

WAKEFIELD METROPOLITAN DISTRICT COUNCIL

HEALTH AND SAFETY ENFORCEMENT POLICY

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Revision Number:	2	Path:	
Status of Document:	Live	Page 1 of 18	

HEALTH AND SAFETY ENFORCEMENT POLICY

<u>Contents</u>	<u>Page No</u>
1 Introduction	3
2 The Purpose and Method of Enforcement	4
3 The Principles of Enforcement	7
3.1 Proportionality	7
3.2 Targeting	8
3.3 Consistency	9
3.4 Transparency	9
3.5 Accountability	10
4 Investigation	11
5 Choice of Appropriate Enforcement Action	12
6 Lead Authorities	13
7 Prosecution	14
7.1 The Decision to Prosecute	14
7.2 Prosecution of Individuals	16
7.3 Publicity	16
7.4 Action by the Courts	16
7.5 Representations to the Courts	17
8 Death at Work	18

Appendices

Appendix 1 Penalties for Health and Safety Offences

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 2 of 18	

1 **INTRODUCTION**

- 1.1 The City of Wakefield Metropolitan District Council's aims are to protect the health, safety and welfare of people at work, and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out.
- 1.2 The Council has statutory responsibilities to make adequate arrangements for the enforcement of health and safety law in relation to work activities in workplaces allocated to it - including offices, shops, retail and wholesale distribution centres, leisure, hotel and catering premises.
- 1.3 This Enforcement Policy Statement sets out the general principles and approach which the Inspectors will follow. All Council staff who take enforcement decisions are required to follow this policy. In general, those staff will be inspectors, so this policy refers to inspectors for simplicity.
- 1.4 The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare.
- 1.5 In allocating resources, the Council will have regard to the principles set out below, the objectives published in HSC's and the HSE/Local Authority Enforcement Liaison Committee's (HELA) strategic plans, and the need to maintain a balance between enforcement and other activities, including inspection.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 3 of 18	

2 THE PURPOSE AND METHOD OF ENFORCEMENT

2.1 The ultimate purpose of the Councils' health and safety enforcement activity is to ensure that duty holders manage and control risks effectively, thus preventing harm. The term 'enforcement' has a wide meaning and applies to all dealings between the Council and those on whom the law places duties (employers, the self-employed, employees and others).

2.2 The purpose of enforcement is to:

- ensure that duty holders take action to deal immediately with serious risks;
- promote and achieve sustained compliance with the law;
- ensure that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts in the circumstances set out later in this policy.

Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor to assist such claims.

2.3 Inspectors have a range of tools at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Inspectors may offer duty holders information, and advice, both face to face and in writing. This may include warning a duty holder that in the opinion of the inspector, they are failing to comply with the law. Where appropriate, inspectors may also serve improvement and prohibition notices, withdraw approvals, vary licence conditions or exemptions, issue formal cautions, and they may prosecute.

2.4 Giving information and advice, issuing improvement or prohibition notices, and withdrawal or variation of licences or other authorisations are the main means which inspectors use to achieve the broad aim of dealing with serious risks, securing compliance with health and safety law and preventing harm.

2.5 A prohibition notice stops specified work activities in order to prevent serious personal injury. Every improvement notice contains a statement that in the opinion of an inspector an offence has been committed. Improvement and prohibition notices, and written advice, may be used in court proceedings. Information on improvement and prohibition notices should be made publicly available.

2.6 Formal cautions and prosecution are important ways to bring duty holders to account for alleged breaches of the law. Where it is appropriate to do so in

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 4 of 18	

accordance with this policy, inspectors will use one of these measures in addition to issuing an improvement or prohibition notice.

