



3. LIABLE IN SO MANY WAYS...

Work-related road safety is like any other risk and as such it has to be suitably assessed and effectively managed.

“Up to a third of all road traffic accidents involve somebody who is at work at the time.” – HSE

3.1 Increased Penalties

Under the Health and Safety Offences Act 2008 sanctions in the lower courts were raised to:

- **FINES: UP TO £20,000**
- **IMPRISONMENT: UP TO 12 MONTHS**
- **OR BOTH!**

Additionally, certain offences formerly only triable in lower courts became triable in either lower or higher courts where greater penalties can be imposed.

3.2 New Guidance and Legislation

In order to effectively manage this risk the HSE has given clear guidance in **INDG 382**. This publication sets the standard and involves looking at the driver, the vehicle and the journey.

The police **Road Death Investigation Manual** has been reviewed in the light of new legislation and officers are now likely to look specifically at these factors when investigating corporate responsibility.

The Corporate Manslaughter and Corporate Homicide Act 2007 specifically requires juries to view health and safety guidance when considering whether companies have been grossly negligent.

3.3 Health & Safety Offences

There is no Health and Safety law that specifically covers work-related road safety; however it is a risk that is covered by the **Health and Safety at Work Act 1974** just as it does any other workplace risk and carries the same sanctions for failures or negligence.

Health and safety law states that organisations must:

- Provide a written health and safety policy (5 or more employees).
- Assess risks to employees, customers, partners and anyone else who may be affected by their activities.
- Arrange for effective planning, organisation, control, monitoring and review of preventative and protective measures.
- Ensure that they have access to competent health and safety advice.
- Consult employees about their risks at work and current protective and preventative measures.

If a health and safety offence is committed with the consent, connivance of, or is attributable to any neglect on the part of any director, manager or other similar officer of the organisation, then that person (as well as the organisation) can be prosecuted under **Section 37 of the Health and Safety at Work etc Act 1974**. Those found guilty are liable for fines, disqualification as a director and, in some cases, imprisonment.

3.4 Directors

Directors may be disqualified under the **Directors Disqualification Act 1986, s2(1)** without additional investigation or evidence.

Individual directors are also potentially liable for other related offences such as the common law offence of gross negligence manslaughter: proved when individual officers of a company by their own grossly negligent behaviour cause death. This offence is punishable by a maximum of life imprisonment.

In July 2007 the Court of Appeal specifically considered directors' duties in relation to **Section 37 of the Health and Safety at Work Act 1974**. If a director is aware that he/she is not dealing with a particular risk and either consents to the company continuing as it is, or turns a blind eye, he/she will be guilty of breaching s37. Directors will also be guilty of breaching s37 if they are neglectful of their duty of care and either knew or ought to have known about the risk the company was running.

And...

These requirements are in addition to the duties you have as an employer under road traffic law, e.g. the **Road Traffic Act and Road Vehicle (Construction and Use) Regulations**.

