

# DUTY OF CARE SAFEGUARDING YOUR INTERNATIONAL WORKFORCE

Compiled and produced by  
**INTERNATIONAL SOS  
FOUNDATION**

In partnership with



HERBERT  
SMITH  
FREEHILLS

**airmic**

**Responsibilities of  
United Kingdom  
organisations to  
employees on  
business travel and  
overseas assignments**

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# PREFACE

All organisations owe a duty of care to their employees, contractors, and others who they are responsible for.

After the global pandemic, many predicted a return to calmer times. However, globally, the world is becoming more troubled and fragmented. International travel has returned post pandemic, and the risks associated with travel have been impacted by intensifying extreme weather events, deteriorating security environments, supply chain fragilities, and inter-state conflicts.

In order to manage travel in an increasingly complex, interconnected rapidly changing context, organisations must develop effective strategies and protocols to manage uncertainty and associated threats and opportunities.

Both AIRMIC as well as the International SOS Foundation were privileged to be involved in the committee drafting the guidance ISO 31030: 2021, published in 2021.

Guidance like ISO 31030: 2021 are not intended to act as a straitjacket for those who use them. Their purpose is to provide guidance to organisations whatever their size or sector, on how to manage risks to the organisation and its travellers because of

undertaking travel. Standards can help teams across an organisation to develop travel risk practices by providing a framework and language to use in policy development, risk assessment, controls, communications, and response strategies. A framework can consequently provide the foundation for collaborative working.

As a first step, creating a 'stakeholder wheel' of those involved in travel risk management can be an eye-opening experience, helping to ensure all stakeholders are engaged in developing an approach to people risk management best suited to their organisation and that the relationships between those involved are understood.

A well-considered travel risk management approach ensures consistent safety measures for travellers regardless of location, fostering confidence in seizing business opportunities while travelling safely.

However, even with top-notch travel risk management, surprises happen. "I remember receiving a call from a senior manager flying off to a high-risk location to undertake high risk work. They thought it might be best for the risk management team to know what they were planning to do and where they were going, should anything go wrong, and they



needed to call for emergency assistance. The call took place as they boarded the aircraft. Their plans sprang into action and based on the risk profile of the work, the manager was greeted on arrival by a security team who guided them throughout the trip, including the use of transport and safe accommodation. Should that manager have known the process – of course! Did that manager receive some special attention when they got home – of course! Did that manager’s family know their loved one was in safe hands – of course! “ says Julia Graham.

The lesson drawn from our collective experience is that no matter how effectively you implement your travel risk management framework, it remains an ongoing process of communication, education, testing, and refinement.

This report, a collaboration between AIRMIC, Herbert Smith Freehills and the International SOS Foundation, underscores the value of such an approach.

For organisations, knowing where to begin with people risk management can be daunting. Having a comprehensive guide like this, along with the support of an organisation like International SOS integrated into your plans and readiness to respond, is invaluable. AIRMIC recognises and appreciates the extensive expertise of International SOS, who continue to support hundreds of organisations globally in managing their people risks and responses for almost 40 years.



**Julia Graham**  
**CEO**  
AIRMIC



**Peter Jenkins**  
**General Manager**  
Northern Europe  
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# INTRODUCTION

The landscape of Travel Risk Management and the underlying concept of Duty of Care has transformed in recent years, driven by complex health and security incidents and evolving workplace behaviors. This transformation has increased the pressure on organisations to be ready for a robust response.

In September 2021, the ISO 31030 – Travel Risk Management Guidance emerged as a crucial tool in protecting a global workforce. The primary aim of ISO 31030 is to establish a global best practice framework for organisations to develop, implement, evaluate and review their travel risk management policy and programme, as well as assess and treat travel risks, irrespective of industry or size. This standard is designed to safeguard the health and security of the workforce while minimising associated the financial, operational, legal, and reputational risks of a travelling workforce.

With each country having unique regulation and law concerning Duty of Care, there is a growing necessity for universal guidelines. This need is particularly pronounced in the current climate, characterised by escalating instability and ever-evolving threats.

In the United Kingdom, as in other countries, the concept of Duty of Care expands to the travelling workforce as well as domestic populations. It encompasses the entire spectrum of an employee's physical and mental wellbeing.

