

MARSH INSIGHTS:

OUTLOOK: PERSPECTIVES ON TOPICAL RISK AND INSURANCE ISSUES FOR UK CORPORATES

TOUGHER PENALTIES MAY BE ON THE WAY FOR CORPORATE MANSLAUGHTER, HEALTH AND SAFETY, AND FOOD SAFETY OFFENCES IN ENGLAND AND WALES

Proposed sentencing guidelines for offences in these areas are out for consultation until 18 February 2015. This could affect any organisation operating in England and Wales, even if they are domiciled elsewhere in the UK.

The Sentencing Council for England and Wales states: “The review of guidelines is taking place in part due to concerns that some sentences imposed for these offences have been too low, particularly in relation to large organisations* convicted of the most serious health and safety and food safety offences.”

*Defined by the Sentencing Council as organisations with turnovers above GBP50 million.

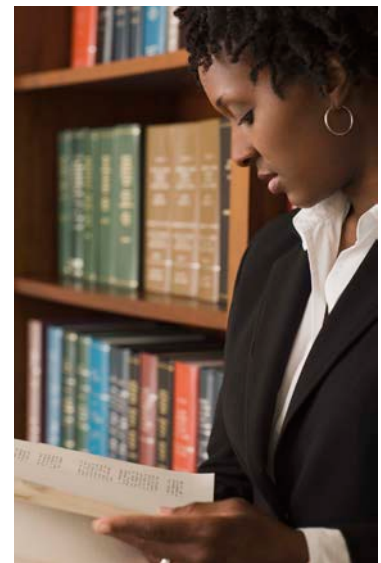
The consultation comes after the Court of Appeal judgement in R v Sellafield and Network Rail [2014] EWCA Crim 49. Here the Court of Appeal indicated the relevant factors to consider when assessing the level of sentence for large organisations in non-fatal but serious incidents. The Court of Appeal upheld a fine of GBP500,000 imposed on Network Rail for a serious but non-fatal injury and supported the assertion that sentencing a corporate defendant according to its means could include taking into account its structure, finances, and profit arrangements.

This suggests an increasing appetite within the judiciary to impose stiffer sanctions on large organisations with high levels of turnover and/or profit that are shown to have breached their legal duties.

These developments are surely a reminder for any organisation to review its approach to safety management, and to ensure it is supported by robust documentation. The financial risk cannot be transferred to the insurance market (other than some limited cover for prosecution defence costs where these are related to an incident that is otherwise covered by the policy). No cover is provided for fines and penalties.

We have provided some background information overleaf. The full [consultation paper](#) provides detailed information, including proposed levels of fines related to turnover bands and the severity of offences.

Marsh can help organisations set up and monitor their health and safety management systems, understand and educate executive/senior management teams on liability exposure and the costs associated with non-fatal incidents; and provide independent validation and pragmatic advice on best in class risk management in key risk areas. Please contact us if you would like an initial discussion with our health and safety specialists.



In this edition:

- Tougher penalties proposed for safety offences.
- Political risks overseas.
- Working Time Directive.
- News in brief — cyber security, changes to driving licences.

TOUGHER PENALTIES (CONTINUED)

THE BACKGROUND

There are current guidelines in place in respect of corporate manslaughter and fatal health and safety offences, but there is no specific guidance on sentencing non-fatal health and safety offences, or food safety offences. In addition, existing guidance only covers offences committed by organisations, not individuals.

The requirement for this guidance is also linked to provisions within the Legal Aid, Sentencing and Punishment of Offenders Act 2012. When section 85 comes into force it will allow magistrates to impose unlimited fines for certain offences (where the previous limit may have been between GBP5,000 and GBP20,000). The proposed guidance is intended to produce certainty and consistency when magistrates are able to exercise their extended sentencing powers.

