

Legal Requirements on Engineers Working in the UK

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Synopsis

- Introduction
- Branches of the Law
- Applicable Law
- 'Vicarious Liability'
- Codes of Conduct
- Plan of Action
 - For Individuals
 - For Organisations
- References

Introduction

- Why Me?
 - CEng, FIChemE
 - 30 Years with HSE, laterly including Head of Profession for Process Safety Specialists
 - ChemEnvoy
- Why Not Me?
 - I am not a lawyer! (IANAL)

Introduction

- Engineering practice is not specifically regulated in the UK – No license to work as a Professional Engineer
- Applicable Law is Generic
- Some Registration Schemes
 - For Technicians – e.g. Gas Safe Register
 - For Engineers – e.g. Chartered Engineer (CEng) and FEANI (Eur Ing)
- Gas Safe Registration compulsory!

Branches of the Law

- Criminal
 - Enforced by 'Authorities' or 'Regulators' on behalf of the Public
 - Proof 'Beyond Reasonable Doubt'
- Civil
 - Contract
 - Tort (especially negligence)
 - Cases instigated by those adversely affected
 - Decided on the 'Balance of Probabilities'
 - Often 'Settled out of Court'

Criminal Law (HSW 1974)

- S6 - General duties of manufacturers etc. as regards articles and substances for use at work
 - ... designed and constructed as to be safe and without risks to health when properly used
 - ... to carry out ... such testing and examination as may be necessary...
 - ... that there will be available ... adequate information about the use for which it is designed and has been tested...
- Is Process Plant an Article for Use at Work?

Criminal Law (HSW 1974)

- S7 - General duties of employees at work
 - to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work
 - as regards ... his employer ... to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

Criminal Law (HSW 1974)

- S8 - Duty not to interfere with or misuse things provided pursuant to certain provisions
- S9 - Duty not to charge employees for things done or provided pursuant to certain specific requirements

'Vicarious Liability'

- The Management of Health and Safety at Work Regulations 1999
 - Provisions as to liability
 - R 21 - Nothing in the relevant statutory provisions shall operate so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of
 - (a) an employee of his, or ...
- 'Master/Servant Relationship'

'Vicarious Liability'

- There is a tension between MSWR R 21 and HSW S7
- Need clarity on roles and responsibilities and good communication
- MSWR R3 (Risk Assessment) requires specific consideration of '*the inexperience, lack of awareness of risks and immaturity of young persons*'
- Competence!
 - Must be managed
 - Is a joint effort

Competence

- Long standing legal requirements for 'thorough examination by a Competent Person'
- Now also in the Control of Substances Hazardous to Health Regulations
- A possible definition:
 - A competent person is somebody with the education, training and practical experience to enable him/her to successfully perform the task for which a competent person is specified.

Penalties on Conviction

- Summary Conviction
 - Up to £20,000
 - Up 6 months imprisonment
- Crown Court
 - Unlimited fine
 - Up to 2 years imprisonment

see: <<http://www.hse.gov.uk/enforce/enforcementguide/court/sentencing-penalties.htm>>

Penalties on Conviction

- Nobels Explosives double fatality 1988
 - £100,000 and £30,000 costs
- BP Oil Grangemouth Refinery in 1988
 - £250,000 for a fatal incident in connection with a flare line
 - £500,000 for a fatal incident following an explosion in a hydrocracker
- 7 cases with fines exceeding £500,000 since 2003 including £1,450,000 for Hertfordshire Oil Storage and £3,600,000 for Total UK Limited (both Buncefield)
- Largest fine for an individual £112,000 (construction fatality)

<http://www.hse.gov.uk/prosecutions/>

Other Jurisdictions

- Seek expert advice!
 - Local and Legal
- Often a need to register before undertaking defined roles
 - 'COMAH' safety report authors in Malaysia
- Cases arising can cross continents
 - Invista -v- Dupont re UK site on Teesside

Codes of Conduct

- Compliance with relevant 'Codes of Conduct' is an element of evidence of compliance with the law
- Compliance is usually a requirement of membership of a Professional Body such as IChemE, and the Engineering and Science Councils

Codes of Conduct

Selected items from IChemE

- Maintain their competence
- Undertake only professional tasks for which they are competent.
- Disclose relevant limitations of competence.
- Accept appropriate responsibility for work carried out under their supervision
- Treat subordinates fairly and without bias.
- Encourage others to advance their learning and competence

Codes of Conduct

Selected items from IChemE

- Avoid where possible real or perceived conflict of interest
- Advise affected parties when such conflicts arise.
- Observe the proper duties of confidentiality owed to appropriate parties.
- Reject bribery and other corrupt practices.
- Assess relevant risks and liability, and, if appropriate, hold professional indemnity insurance.
- Notify the Institution if convicted of a criminal offence or upon becoming bankrupt or disqualified as a Company Director.

Codes of Conduct

The Engineering Council

- As for IChemE

The Science Council

- As for the EC and IChemE, but also
- Have regard at all times to the public interest

Public Interest -v- Company Interest

- Conflict can lead to 'whistle-blowing'

Plan of Action (Individuals)

- Read the paper 'Directors' and engineers' responsibilities for safety - a cautionary tale by Brian Harris'
- Consider applying 'The Self Assessment Toolkit for Safety Health and Environmental Assurance' to manage your personal SH & E responsibilities and accountabilities

Plan of Action (Organisations)

- Read the paper 'Directors' and engineers' responsibilities for safety - a cautionary tale by Brian Harris'
- Be clear about how you manage the competencies of staff.
- Be clear about the competencies required for each post in the organisation.
- Ensure clarity in the safety responsibilities allocated in contracts.

Legal Contacts



References

- Directors' and engineers' responsibilities for safety - a cautionary tale by Brian Harris
- Self Assessment Toolkit for Safety, Health & Environment Assurance
(Both documents can be downloaded from <http://www.icheme.org/SLP-Resources>)
- Engineering Council Model Code of Conduct
(<http://www.engc.org.uk/about-us/professional-ethics>)
- Competence assessment for the hazardous industries – HSE Research Report 086
(<http://www.hse.gov.uk/research/rrhtm/rr086.htm>)