In an interconnected world, deployment of employees to various emerging markets and high-risk locations may be required to expand and thrive. However, this leads to an increasing complexity for an organisation assessing its Duty of Care. How, as an employer operating globally, do you ensure compliance with Duty of Care obligations both domestically and abroad?



Organisations bear legal responsibility to take reasonable steps to mitigate the risks employees face in the workplace or in the course of their employment. A duty to mitigate risk goes beyond insurance, which predominately focuses on financial exposure, and encompasses proactive assessment and management of risk.

Organisations should adopt a dynamic approach to Duty of Care. They must consider and respond to the unique and diverse challenges faced by their employees. They

must further adapt quickly as risks evolve over time. This whitepaper will explore the concept of Duty of Care in the UK, the obligations of employers to their employees (both domestically and abroad) and identify strategies and frameworks available to empower organisations to better meet their Duty of Care obligations.



# DUTY OF CARE IN THE UNITED KINGDOM: WHAT'S IT ALL ABOUT?



Duty of Care refers to the legal obligation imposed on employers to take reasonable steps in ensuring the health, safety and wellbeing of their employees. Employers have both a statutory and common law duty to their employees to take reasonable care to protect them from unnecessary risk.

Further to this common law duty, Health and Safety legislation compels employers to ensure the health, safety and welfare of their employees, in the workplace and when acting in the course of their employment.



The Duty of Care owed to employees extends beyond basic employee benefits and insurance, and requires a proactive assessment of risk and the implementation of reasonable pre-cautionary measures. As such, Duty of Care would rarely be discharged with a one-size fits all approach.

It should encompass a comprehensive commitment to safeguarding employee health, safety, and wellbeing, in the workplace, at remote sites, during business travel, whilst on international assignments, or when working remotely. In addition, insurance providers may dispute coverage for claims where they perceive such claims to fundamentally stem from an employer's breach of obligation, such as failing to meet health and safety requirements.



The COVID-19 pandemic highlighted the need for (and complexity of) continuous monitoring of Duty of Care. Organisations were forced to quickly consider their Duty of Care obligations in protecting their employees from COVID-19. Demonstrating a safe system of work designed to mitigate the risk of COVID-19 transmission and ensuring that system was reassessed to adapt to the evolving risk was a complex task during that time.





Since COVID-19 the diversity of the workforce has continued to expand, along with the return to business travel and international assignment, concepts of flexible working have been increasing. Remote working and even “working from anywhere” employees are more common. Risks faced by employees span health, safety, security, and psychological dimensions and they differ according to the different employee types. For some infectious diseases may be highly critical, for others road safety or civil unrest present the biggest risk. Mental health concerns impact all employee types, but the drivers can vary depending on work environment.

The risks confronted by international assignees and business travellers are different to local employees and can further be complicated by encompassing dependents. Case law has tested the duty of employers to their international assignees and travelling employees and confirmed an employer can be liable for harm suffered by employee abroad. For example, an employer was found to be in breach if its Duty of Care when an employee died from malaria while overseas.

Such cases reveal the importance of considering the specific risks faced by international assignees and business travellers and ensuring mitigations are

adapted to address those risks. Not only did COVID-19 test the challenges on employers in managing their Duty of Care. Recent events in the Ukraine and Gaza/Israel have once again forced employees to consider the the nature of changing risks and reassess their Duty of Care policies. For example, events such as the crisis in Ukraine elevate risks of logistical challenges, prompting organisations to review their evacuation plans and safety protocols. Not only do crisis situations compel organisations into action, they heighten employees’ expectations of their organisations’ duty to protect them. The need for a proactive approach to risk management, robust crisis management plans and emergency preparedness procedures is highlighted by crisis situations.



The actions employers take to meet their Duty of Care obligations will determine their exposure to claims and whether any such claims are ultimately successful. Monitoring risks, reviewing emerging situations and keeping up to date with current advice, whilst proactively implementing systems, policies and procedures designed to address risks employees face are critical for an organisation in managing its own risk exposure.



“ *Amidst this ever-changing security landscape, access to healthcare has become a critical issue in many countries around the world (WHO 2023, Global Pulse Survey), posing new challenges for organisations and their employees.* ”

## **EMBRACING THE NEW NORMAL: AN EVOLVED APPROACH TO TRAVELLING**

Today's risk environment is complex, organisations and their workforce are constantly being tested by a range of dynamic threats. This is particularly evident for employers managing employees abroad.