- 2.7 Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, the Council and its' inspectors will have regard to the principles of enforcement set out in this statement and the objectives published in HSC and HELA strategic plans. In particular, in allocating resources, the Council will strike a balance between investigations and mainly preventive activity.
- 2.8 Sometimes the law is prescriptive - spelling out in detail what must be done. However, much of modern health and safety law is goal setting - setting out what must be achieved, but not how it must be done. Advice on how to achieve the goals is often set out in Approved Codes of Practice (ACOPs). These give practical advice on compliance and have a special legal status. If someone is prosecuted for a breach of health and safety law and did not follow the relevant provisions of an ACOP, then the onus is on them to show that they complied with the law in another way. Advice is also contained in other HSC, HSE and HELA guidance material describing good practice. Following this guidance is not compulsory, but doing so is normally enough to comply with the law. Neither ACOPs nor guidance material are in terms which necessarily fit every case. In considering whether the law has been complied with, inspectors will need to take relevant ACOPs and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them. More is said about these matters in this statement.
- 2.9 Inspectors will use discretion in deciding when to investigate or what enforcement action may be appropriate but the Council expects that such judgements will be made in accordance with the following principles. These are in accordance with the *Enforcement Concordat* agreed between the Cabinet, Home Office and local authority associations and adopted by the Council.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 5 of 18	

2.10 Inspectors will have regard to the HELA Local Authority Circular 22/1 during their enforcement activities.

Notes:

A formal caution is a statement by an inspector, that is accepted in writing by the duty holder, that the duty holder has committed an offence for which there is a realistic prospect of conviction. A formal caution may only be used where a prosecution could be properly brought. 'Formal cautions' are entirely distinct from a caution given under the Police and Criminal Evidence Act by an inspector before questioning a suspect about an alleged offence. The Inspector should take account of current Home Office guidelines when considering whether to offer a formal caution.

In this policy, 'risk' (where the term is used alone) is defined broadly to include a source of possible harm, the likelihood of that harm occurring, and the severity of any harm.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 6 of 18	

3 THE PRINCIPLES OF ENFORCEMENT

The Council believes in firm but fair enforcement of health and safety law. This should be informed by the principles of **proportionality** in applying the law and securing compliance; **consistency** of approach; **targeting** of enforcement action; **transparency** about how the regulator operates and what those regulated may expect; and **accountability** for the regulator's actions. These principles should apply both to enforcement in particular cases and to the Councils' management of enforcement activities as a whole.

3.1 Proportionality

3.1.1 *Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) can expect that action taken by the inspector to achieve compliance or bring duty holders to account for non-compliance will be proportionate to any risks to health and safety, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law.*

3.1.2 In practice, applying the principle of proportionality means that the inspector will take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

3.1.3 Some health and safety duties are specific and absolute. Others require action so far as is reasonably practicable. The Inspector will apply the principle of proportionality in relation to both kinds of duty.

3.1.4 Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where duty holders must control risks so far as is reasonably practicable, the Inspector considering protective measures taken by duty holders will take account of the degree of risk on the one hand, and on the other the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk.

3.1.5 The Council will expect relevant good practice to be followed. Where relevant good practice in particular cases is not clearly established, health and safety law effectively requires duty holders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately, the courts determine what is reasonably practicable in particular cases.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 7 of 18	

3.1.6 Some irreducible risks may be so serious that they cannot be permitted irrespective of the consequences.

3.2 Targeting

3.2.1 *Targeting means making sure that contacts are targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focused on the duty holders who are responsible for the risk and who are best placed to control it - whether employers, manufacturers, suppliers, or others.*

3.2.2 The Council will have systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a duty holder's operations. The duty holder's management competence is important, because a relatively low hazard site poorly managed can entail greater risk to workers or the public than a higher hazard site where proper and adequate risk control measures are in place. Certain very high hazard sites will receive regular inspections so that the Council can give public assurance that such risks are properly controlled.

3.2.3 Any enforcement action will be directed against duty holders responsible for a breach. This may be employers in relation to workers or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; designers or clients of projects; or employees themselves. Where several duty holders have responsibilities, the Inspector may take action against more than one when it is appropriate to do so in accordance with this policy.

