

HEALTH AND SAFETY (DIRECTOR DUTIES)

EXPLANATORY MEMORANDUM

This Bill needs to be read alongside the document “A Hard Day’s Work Never Killed Anyone – Negligent Bosses Did” published by the T&G

Introduction

1. These explanatory notes relate to the Health and Safety (Directors Duties) Bill. They have been prepared in order to assist the reader of the Bill. They do not form part of the Bill.
2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be a comprehensive description of the Bill.

Summary

3. The purpose of this Bill is to impose an obligation upon all company directors to take all reasonable steps to ensure that their company is complying with health and safety law.
4. It also imposes an obligation upon large companies to appoint a director with responsibility for health and safety, to ensure that the company has the procedures that will allow this director to undertake his duties and to make adequate arrangements within the company so that the health and safety director can carry out his duties.
5. The Bill states that this health and safety director has a duty to take all reasonable steps to obtain safety information concerning the company and to pass this information to the board.
6. The Bill also imposes an obligations upon the directors to take account of any information and advice provided to them by the health and safety director.

Background

7. The Government, in its strategy document, Revitalising Health and Safety, published in June 2000 set out the importance of the conduct of directors to the health and safety of companies, and stated that its was the intention of ministers to introduce

legislation on directors responsibilities when parliamentary time allows. This bill is intended to comply with that intention.

8. This legislation is required as existing law imposes no positive duty upon company directors to take any steps to ensure that their company is complying with health and safety law.

Section One

9. Section 1(1) amends section 282 of the Companies Act 1985 and inserts an additional duty upon those companies which are neither small nor medium as defined by section 247 of the Companies Act to nominate one of its directors as a 'health and safety director'.

10. Section 1(2) amends section 364 of the Companies Act so that the name of this director is set out in the company's annual return.

Section Two

11. Section 2 amends section 309 of the Companies Act 1985 and adds three new sections.

12. The new section 309A imposes a duty upon directors of all companies to take all reasonable steps to ensure that their company is complying with health and safety law. The applicable law is set out in schedule 2.

13. It also imposes a duty upon the directors of those companies which have a duty to nominate a health and safety director to take in to account the information and advice of this nominated director when assessing what steps to comply with the duty that is imposed upon them. It imposes a further duty upon these directors to make adequate arrangements within the company so that this nominated director can obtain the necessary information.

14. Section 1 of the new section 309B sets out the duties of the nominated health and safety director. These are divided into three parts. Section (1) (a) requires them to inform the other directors "not less than four times a year", of;
 - how the company's activities are affecting the health and safety of its employees and other persons not in the company's employment;
 - the adequacy of the measures taken by the company to ensure that it complies with health and safety legislation and any further measures that may be necessary for this purpose.

15. Section (1) (b) requires the nominated director to inform other directors 'promptly' in relation to:
 - any significant health and safety failure by the company and the steps that have been taken, or will be necessary, to rectify it;
 - details of reportable incidents, enforcement notices and decision to prosecute the company.

16. Section (1) (c) requires them to inform the board on the health and safety implications of its decisions.

17. Section 2 of section 309 B states that the duties of the health and safety director do

not diminish any other health and safety duty imposed on other directors under this act, and any other duties imposed by the Board.

18. The new section 309 C states that in determining what steps need to be taken by directors to meet the requirements of the duties imposed upon them, they should give consideration to any code of practice issued or approved by the Health and Safety Commission.

Schedule 1

18. Amendment of section 16 of the Health and Safety at Work Act 1974 ensures that the HSC has the power to issue codes of practice in relation to the matters in Part 1 of the Bill.