Ensuring the health and safety of international assignees and business travellers has become difficult. The security situation in several countries has deteriorated significantly, and recent conflicts in Ukraine and the Middle East region are

demonstrative of this. Growing social and political instability is becoming increasingly prominent, sparking protests and unrest. One of the primary factors contributing to the growing political instability is the increase in the cost of living, which has sparked protests and unrest. This instability is expected to extend to traditionally more stable areas grappling with additional challenges such as hyperinflation, rising public debt, and welfare cuts.

This underlines the difficulty for employer's in managing their Duty of Care and the increasing demands on them for comprehensive support systems for employees, especially when assigned or travelling abroad.

The variety of threats and the rapidity with which they continue to evolve has highlighted the need to adopt smarter and more flexible systems based on risk assessment processes suitable for navigating this new international context. Organisations need systems that can guarantee a timely and effective response to

possible crises, following national laws and international standards.

Revising procedures according to guidance like ISO 31030 enables a systematic, structured, and swift risk management approach, protecting the workforce and maintaining operational efficiency for competitive advantages.



# INTRODUCING NEW STANDARDS FOR AN EVOLVING REALITY

Meeting Duty of Care requirements for international assignees and business travellers has proved difficult due to a lack of clear global standards and guidance. However, ISO 31030: 2021 provides an excellent starting point for employers wanting to demonstrate commitment to Duty of Care.

ISO 31030:2021 Guidance (Travel Risk Management - Guidance for Organisations) is an internationally recognised framework, now recognised in 70 countries, applicable to organisations of all sizes and types. Its primary goal is to offer guidelines and best practices for employers in effectively fulfilling their Duty of Care obligations. Compliance with ISO standards, widely applied by insurers, regulators, and local authorities,

helps mitigate exposure to legal and financial penalties, as well as reputational damage, safeguarding employers and managers involved in managing business travel. ISO 31030 sets enhanced expectations for travel risk management, necessitating a thorough review and adaptation. Moreover, it goes beyond travel risk management, requiring a profound understanding of the organisation's objectives, strategy, and core values, encouraging the adoption of models that best suit the nature and scope of existing threats.

**“ Adhering to standards provides a competitive edge over other market players and fosters peace of mind and trust among business travellers, leading to increased productivity and reduced staff turnover.**

**”**



# THE ISO 31030 INTERNATIONAL GUIDANCE

ISO 31030 Guidance was a response to higher levels of vigilance towards travel-related risks, as revealed by studies conducted over the past five years.

The ISO Guidance was also an attempt to fill a regulatory gap where existing laws and the evolution of case law had not clearly defined for employers what was needed to discharge their obligations, especially when looking at international assignees and travellers.

It can be implemented by all organisations, non-profits and universities, ideally within a management system that also includes other guidance regulating contiguous contexts (ISO 31000 on Risk Management or ISO 45001 on occupational health and safety) and aspires to promote a method and culture aimed at tackling travel risk management in an appropriate and structured way.



**Reference:**

*BSI Group (2021). ISO 31030:2021 Travel risk management – Guidance for organizations.*

# 10 TIPS FOR TRAVEL RISK MANAGEMENT

Get commitment from decision makers for the travel risk policy and program; senior management are often travellers too, so have a strong interest in making them work well.

01

Manage travel risk functions, including security, risk and insurance, travel management and human resources. Don't forget to consider your IT requirements too.

02

Look at travel safety management in the same way you manage process safety, integrating all dimensions of safety information, hazard analysis, travel procedures, training, near misses and incident reporting, and management of change.

03

Good communications are at the heart of good practice. There should be one point of contact, available 24/7 for travellers, and everyone should know who this is. Brief travellers well but keep the process simple, so they can understand and follow the guidelines. Know where your travellers are and how to contact them quickly.

04

Consider the accumulation risk if several employees, especially key people or senior executives, are going to the same destination, and plan travel accordingly.

05

# INTERNATIONAL SOS FOUNDATION

10

Regularly review use of the Assistance Centre, download apps and the results. Take feedback from travellers. There is always some improvement to make, so measure the success and adapt.

09

Insurance should be easy to use for the travellers and the claims handling should be professional and smooth.