3.2.4 When inspectors issue improvement or prohibition notices; withdraw approvals; vary licence conditions or exemptions; issue formal cautions; or prosecute; the Inspector will ensure that a senior officer of the duty holder concerned, at board level, is also notified.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 8 of 18	

3.3 Consistency

3.3.1 *Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.*

3.3.2 Duty holders managing similar risks can expect a consistent approach from the Council and its' inspectors in the advice tendered; the use of enforcement notices, approvals etc; decisions on whether to prosecute; and in the response to incidents.

3.3.3 The Council recognises that in practice consistency is not a simple matter. Inspectors are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by the inspector. The Council has arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other Councils.

3.4 Transparency

3.4.1 *Transparency means helping duty holders to understand what is expected of them and what they should expect from the Inspector. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.*

3.4.2 Transparency also involves the Council in having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements have regard to legal constraints and requirements.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 9 of 18	

3.4.3 This statement sets out the general policy framework within which the Council operates. Duty holders, employees, their representatives and others also need to know what to expect when an inspector calls and what rights of complaint are open to them. All inspectors are required to issue the HSC leaflet *What to expect when a health and safety inspector calls* to those they visit. This explains what employers and employees and their representatives can expect when a health and safety inspector calls at a workplace. In particular:

- When inspectors offer duty holders information, or advice, face to face or in writing, including any warning, inspectors will tell the duty holder what to do to comply with the law, and explain why. Inspectors will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice.
- In the case of improvement notices the inspector will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when, and that in the inspector's opinion a breach of the law has been committed.
- In the case of a prohibition notice the notice will explain why the prohibition is necessary.

3.5 Accountability

3.5.1 Regulators are accountable to the public for their actions. Therefore the Council has policies and standards (such as the four enforcement principles above) against which it can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 10 of 18	

4 **INVESTIGATION**

4.1 As with prosecution, the Inspector will use discretion in deciding whether incidents, cases of ill health, or complaints should be investigated. HSC's priorities are reflected in the HELA Strategy which is used by the Council to target its activities and resources. This will inform the decision of whether or not to investigate.

4.2 Investigations are undertaken in order to determine:

- Causes
- Whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law
- Lessons to be learnt and to influence the law and guidance
- What response is appropriate to a breach of the law

To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. HSC's Strategic Plan recognises that is neither possible nor necessary for the purposes of the Act to investigate all issues of non-compliance with the law which are uncovered in the course of preventive inspection, or in the investigation of reported events.

4.3 The Council will always carry out a site investigation of a reportable work-related death.

4.4 In selecting which complaints or reports of injury or occupational ill health to investigate and in deciding the level of resources to be used, the Council and its' inspectors will take account of the following factors:

- The severity and scale of potential or actual harm.
- The seriousness of any potential breach of the law.
- Knowledge of the duty holder's past health and safety performance.
- The enforcement priorities.
- The practicality of achieving results.
- The wider relevance of the event, including serious public concern.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 11 of 18	

5 **CHOICE OF APPROPRIATE ENFORCEMENT ACTION**

- 5.1 When deciding on the choice of enforcement action inspectors will have regard to the principles of proportionality, targeting, consistency and transparency set out in this policy. Specific guidance regarding the choice of prosecution as the appropriate enforcement action is given later in this policy.
- 5.2 The inspector will take into account the following factors when deciding whether or not the service of an improvement or prohibition notice is appropriate:
- The degree of risk.
 - The seriousness of the breach.
 - The likelihood of achieving compliance by less formal means.
 - The general record and approach of the dutyholder.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 12 of 18	

6 **LEAD AUTHORITIES**

6.1 Inspectors will contact and, if necessary, liaise with the relevant Lead Authority:

- Before taking formal enforcement action against an organisation participating in the Lead Authority Partnership Scheme, except in the case of immediate danger.
- After serving a prohibition notice.
- When significant shortcomings are identified in a participating organisations agreed policies or procedures which the inspector believes ought to be challenged at a national level.
- Following any significant on-site investigation of any death, major injury, case of work-related ill-health or dangerous occurrence reportable under the Reporting of Injuries Diseases and Dangerous Occurrences Regulations 1995.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 13 of 18	

7 **PROSECUTION**

7.1 **The Decision to Prosecute**

7.1.1 The decision to proceed with a court case rests with the inspector who must use discretion, in line with the principles set out in this policy, in deciding whether to bring a prosecution.

