

Individual Imprisonment

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CATEGORY:
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Following a freedom of information request, it was revealed last year that there has been a 400% increase of prosecutions of directors and managers under s.37 of the Health and Safety at Work Act 1974 (the 'Act') over the past five years.

HSE's own figures show that 43 individuals were investigated for an offence under s.37 during 2010/2011, whilst it is particularly remarkable that 21 individuals were prosecuted despite being involved in incidents where there had been no fatalities or injuries whatsoever.

In July of this year, a director of a house building company received a suspended prison sentence after it was found that his company's offence of failing to ensure that work at height was properly planned and supervised occurred with his consent. The company had been served with 52 enforcement notices since February 2002 which had remained unheeded, while the director was described as a 'dinosaur who needed to move with the times'.

Notably, these statistics do not include information in relation to prosecutions under section 7 of the Act, which imposes an obligation on employees to take reasonable care for the safety of themselves and other persons who may be affected by their acts or omissions at work, or under gross negligence manslaughter laws.

Earlier in the year, the driver of a Caterpillar crawler received a 24-week suspended prison sentence for accidentally killing a fellow worker after reversing his vehicle into him at a work site. The HSE investigating officer commented that while employers have a duty to assess risks and implement safety precautions, employees also have a duty to take reasonable care for the safety of others, particularly when operating dangerous machinery.

When the Health and Safety (Offences) Act 2008 was enacted, introducing for the first time an option for imprisonment of employees for health and safety offences, it was widely expected that prosecution and imprisonment would be reserved only for the very worst of offences. However, statistics published by the HSE and the examples mentioned above portray a slightly different picture and it is now apparent that courts are more trigger happy when it comes to prosecuting individuals, even though the majority of successful prosecutions end in suspended prison sentences as opposed to actual time behind bars.