08

Ensure pre-travel risk advisories and responses are broad enough for a diverse range of travellers, including women, people with disabilities, older travellers and those who are lesbian, gay, bisexual, transgender, queer, intersex, asexual (LGBTQIA+).

07

Provide emotional support in times of anxiety.

06

Use the same health and travel security solutions for all international assignees, short and long term, for better co-ordination in a crisis.

# THE FUNDAMENTAL STEPS THE GUIDANCE DEFINES 4 FUNDAMENTAL STEPS:

1

## STEP 1

scope, context and risk criteria;

Identify, analyse, mitigate, and manage risks with a direct or indirect impact on business trips or that could lead to interruptions. It is crucial to establish clear roles and responsibilities through a systematic and accurate risk assessment, ensuring the effective identification and implementation of related counter measures.

Define and incorporate the scope and objectives of the risk management programme, ensuring the safety and protection of personnel during travel and work, and implement solutions to address emergency situations.

## STEP 2

travel risk management process;

2

Effectively implement appropriate risk management processes and measures. The Travel Risk Policy, complemented by the guidance, must be communicated effectively within the organisation. This aims to raise awareness among business travellers through an efficient, clear, and immediate training strategy.

3

## STEP 3

travel and operational management;

Implement a system enabling regular review of the effectiveness of the travel management programme, ideally based on quantitative data and other relevant parameters. This facilitates the assessment of stakeholders' performance both within and outside the organisation. Monitoring and gathering information, including the use of digital measures, allow continuous review of the process and assessment of its efficacy, adapting to changing needs.

## STEP 4

recording and reporting;

4



Therefore, ISO 31030:2021 aids organisations in managing travel risks appropriately and highlights the need to:

- Assess the cost/benefit ratio of travel.
- Define the level of risk the organisation is willing to accept (“risk appetite”).
- Make informed decisions based on risk assessments grounded in proven methods and current, comprehensive data.
- Incorporate these criteria into the Travel Risk Policy.



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## A NEW TRAVEL RISK MANAGEMENT MODEL

To ensure adherence of the travel risk management system with the indicators provided by ISO 31030, it must cater to the entire population travelling for any reason under the responsibility of the organisation. This includes assignees and accompanying family members, commuters, contractors, and the local workforce.

The system should take into account any threats that could jeopardise the safety and integrity of the company’s tangible and intangible assets, covering medical-health, social-political, logistical risks, etc.

It is vital to appropriately handle every stage of travel, from planning and assessment to addressing medical and security incidents.

This necessitates a coordinated process involving different departments (Security, HSE, Insurance, Legal, HR, etc.) with adequate resources and management approval. Such coordination is pivotal for the effective implementation of the travel management system within broader risk management strategies.

In summary, implementing a Travel Risk Management programme that fully aligns with the indications of ISO 31030 enables companies and organisations to achieve the following objectives:

- **Endorsement from Leadership**

Secure backing from management, integrating travel management into the company's risk strategies and value proposition (aligned with ISO 31000).

- **Meeting duty of care obligations**

Abroad, minimising exposure to legal and financial liabilities, and protecting the employer and senior management.

- **Gaining a competitive edge**

Fortifying the organisation in terms of resilience and business continuity, fostering trust, and securing the loyalty of the workforce.

- **International comparison**

Guaranteeing that the processes and policies are suitable for the new travel scenario. Only organisations able to implement a Travel Risk Management policy that is fully in line with Guidance ISO 31030:2021 will be in a position to guarantee travel in safe and secure conditions, ensuring the protection of their workforce, business continuity, and organisational resilience, with undoubted advantages also of a competitive nature.



# THE INTERNATIONAL ORGANISATION FOR STANDARDISATION (ISO):

## FACTS AND FIGURES:

**1947**

*The International Organisation For Standardisation (ISO) is an independent, non Governmental organisation founded in 1947*

**50.000  
+**

*Experts are involved in drafting of ISO standards*

**810**

*Technical committees take care of the standard development*

**24.000  
+**

*International Standards covering almost all aspects of technology, management and manufacturing*

**167**

*Members representing ISO in their country*

**1**

*Only 1 member per country. ISO membership comes with rights, benefits, obligations and codes*

# A SYSTEMATIC APPROACH TO ISO 31030

To foster a positive company culture and ensure effective travel risk management while adhering to best practices in Duty of Care, a systematic approach is essential. This involves creating, implementing, evaluating, and revising an integrated and customised travel risk management system in alignment with the new ISO 31030 Guidance. This system should be flexible to meet specific operational and organizational requirements at all stages of travel.

