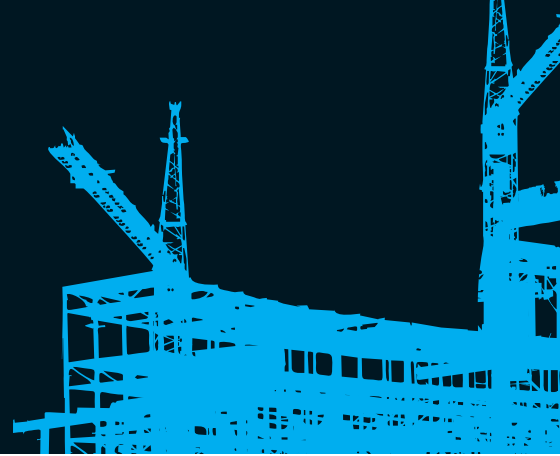




# Construction update

March 2009 Newsletter



## Welcome to the first edition of QBE's, Construction update. This quarterly publication aims to provide you with up to date developments pertaining to health, safety and legal liability issues within the construction industry

The economic climate is challenging, significant job losses have been reported and there is continued speculation on mergers and acquisitions. Major government projects may offer stability to some sectors in the industry, however, during these uncertain times, most companies are seeking avenues to cut costs. More prudent businesses will recognise that occupational health and safety is not an area where costs can afford to be cut.

### Construction accident rates rise for first time in a decade

While the UK construction industry continues to have the lowest fatal accident rate in Europe, 'major' and 'over 3 lost days' injuries have shown small increases, representing the first increases in over a decade.

QBE recommends all clients review their own accident rates against industry averages, outlined next, and set objectives in line with the government's strategy for sustainable construction, of 10% annual reductions.

### Construction sector: accident rates

	07/08 Number	07/08 Rate/100,000 employees	06/07 Number	06/07 Rate/100,000 employees
<b>Fatal</b>	72	3.4	79	3.8
<b>Major</b>	3764	302.9	3730	300.7
<b>&gt;3 day</b>	7446	599.2	7161	577.3

Source: HSE

### Health and Safety (Offences) Act 2008

Whilst offences under the Corporate Manslaughter Act could result in fines of circa 10% of the company's turnover, it did not introduce any new offence for individuals or groups of persons.

This has been addressed to some extent by The Health and Safety (Offences) Act 2008, which came in to force on 16 January 2009.

Whilst this Act too, does not introduce new offences, or change any existing offences, it aims to ensure sentences for existing offences are set at a level to deter businesses that do not take health and safety management responsibilities seriously.



### In brief summary, the Act:

- Amends section 33 of the Health and Safety at Work Act 1974, to revise the mode of trial and maximum penalties available to courts in respect of certain offences.
- Raises the maximum fine which can be imposed by the lower courts to £20,000 for most health and safety offences.
- Makes custodial sentences an option for most health and safety offences in all courts.
- Makes certain offences that are now only triable in lower courts triable either way.

Whilst these changes appear subtle, in practice it could mean significant changes to penalties arising from health and safety offences. In the past, custodial sentences for health and safety offences have occurred following a fatality and the person charged had been grossly negligent. Death or gross negligence is not a requirement of the Health and Safety Offences Act therefore, by example, an individual employee who injures a colleague by ignoring instructions or engaging in dangerous horseplay, could face prison if convicted under Section 7 of the Health and Safety at Work Act. Similarly, directors and managers could be imprisoned under Section 37 of HSWA if they can be shown to have consented or connived with an offence by a company, which is attributable to their neglect.



## Asbestos & pleural plaques

The dangers of asbestos are well documented but in the case of Johnston v NEI International Combustion, the House of Lords ruled that pleural plaques do not give rise to a cause of action under the law of damages.

Pleural plaques are small areas of scarring on the lungs which are benign and are an indicator of exposure to asbestos. In the course of a lifetime a person with pleural plaques has an increased risk of developing mesothelioma and a small but significantly increased risk of developing bronchial carcinoma.

With this uncertainty of future ill health, the Scottish government are looking to reverse the House of Lords judgment and enable those who have been diagnosed with pleural plaques, to be able to raise and pursue actions for damages in Scotland.

This raises the potential of increased claims for asbestos related conditions and in the construction industry it is estimated that 20 tradesmen die each week from asbestos related diseases. With extensive amounts of asbestos remaining in UK buildings, raising awareness around the dangers and mitigation of asbestos will remain a priority in the industry for many years to come.

**Raising awareness:**  
[www.hse.gov.uk/asbestos/hiddenkiller](http://www.hse.gov.uk/asbestos/hiddenkiller)

## Asbestos employer's liability policy trigger

Pending appeal, judgment was handed down, in the matter of Durham v Thorpe Campbell Holdings Ltd & Others, on 21 November 2008 that the trigger for asbestos related employer's liability claims will continue to be determined at the time the employee was exposed to or inhaled the asbestos fibres.

This is an important judgment that reaffirms current market practice and clarifies that former employer's liability policy wordings that related to "disease sustained" or "disease contracted" should simply be treated the same as policies that relate to "disease caused".

## Semi-automatic quick hitches

Since December 2006, 4 fatalities involved failure of excavator semi-automatic quick hitches. There have also been incidences with manual and automatic hitches in the past. The common theme behind these fatalities has been a missing retaining pin or bar.

From 1 October 2008, the HSE has voluntarily agreed with European manufacturers that semi automatic hitches will no longer be supplied to the UK. This does not make semi automatic hitches illegal but QBE would advise clients to monitor this situation closely, consider preventative action by removing semi automatic hitches from use or ensure safe operating procedures are adhered to by operatives, with regular checks that retaining bars are in use. For further information see:

[www.hse.gov.uk/foi/internalops/sectors/construction/2\\_07\\_01.pdf](http://www.hse.gov.uk/foi/internalops/sectors/construction/2_07_01.pdf)

## No prosecution over Liverpool tower crane collapse

An investigation by Merseyside Police and HSE, assisted by the Health and Safety Laboratory (HSL), has concluded that there is insufficient evidence to bring proceedings against any of the parties investigated.

The crane collapsed when the slew ring bolts failed and the slew ring fractured, allowing the main crane assembly to fall from its tower, killing a site worker and injuring the crane driver.

Further detail on this investigation is available at: [www.hse.gov.uk/construction/pdf/craneaug08.pdf](http://www.hse.gov.uk/construction/pdf/craneaug08.pdf)

HSE safety alert on use of tower cranes is available at: [www.hse.gov.uk/construction/pdf/towercranes.pdf](http://www.hse.gov.uk/construction/pdf/towercranes.pdf)

Strategic Forum for Construction: Safe Crane Campaign: [www.strategicforum.org.uk/towercranes.shtml](http://www.strategicforum.org.uk/towercranes.shtml)

## Risk Management at Casualty for UK and Ireland

This bulletin is produced by the Risk Management team within QBE's UK and Ireland Casualty department. We are a team of dedicated professionals who work closely with our clients to actively assist with accident prevention, employee rehabilitation and claims mitigation.

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