The Sentencing Council states it wants “to ensure that sentences that are proportionate to the seriousness of the offence while, as required by law, taking account of the financial circumstances of the offender. The aim is to help ensure sentences that not only punish the offender, but deter them and others from committing these crimes, and remove any financial benefit they may have received from the offending.”

Sentencing levels in relation to lower level offences are said to be unlikely to change because they are already considered to be proportionate.

Most corporate manslaughter prosecutions to date have involved small organisations. The following extract from the consultation paper is therefore also worthy of note:

The Council is proposing starting points for micro organisations that are lower than the SGC’s* suggested threshold of GBP500,000. However, the Council considers that these are appropriate and fair starting points that meet the aims of sentencing and the principles outlined above. In addition, the Council has noted that in cases sentenced to date involving micro companies or organisations that had gone out of business, the courts have been restricted in the fines they have been able to impose by the limited means of the offender.

* SGC: The Sentencing Guidelines Council. (The predecessor body to the Sentencing Council.)

Note: This consultation relates to the legislation and sentencing applicable to offences occurring in England and Wales. Offences occurring in Scotland and Northern Ireland are subject to different legislation and sentencing structures.



DO YOU INVEST OVERSEAS? INFORMATION IS NOW AVAILABLE ON THE POLITICAL RISKS

Rising geopolitical tensions, political violence, and separatist movements combined with falling commodity prices are exacerbating political risks and further highlighting challenges for direct foreign investors. There is a clear divide between healthy emerging markets and those that represent poor investments for foreign investors, according to the [2015 Marsh Political Risk Map and report](#).

The map draws on data from Business Monitor International (BMI), a leading source of independent political and credit risk analysis, to provide you with overall risk scores for 185 countries based on three categories: Political risk, macroeconomic risk, and operational risk.

The associated report details several of the major factors that drove the political risk environment in 2014, as well as those that will likely continue into 2015, including:

- Falling oil prices.
- The divergence between emerging economies that represent strong investment opportunities and those that do not.
- Political violence beyond the Middle East and North Africa.
- Autonomy and separatist movements.
- Greater global conflict.
- Social media.
- State-sponsored cyber-attacks.

The report recommends strategies for managing political risks and looks beyond the next couple of years to consider 2017, when elections in several countries could significantly alter the political risk landscape.

CONSULTATION UNDERWAY ON THE WORKING TIME DIRECTIVE

The European Commission is reviewing the Working Time Directive, which aims to protect workers from health and safety risks associated with excessive or inappropriate working hours.

According to the Commission: “Over the last twenty years, fundamental changes have occurred in the world of work and the economy, which have had a clear impact on many aspects of the organisation of working time. In the light of these developments, it is necessary to reflect on the kind of working time legislation the EU needs in order to cope with the current and future challenges of the first part of 21st century – social, economic, technological and demographic.”

The objective is to establish the changes are needed to arrive at working time rules which best meet the needs of workers, businesses, public services, and consumers across the European Union.

You can download the consultation document and contribute your views on the [Commission's website](#).



NEWS IN BRIEF CYBER SECURITY

In November 2014, Marsh hosted a meeting with UK Government and senior executives of the UK's leading cyber insurers to discuss the ways in which the industry and the UK Government can work together to improve cyber security for businesses operating in the UK.

You can read our [Adviser](#) to find out the commitments that were made at the meeting and how these will be taken forward to drive improvements in cyber security risk management.

CHANGES TO DRIVING LICENCES

From 8 June 2015, the paper counterpart that currently accompanies the photocard driving licence will not be valid and will no longer be issued by the Driver and Vehicle Licensing Agency (DVLA) in Great Britain. Older, paper-only licences (that is, those issued prior to 1998) will remain valid, but will be replaced with a photocard-only licence when they are next renewed or amended.

Endorsements and penalty points will no longer be recorded on paper driving licences/counterparts.

Our [Adviser](#) sets out the implications for businesses in terms of the requirement to check the licences of anyone who drives on your business, and how you can undertake these checks.

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