## 1 Organisational preparedness

Establish the scope, objectives, and tasks to mitigate the organisation's risks.

## 2 Preparing for travel

Identify and assess risks to determine mitigation measures and authorisation requirements.

## 3 During travel

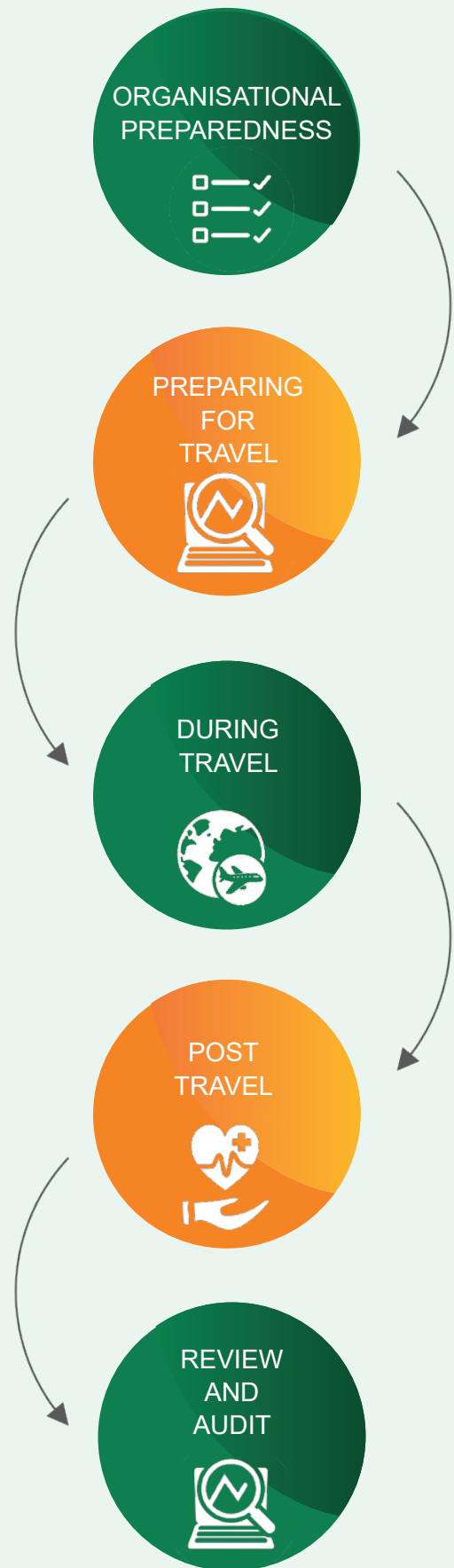
Provide consultancy and communication, and prepare responses to incidents.

## 4 Post travel

Determine goals for the period following an illness, as well as the correct procedure for employees returning from travel due to a medical emergency or other causes.

## 5 Review and Audit

Define goals for reviewing the programmes and assessing their efficacy.



***A Systematic Approach to Evaluate, Develop, and Implement Travel Risk Management Solutions for Organisations***



## ADOPTING THIS APPROACH ENABLES COMPANIES TO:

- **OBTAIN** more information about Guidance ISO 31030 and its implementation by the organisation during the preparation stage.
- **ASSESS** the needs and requirements of the new travel landscape.
- **CREATE OR UPDATE** procedures for actual and effective use.
- **PROVIDE** practical guidelines that enhances business continuity and resilience.
- **ALIGN** with the new standards and ensure adherence to national laws and international best practices.

## ANALYSIS OF THE TRAVEL RISK MANAGEMENT PROGRAMME

To assess your travel risk management programme, health and safety experts from International SOS have prepared a 5-minute self assessment questionnaire that provides a personalised report to illustrate the status directly to management.



To start the assessment, go to <https://assessmyrisks.com/360>

As a result, not only does investing in Duty of Care help to support your reputation, it also helps to reduce cost savings.



