

# **Health and Safety (Directors' Duties) Bill**

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by Mr Stephen Hepburn, are published separately as Bill 22-EN.

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**B I L L**

TO

Impose duties upon company directors in relation to health and safety; to give powers to the Health and Safety Commission to issue and approve codes of practice in connection with the performance of those duties; to require large companies to appoint a director as health and safety information director; and for connected purposes.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1 Health and safety information directors**

- (1) The Companies Act 1985 (c. 6) is amended as follows.
- (2) In section 282 (directors), after subsection (3), insert—
  - “(4) A company to which this requirement applies shall appoint one of its directors as health and safety information director for the purposes of section 309E. 5
  - (5) The requirement in subsection (4) applies to every company which does not qualify as a small or medium-sized company for the purposes of section 247.”
- (3) In section 364 (contents of annual return: general), after subsection (1)(d), insert—
  - “(da) the name of the health and safety information director of the company;”. 10

**2 Directors' duties**

- (1) The Companies Act 1985 is amended as follows. 15
- (2) After section 309C (which is inserted by section 19 of the Companies (Audit,

Investigations and Community Enterprise Act 2004 (c. 27)) insert—

**“309D Directors’ duties regarding health and safety**

- (1) It is the duty of the directors of a company to take all reasonable steps to ensure that the company acts in accordance with the obligations imposed on it by— 5
- (a) the relevant statutory provisions,
  - (b) any statutory provision that is specified in the first column of Schedule 12A,
  - (c) any regulations, orders or other instruments of a legislative character made or having effect under any provision so specified that relates to health and safety, or 10
  - (d) any Order in Council or regulations made under section 2 of the European Communities Act 1972 (general implementation of Treaties) that relates to health and safety.
- (2) The directors of a company to which section 282(4) applies shall, for the purpose of complying with their duty under subsection (1), take account of any information and advice provided to them by the health and safety information director. 15
- (3) The directors of a company to which section 282(4) applies shall make adequate arrangements to ensure that the health and safety information director is provided with such information as he may require to carry out his duties under section 309E. 20
- (4) In this section and section 309E, ‘the relevant statutory provisions’ means—
- (a) anything within the meaning given to that term by section 53(1) of the Health and Safety at Work etc. Act 1974 (interpretation), and 25
  - (b) anything which, under the terms of any Act, has effect as if it were an existing statutory provision within the meaning given to that term in Part 1 of the Health and Safety at Work etc. Act 1974. 30

**309E Duties of health and safety information directors**

It shall be the duty of the health and safety information director appointed under section 282(4) to take all reasonable steps—

- (a) to inform the other directors, not less than four times a year, of— 35
  - (i) how the company’s activities are affecting the health and safety of its employees and of other persons not in the company’s employment,
  - (ii) the adequacy of the measures taken by the company to ensure that it complies with the provisions referred to in section 309D(1)(a) to (d), 40
  - (iii) any further measures that may be necessary to ensure that it complies with those provisions;
- (b) to inform other directors promptly of— 45
  - (i) any significant health and safety failure by the company and the steps that have been taken, or will be necessary, to rectify it,

- (ii) details of any deaths, injuries or other incidents that the company has a duty to report under –
  - (a) the relevant statutory provisions,
  - (b) any statutory provision that is specified in the first column of Schedule 12B, or 5
  - (c) any regulations, orders or other instruments of a legislative character made or having effect under any provision so specified that relates to health and safety,
- (iii) details of any notice which has been served on the company or on one of its employees under – 10
  - (a) the relevant statutory provisions,
  - (b) any statutory provision that is specified in the first column of Schedule 12C, or
  - (c) any regulations, orders or other instruments of a legislative character made or having effect under any provision so specified that relates to health and safety, 15
- (iv) details of any proceedings which have been brought against the company for an offence under any law relating to health and safety or for any offence arising out of a death; and 20
- (c) to inform the board of the health and safety implications of its decisions. 25

**309F All reasonable steps** 25

In determining those steps that should be taken by directors to comply with the requirements of sections 309D and 309E, consideration shall be given to any code of practice issued or approved by the Health and Safety Commission in exercise of its powers under section 16 of the Health and Safety at Work etc. Act 1974 (approval and issue of codes of practice by the Commission). 30