7.1.2 The decision whether to prosecute should take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution may go ahead unless the prosecutor finds there is sufficient evidence to provide a realistic prospect of conviction, and decides that prosecution would be in the public interest.

7.1.3 While the primary purpose of the Council is to ensure that duty holders manage and control risks effectively, thus preventing harm, prosecution is an essential part of enforcement. The HSC (and the Council) expects that where in the course of an investigation an inspector has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account of the Code for Crown Prosecutors, that it is in the public interest to prosecute, then that prosecution should go ahead. Where the circumstances warrant it and the evidence to support a case is available, the inspector may prosecute without prior warning or recourse to alternative sanctions.

7.1.4 Subject to the above, HSC (and the Council) expects that, in the public interest, the Inspector should normally prosecute, or recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances apply. Where:

- Death was a result of a breach of the legislation.
- The gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it.
- There has been reckless disregard of health and safety requirements.
- There have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance.
- Work has been carried out without or in serious non-compliance with an appropriate licence or safety case.
- A duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 14 of 18	

- There has been a failure to comply with an improvement or prohibition notice or there has been a repetition of a breach that was subject to a formal caution.
- False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk.
- Inspectors have been intentionally obstructed in the lawful course of their duties.

Where inspectors are assaulted, the Council will seek police assistance, with a view to seeking the prosecution of offenders.

7.1.5 HSC (and the Council) also expect that, in the public interest, the inspector will consider prosecution, or consider recommending prosecution, where following an investigation or other regulatory contact, one or more of the following circumstances apply:

- It is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law.
- A breach which gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

Note:

Health and safety sentencing guidelines regard death resulting from a criminal act as an aggravating feature of the offence. If there is sufficient evidence, HSC considers that normally such cases should be brought before the court. However, there will be occasions where the public interest does not require a prosecution, depending on the nature of the breach and the surrounding circumstances of the death.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 15 of 18	

7.2 Prosecution of Individuals

7.2.1 Subject to the above, Inspectors should identify and prosecute or recommend prosecution of individuals if they consider that a prosecution is warranted. In particular, they should consider the management chain and the role played by individual directors and managers, and should take action against them where the inspection or investigation reveals that the offence was committed with their consent or connivance or to have been attributable to neglect on their part and where it would be appropriate to do so in accordance with this policy. Where appropriate, the Inspector should seek disqualification of directors under the Company Directors Disqualification Act 1986.

7.3 Publicity

7.3.1 The Council will make arrangements for the publication annually of the names of all the companies and individuals who have been convicted in the previous 12 months of breaking health and safety law. It also has arrangements for making publicly available information on these convictions and on improvement and prohibition notices which they have issued.

7.3.2 The Council will also consider in all cases drawing media attention to factual information about charges which have been laid before the courts, but great care must be taken to avoid any publicity which could prejudice a fair trial. It will also consider publicising any conviction which could serve to draw attention to the need to comply with health and safety requirements, or deter anyone tempted to disregard their duties under health and safety law.