# LEGISLATION IN THE UNITED KINGDOM IN PARTNERSHIP WITH HERBERT SMITH FREEHILLS (HSF)

## Laws that apply to the United Kingdom & Duty of Care

*This briefing paper is intended to provide a general summary of the law in England & Wales.*

*It is not intended to, nor should it be, relied upon as legal advice. This section has been written by HSF. The remaining sections have been prepared by other contributors.*

### **1** INTRODUCTION

This briefing paper aims to provide the clients of International SOS with a brief overview of the laws pertaining to workplace health and safety (“**WHS**”) and duty of care in England & Wales. The Health and Safety at Work Act 1974 (“**HSWA 1974**”) created the legal framework by which work activity in England & Wales is regulated. The Act is supplemented by a large body of secondary legislation and supported by Approved Codes of Practice (“**ACoP**”) and guidance. Another important piece of legislation in this field is the Corporate Manslaughter and Corporate Homicide Act 2007 (“**CMCHA 2007**”). This health and safety related legislation is, together, referred to as “**WHS Law**” in this briefing paper.

In overview, the WHS Laws impose general duties on employers to ensure the health, safety and welfare of employees (and third parties) so far as is reasonably

practicable. Most organisations operating in England & Wales will be familiar with how the WHS Laws apply in respect of workers performing work for them in the jurisdiction. This briefing paper considers the application of those laws to:

- domestic businesses that have workers living or travelling overseas for work; and
- international businesses that have workers travelling to, or who are based in, England & Wales for work.

In this briefing, we also:

- provide guidance on the steps which should be taken by an organisation to comply with any duties they may owe to workers whilst travelling or based overseas for work; and
- include a summary of recent developments in the WHS Laws.

## 1.1 OVERVIEW OF THE MODEL WHS LAWS

The framework of WHS Laws is made up of:

- **The Health and Safety at Work Act 1974.**

The HSWA 1974 is the foundation of health and safety law in England & Wales. It imposes general duties on employers, employees and the self-employed with the aim of securing the health, safety and welfare of persons at work and third parties. The HSWA 1974 also provides for the making of health and safety regulations and ACoP.

- **Corporate Manslaughter and Corporate Homicide Act 2007.**

The CMCHA 2007 was introduced with the intention of making it easier for the authorities to successfully prosecute large organisations where serious corporate management failing has caused a fatality. The CMCHA 2007 is intended to complement, rather than replace, existing health and safety offences, for which organisations may still be prosecuted as an alternative to, or in addition to, any offence under this Act.

- **Health and safety regulations.**

Made with the powers established by the HSWA 1974, the health and safety regulations are a body of secondary legislation which sets out detailed duties and provisions in respect of specific workplace activities.

- **Approved Codes of Practice.**

The HSWA 1974 made provisions for the creation and approval of ACoP. These have quasi-legislative status in that they provide an officially recognised route to compliance with health and safety law. Failure to comply with the ACoP is not an offence but any person who does not comply with the ACoP will need to be prepared to demonstrate that they have met their statutory duties through other means.

## 1.2 DUTIES UNDER WHS LAWS

The general duty for employers under the HSWA 1974 is, as far as is reasonably practicable, to ensure the health, safety and welfare of their employees. This duty extends in particular to providing:

- safe plant and systems of work;
- safe arrangements for the use, handling, storage and transport of articles and substances;
- adequate information, instruction, training and supervision;
- safe places of work (including safe access and egress); and
- safe working environment with adequate welfare facilities.

An employer must also conduct its business, as far as is reasonably practicable, so as to ensure that non-employees are not exposed to health and safety risks. Non-employees include, for example, contractors, visitors and members of the public.

Employers must conduct a sufficient and suitable risk assessment to identify the hazards posed by their work activities

to employees and non-employees. The employer must then put in place appropriate control measures to reduce, so far as reasonably practicable, the risk of those identified hazards eventuating. A written health and safety policy is required for employers with over 5 employees.

Employees also have a duty imposed by the HSWA 1974:

- to take reasonable care not to endanger themselves or others; and
- to co-operate with their employer (e.g. by wearing protective equipment if it is provided).

It is a criminal offence to breach the health and safety obligations imposed by the HSWA 1974. Further, where an offence by the company is proved to have been committed with the consent, connivance or neglect of one or more of its directors or officers, those individuals can also be criminally liable.

Numerous health and safety regulations impose specific additional duties for employers in the context of the activity / industry to which the legislation relates.