**309G Application of Part 1 of the Health and Safety at Work etc. Act 1974**

Part 1 of the Health and Safety at Work etc. Act 1974 shall have effect as if the provisions of sections 309D and 309E of this Act were existing statutory provisions within the meaning of Part 1 of that Act and were specified in the third column of Schedule 1 to that Act.” 35

(3) Before Schedule 13 insert –

“SCHEDULE 12A

Section 309D(1)

OTHER STATUTORY PROVISIONS RELATING TO HEALTH AND SAFETY 40

<i>Title of Statutory Provision</i>	<i>Reference</i>
Part 2 of the Children and Young Persons Act 1933	1933 c. 12

<i>Title of Statutory Provision</i>	<i>Reference</i>	
Employers' Liability (Defective Equipment) Act 1969	1969 c. 37	
Employers' Liability (Compulsory Insurance) Act 1969	1969 c. 57	
Fire Precautions Act 1971	1971 c. 40	
Section 2 of the Employment of Children Act 1973	1971 c. 24	5
Civil Aviation Act 1982	1982 c. 16	
Building Act 1984	1984 c. 55	
Section 11 of the Food and Environment Protection Act 1985	1985 c. 48	
Section 11 of the Consumer Protection Act 1987	1987 c. 43	10
Sections 41 and 64 of the Road Traffic Act 1988	1988 c. 52	
Section 8 of the Social Security Administration Act 1992	1992 c. 5	
Sections 41 and 45 of the Transport and Works Act 1992	1992 c. 42	
Activity Centres (Young Persons' Safety) Act 1995	1995 c. 15	
Merchant Shipping Act 1995	1995 c. 21	15
Part 4A and sections 44, 45A, 48, 49, 100, 101A and 103A of the Employment Rights Act 1996	1996 c. 18	
Section 559 of the Education Act 1996	1996 c. 56	
Section 157 of the Education Act 2002	2002 c. 32	
Railways and Transport Safety Act 2003	2003 c. 20	20

## SCHEDULE 12B

Section 309E(b)(ii)(b)

## OTHER STATUTORY PROVISIONS REQUIRING THE NOTIFICATION OF EVENTS

<i>Title of Statutory Provision</i>	<i>Reference</i>	
Civil Aviation Act 1982	1982 c. 16	25
Section 8 of the Social Security Administration Act 1992	1992 c. 5	
Merchant Shipping Act 1995	1995 c. 21	

## SCHEDULE 12C

Section 309E(b)(iii)(b)

## OTHER STATUTORY PROVISIONS PERMITTING THE SERVING OF NOTICES

<i>Title of Statutory Provision</i>	<i>Reference</i>	
Section 2 of the Employment of Children Act 1973	1971 c. 24	5
Section 559 of the Education Act 1996	1996 c. 56	

**3 Amendment of the Health and Safety at Work etc. Act 1974**

- (1) The Health and Safety at Work etc. Act 1974 (c. 37) is amended as follows.
- (2) In section 16(1) (powers of Health and Safety Commission to approve and issues codes of practice), after the word “regulations”, insert the words “or of sections 309D and 309E of the Companies Act 1985”. 10
- (3) In section 37 (offences by bodies corporate), after subsection (2), insert –
  - “(3) In determining whether a company director has committed an offence under subsection (1), consideration shall be given to the duties imposed on directors by sections 309D and 309E of the Companies Act 1995.” 15

**4 Short title and extent**

- (1) This Act may be cited as the Health and Safety (Directors' Duties) Act 2005.
- (2) This Act comes into force at the end of the period of two months beginning with the day on which it is passed.
- (3) This Act does not extend to Northern Ireland. 20

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*Presented by Mr Stephen Hepburn  
supported by  
Vera Baird, Tony Baldry, Mr Nicholas Brown,  
Mr Michael Clapham, Mr Tony Clarke,  
Ross Cranston, Mr Frank Dobson,  
Mrs Joan Humble, Helen Jackson,  
Mr Michael Meacher and Dr Jenny Tonge.*

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