

# RoSPA Scotland Conference

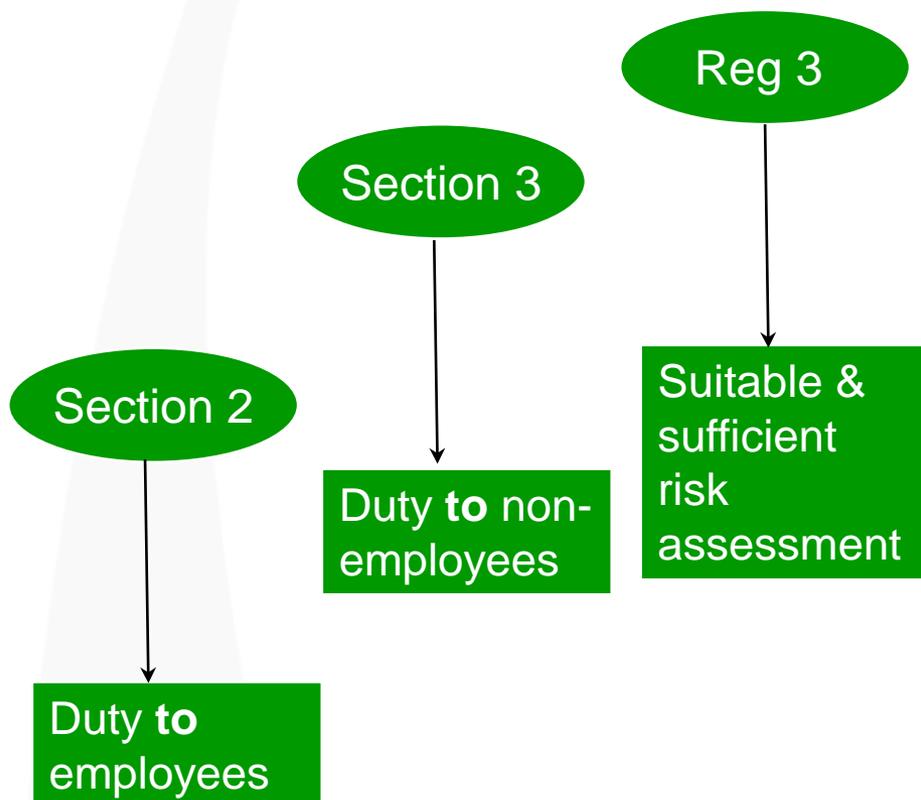
## Dealing with a serious incident in the workplace

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# Corporate H&S duties



Duty to “**ensure**” the health safety and welfare of employees

Duty to “**ensure**” the health and safety of non-employees

“So far as is reasonably practicable”

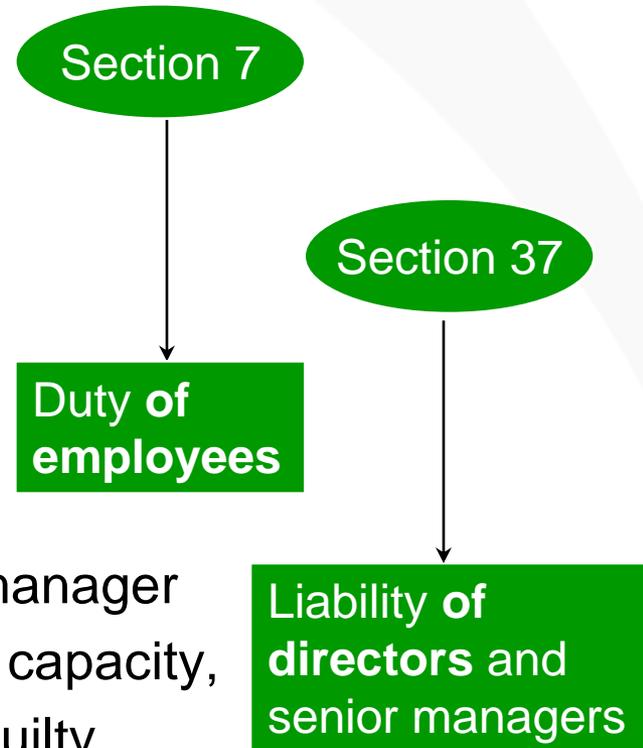
Duty to conduct a suitable and sufficient assessment of risk for the purpose of identifying controls

# Individuals H&S duties - HSWA

Duty to take reasonable care of self and others affected by work (s.7)

Where an offence... has been committed with the **consent**, **connivance**, or...attributable to any **neglect** on the part of any director, manager ... or a person who purports to act in that capacity, he/she as well as the company shall be guilty of that offence (s.37)

## Individuals



# The Facts

- Tom Jones is the Health & Safety Manager for the University of Strathdean. It's 8.30am on Tuesday, 12 June 2012. Tom receives a telephone call from security at the front desk to inform him that Peter Smith, an employee of the University, has been run over in a car park within the University's premises. Tom goes to the car park. Paramedics and the police respond to the 999 call. The police speak to a few people but leave the site within the hour.



# The Facts (cont.)

- That morning Tom completes an incident report and sends an email, which is critical of the car park arrangements, to Danielle Brown the Operations Director.
- Later that afternoon two police officers return to the site and inform Tom that Peter has died. They ask if he can provide any relevant information about the incident.
- Tom provides the police with a copy of the incident report he has prepared and the Police take 'note book' statements from Tom and Danielle and several other employees about the car park arrangements.

# The Facts (cont.)

- The University of Strathdean's health and safety manual, records of health and safety audits, minutes of Board Meetings from June 2010 to June 2012, and Tom and Danielle's laptops were seized.
- Tom and Danielle are invited to attend the local police station.

Role Play: Interviews of Tom and Dan

# Charges under consideration

- **If you were a prosecutor, what charges would you investigate bringing?**
- University of Strathdean:
  - Corporate Homicide
  - s2 HSWA
  - Reg 3 MHSWR 1999
- Tom – s.7 HSWA
- Danielle – s.37 HSWA

# The Facts (cont.)

- Several weeks pass by and the police decide that on the basis of the information obtained in the course of their investigation, there is no prospect of there being a charge of corporate homicide being made against the University and they pass the investigation over to the HSE. The HSE make arrangements to interview witnesses at the University, including re-interviewing Tom and Danielle.
- The HSE Inspectors prepare a report for and recommend a prosecution of the University of Strathdean on indictment.
- The University of Strathdean is prosecuted for breaching s.2 of the HSWA and r.3 of the MHSWR

# Court Scene

- Role play of Tom's evidence
- Role play of Danielle's evidence

# Question

- On the basis of what you heard, what is your verdict against the University?
  - A. Guilty
  - B. Not Guilty

# Learning points

- Good health and safety compliance is essential
- Remember every day risks e.g. walking across a car park
- Serious criminal cases and significant fines are on the increase
- Necessitates:
  - Careful allocation of responsibilities
  - Accurate and balanced incident reports
  - Awareness of legal rights
  - Careful answering of questions

# Learning points

- Key legal rights
  - Right to silence (except under s20 HSWA 1974)
  - Right to legal advice (Cadder judgment)
  - Right to withhold documents (except under s20 HSWA 1974 or under warrant)
  - Right to withhold legal communications and privilege documents
- Incident Management Plans
- Take legal advice at the outset

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