Under the CMCHA 2007, an organisation is guilty of a criminal offence if the way in which its activities are managed by its senior management:

- causes a person's death, and
- amount to a gross breach of a relevant duty of care owed by the organisation to the deceased.
- "Senior management" is defined as those persons who play significant roles in either:
  - the making of decisions about how the whole or a substantial part of an organisation's activities are to be managed or organised; or
  - actually managing or organising those activities.

A "gross breach" means conduct which falls far below what can reasonably be expected of the organisation in the circumstances and will be assessed by a jury, taking into account factors such as: whether the organisation failed to comply with health and safety legislation, the seriousness of the failure and the severity of the risk of death posed.





## 2.1 WHAT DUTIES WILL BE OWED TO WORKERS TRAVELLING OR BASED OVERSEAS?

As a starting point, the legislation discussed above does not apply extraterritorially. This means that the laws of England & Wales do not generally regulate or impose duties in relation to activities conducted overseas unless expressly indicated. The HSWA 1974 does apply in specific (narrow) circumstances to certain workplaces outside the jurisdiction.<sup>1</sup>

While statutory WHS Laws do not generally apply outside England & Wales, case law has confirmed that employers who send their employees to work overseas (including on the premises of a third party) retain an overriding duty to take reasonable care not to expose those employees to unnecessary risk.

Foreign entities with workers travelling or based in England & Wales are subject to the WHS Laws.

Domestic companies should therefore adhere to the general duty for employers to keep employees safe where they send workers abroad. That is, they should take

reasonably practicable steps to provide or ensure a safe working environment.

What is considered to be reasonably practicable to discharge the duty to workers while they are overseas will be impacted by (among other things) the ability of the employer to control or influence safety outcomes in the relevant circumstances.

Whilst an employer is not usually responsible for deficiencies in the premises of others where the employee is directed to work, if the employer knows or ought to know, for instance, of a particular danger on the third party's premises, they ought to take reasonable care to safeguard their employees from it.

In judging which risk mitigation activities are reasonable, the employer should look at all the circumstances of the case, including:

- the place where the work is to be done;
- the nature of the site concerned;
- the experience of the employee who is so despatched to work at such a site;

<sup>1</sup>The specified premises and activities where the HSWA 1974 applies outside England & Wales include: offshore installations, wells, pipelines, mines, wind farms and other energy generation sites within the territorial sea (i.e. the sea surrounding the UK).

- the nature of the work he is required to carry out;
- the degree of control that the employer can reasonably exercise in the circumstances; and
- the employer’s own knowledge of the defective state of the premises.

## 2.2 WHAT DUTIES WILL BE OWED BY FOREIGN COMPANIES WHEN THEIR EMPLOYEES WORK IN ENGLAND & WALES?

An overseas employer who has employees working in England & Wales is subject to the WHS Laws in relation to those workers. This means that overseas employers are under a duty to ensure the protection of the health and safety of their employees in England & Wales.

**“ If overseas employers are found to have fallen short of their duties under the HSWA 1974, they will have committed an offence and will be liable to prosecution. ”**

## 2.3 WHAT IS REQUIRED TO ASSERT COMPLIANCE?

Most duties owed under the WHS Laws require the duty holder to ensure the health and safety of others “so far as is reasonably practicable”. This standard involves striking a balance between, on the one hand, the risk to health and safety and, on the other hand, the inconvenience in terms of time, money and other resources of mitigating that risk. If the burden of a particular control measure is wholly disproportionate to the risk then, at least in theory, the employer is not required to implement it.

Assistance on what actions are reasonably practicable comes from ACoPs and guidance documents issues by the Health and Safety Executive, as well as relevant British Standards and industry guidance.

Employers should give careful thought to their risk assessments and decisions to implement or reject certain safety processes, and ensure they keep an accurate record of these.



# 3

## RECENT DEVELOPMENTS IN WHS

There have been no recent substantive amendments to the HSWA 1974. New secondary health and safety legislation is being continually developed, and so it is advisable to keep abreast of developments in your specific sector.

The safety of buildings (particularly in relation to fire risk following the Grenfell Tower fire in 2017) has been the main area of focus for health and safety law in England & Wales over recent years. This is reflected in the

passage of the new Building Safety Act 2022 which substantially reforms the management of health and safety in the built environment.

