution.

The written notification must include the following information:

- the law that the inspector's opinion relates to;
- the reasons for their opinion; and
- notification that a fee is payable to the HSE.

Fee For Intervention (FFI) applies where HSE is the enforcing authority.

The fee payable is based on the amount of time it takes the HSE to identify and conclude its regulatory action in relation to the material breach (including associated office work). This is calculated using a standard hourly rate (for the current rate see <https://www.hse.gov.uk/fee-for-intervention/what-is-ffi.htm>). Material breaches discovered during a site visit would result in FFI being charged for the entire duration of that site visit.

Invoices are payable within 30 days.

Prosecution

Criminal prosecutions result in a trial heard in either the Magistrates' Court or the Crown Court (in England and Wales) or the Justice of the Peace or Sheriff Court (in Scotland). The case is brought by the enforcement agency itself in England and Wales, although in Scotland the Crown Office and Procurator Fiscal Service (COPFS) brings the case on behalf of the inspectors.

STUDY QUESTIONS

1. Incidents will have a financial impact that affects the business and can also affect society. Give two examples of costs to:
 - (a) The business.
 - (b) Society.
2. Identify two risk areas in construction that have a high injury incidence rate.

(Suggested Answers are at the end.)

The Construction (Design and Management) Regulations 2015

IN THIS SECTION...

- The **CDM Regulations 2015** apply to **all** construction projects in the UK.
- Duties are placed upon clients, designers, principal designers, principal contractors and contractors.
- The management of projects can be divided into two distinct stages:
 - Development of pre-construction health and safety information.
 - Development of a construction phase health and safety plan.
- Pre-construction (and other) information must be enough to ensure that all significant risks foreseen in the project are anticipated and planned for.
- The health and safety file becomes the manual for future construction projects and is required for projects involving more than one contractor.
- The extent to which domestic clients must carry out the client duties in **CDM Regulations 2015** is limited and most of the duties are passed to other duty holders.

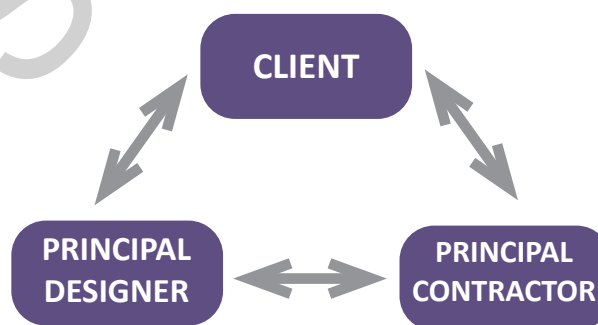
Roles, Competence and Duties under the CDM Regulations

The **Construction (Design and Management) (CDM) Regulations 2015** provide a detailed framework for managing construction projects. They specifically target planning and design issues, as these areas hold the underlying causes of accidents, as well as the actual construction phase management; this includes good fire risk management. The intention is to 'design out' the problems from the start.

CDM Regulations 2015 develop the roles of people involved in construction projects (clients, designers, principal designers, principal contractors and contractors) and places particular duties upon each of them.

In particular:

- The client has a duty to ensure that both the principal designer and principal contractor comply with their duties.
- The principal designer is responsible for managing the pre-construction phase of the project.
- The principal contractor is responsible for managing the construction phase of the project.



Based on original image from *Industry guidance for principal contractors* (www.citb.co.uk/documents/cdm%20regs/2015/cdm-2015-principal-contractors-printer-friendly.pdf)

They apply to all construction projects, but identify specific types of projects as 'notifiable'.

Clients (Regulations 4, 5 and 6)

Clients must make suitable arrangements for managing a project, including the allocation of sufficient time and other resources, and ensure that these arrangements are maintained and reviewed throughout the project. They must also provide pre-construction information as soon as is practicable to every designer and contractor appointed to the project; this must include existing fire precautions and building layout; and identify the presence of flammable and combustible materials.

In addition, they must ensure that, before the construction phase begins, a construction phase plan is drawn up by the contractor or principal contractor which includes project-specific fire risks and procedures in case of fire; and that the principal designer prepares a health and safety file for the project.

Designers (Regulation 9)

A designer can be any person who specifies construction work, or specifies materials to be used. Typical examples include architects, surveyors and design and build contractors. The designer must ensure the client is aware of their **CDM** duties and seek to avoid hazards or minimise risk by effective design.

Designers must consider the risk of fire at design stage, including in their choice of building materials and methods of construction. For example, specifying materials that can be fixed together by mechanical means rather than hot means. They should also consider the impact on neighbouring properties and their emergency escape routes. Where risks cannot be avoided, adequate information must be provided with design drawings and specifications.

Principal Designers (Regulation 11)

Principal designers are responsible for planning, managing, monitoring and co-ordinating health and safety in the pre-construction phase of a project. This includes identifying, eliminating or controlling foreseeable risks and ensuring that designers carry out their duties. They must ensure risk of fire is identified, eliminated, and controlled.

They are also responsible for preparing and providing relevant information to other duty holders, including that relating to fire risk and control; in particular, principal contractors, to help them plan, manage, monitor and co-ordinate health and safety in the construction phase.

Principal Contractor (Regulation 13 and 14)

The principal contractor is the main contractor involved and is normally a specialist in managing construction projects. Significant to this role is the planning, managing and monitoring of the construction phase, and co-ordinating matters relating to health and safety during the construction phase to ensure that, so far as is reasonably practicable, construction work is carried out without risks to health or safety. This includes ensuring a site-specific fire risk assessment forms part of the construction phase plan, that programming of work considers fire mitigation measures and that those measures are implemented.

The principal contractor must also consult and engage with the workforce to ensure that measures for their health, safety and welfare are developed, promoted and checked for effectiveness.



The principal contractor will put the site rules in place