7.4 Action by the Courts

7.4.1 Health and safety law gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences. Unlimited fines may be imposed by higher courts. HSC will continue to seek to raise the courts' awareness of the gravity of health and safety offences and of the full extent of their sentencing powers, while recognising that it is for the courts to decide whether or not someone is guilty and what penalty if any to impose on conviction. This action by the HSC will be supported by the Council. A list of the sanctions presently available to the courts is attached to this statement.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 16 of 18	

7.4.2 The Inspector will, when appropriate, draw to the court's attention all the factors which are relevant to the court's decision as to what sentence is appropriate on conviction. The Court of Appeal has given guidance on some of the factors which should inform the courts in health and safety cases (*R v F Howe and Son (Engineers) Ltd* [1999] 2 All ER, and subsequent judgments). The Council notes that the Lord Chancellor has said that someone injured by a breach of health and safety legislation is no less a victim than someone who is assaulted.

7.5 Representations to the Courts

7.5.1 In cases of sufficient seriousness, and when given the opportunity, the Inspector will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make, the Inspector will have regard to Court of Appeal guidance: the Court of Appeal has said '*In our judgment magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence*'.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 17 of 18	

8 **DEATH AT WORK**

- 8.1 Where there has been a breach of the law leading to a work-related death, the Inspector will consider whether the circumstances of the case might justify a charge of manslaughter.
- 8.2 In order to ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, HSE, the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS) have jointly agreed and published *Work-related deaths: A protocol for liaison*. The Local Government Association has agreed that local authorities should take account of the protocol when responding to work-related deaths. The Inspector will adhere to that protocol.
- 8.3 The police are responsible for deciding whether to pursue a manslaughter investigation and whether to refer a case to the CPS to consider possible manslaughter charges. The Inspector is responsible for investigating possible health and safety offences. If in the course of their health and safety investigation, the Inspector find evidence suggesting manslaughter, they will pass it on to the police. If the police or the CPS decide not to pursue a manslaughter case, the Inspector will normally bring a health and safety prosecution in accordance with this policy.

Date of Issue:	April 2001	Review Date:	February 2004
Author:	P Fielding	Authorised By:	G Butler
Revision Number:	2	Path:	
Status of Document:	Live	Page 18 of 18	

APPENDIX 1

PENALTIES FOR HEALTH AND SAFETY OFFENCES

PENALTIES FOR HEALTH AND SAFETY OFFENCES

The Health and Safety at Work etc Act 1974 (the HSW Act), section 33 (as amended) sets out the offences and maximum penalties under health and safety legislation.

- 1 *Failing to comply with an improvement or prohibition notice, or a court remedy order (issued under the HSW Act sections 21, 22 and 42 respectively):*

Lower court maximum £20,000 and/or 6 months' imprisonment
Higher court maximum Unlimited fine and/or 2 years' imprisonment.

- 2 *Breach of sections 2-6 of the HSW Act, which set out the general duties of employers, self-employed persons, manufacturers and suppliers to safeguard the health and safety of workers and members of the public who may be affected by work activities:*

Lower court maximum £20,000
Higher court maximum Unlimited fine

- 3 *Other breaches of the HSW Act, and breaches of 'relevant statutory provisions' under the Act, which include all health and safety regulations. These impose both general and more specific requirements, such as requirements to carry out a suitable and sufficient risk assessment or to provide suitable personal protective equipment:*

Lower court maximum £5,000
Higher court maximum Unlimited fine

- 4 *Contravening licence requirements or provisions relating to explosives.* Licensing requirements apply to nuclear installations, asbestos removal, and storage and manufacture of explosives. All entail serious hazards which must be rigorously controlled.

Lower court maximum £5,000
Higher court maximum Unlimited fine and/or 2 years' imprisonment.

- 5 *On conviction of directors for indictable offences in connection with the management of a company (all of the above, by virtue of the HSW Act sections 36 and 37), the courts may also make a disqualification order (Company Directors Disqualification Act 1986, sections 1 and 2). The courts have exercised this power following health and safety convictions. Health and safety inspectors draw this power to the court's attention whenever appropriate.*

Lower court maximum 5 years' disqualification
Higher court maximum 15 years' disqualification

Note: These penalties can change from time to time