Another development (of more direct relevance to this briefing paper) has been the substantial increase in the level of fines imposed for health and safety offences, particularly on large corporate defendants, following the implementation of the new sentencing guidelines in 2016.



The guidelines provide judges with ‘starting points’ and ‘ranges’ of fines by reference to the defendant’s level of culpability, its size (measured by turnover) and the extent of harm caused or risked. The ranges of fines go up to £10 million for health and safety offences and £20 million for corporate manslaughter but the guidelines make clear that these levels can be exceeded for very large organisations (namely those with a turnover far in excess of £50 million pa).

In common with many other organs of the state, the Health and Safety Executive is increasing its focus on mental health conditions. Its 2023/24 business plan sets out five key objectives, the first being:

“ *Reduce work-related ill health, with a specific focus on mental health and stress.* ”



# 4

## ACTION PLAN FOR ASSESSING AND MEETING COMPLIANCE

For those organisations that owe duties of care to workers who travel to or who are based in overseas jurisdictions, preparing

the business to comply with the WHS Laws is likely to include the following:

### ‘BIG PICTURE’ LEGAL COMPLIANCE



#### 4.1 IDENTIFYING DUTIES APPLICABLE TO WORKERS TRAVELLING OR BASED IN ENGLAND & WALES AND OVERSEAS

Employers should identify which WHS Laws (and specifically which pieces of secondary health and safety regulation) are likely to be applicable to their business activities

and identify the workers and non-workers to whom a duty is owed (including employees, volunteers and contractors).

#### 4.2 IDENTIFYING RELEVANT STAKEHOLDERS AND REVIEWING CONSULTATION, CO-OPERATION AND CO-ORDINATION ARRANGEMENTS

It will be important to consider whether current consultation arrangements are adequate to allow for consultation with all ‘workers’ to whom a duty is owed about the risks associated with their work overseas. Systems should also be in place to identify

other employers with whom a duty may be shared and ensure consultation occurs with those other duty holders (such as host employers overseas) to achieve a co-ordinated approach to managing safety risks applicable to workers based or travelling overseas.



## 4.3 UNDERTAKING A GAP ANALYSIS

Most businesses will need to review existing safety management systems, and compare that system with the duties owed

under the WHS Laws. This will identify any 'gaps' in the system that require improvement in order to achieve compliance.

## 4.4 UPDATING POLICIES AND PROCEDURES

Policies and procedures should be updated where gaps are identified and on an ongoing basis. In the context of overseas workers, particular attention may need to be paid to:

- **Hazard identification and control procedures:**

among other things, these should contemplate risks to workers that are likely to arise when they are travelling or based in overseas jurisdictions (e.g. security, diseases, exposure to traumatic events, etc).

- **Training procedures:**

these should be targeted at ensuring the provision of necessary information, instruction and training for workers to understand the particular risks associated with their work overseas and the control measures in place to enable them to perform their work safely and in safe conditions.

- **Welfare facilities:**

arrangements should be in place to ensure that workers abroad have access to adequate facilities (including access to drinking water, washing and eating facilities).

- **Emergency plans:**

these should be reviewed to ensure that the business can respond to emergencies involving overseas workers. This will include evacuation procedures and processes for ensuring access to appropriate medical assistance as required.

- **Procedure for remote or isolated workers:**

arrangements should be in place to ensure that workers in remote locations have access to medical assistance with effective means of communication.

- **Procedure for managing psychosocial hazards:**

these should be targeted at the likely psychosocial hazards that will arise when workers are abroad (including where the workers have travelled to and what type of work they will be undertaking).

# MENTAL HEALTH AND DUTY OF CARE: CHALLENGES ORGANISATIONS ARE FACING IN THE UK

The United Kingdom, despite its progressive stance on many issues, is not immune to the challenges of integrating mental health into Duty of Care.

Some of the current challenges companies face include:

## ● Stigma

Even in open societies, stigmatisation prevails. Employees might be reluctant to seek help or disclose their mental health issues for fear of judgment or repercussions.

## ● Lack of Training

Not all managers and HR personnel are equipped to handle or even recognise signs of mental distress in their employees.

## ● Resource Allocation

While companies might recognise the importance of mental health, they might not allocate sufficient resources for mental health programmes, training, or support.

## ● Remote Work Challenges

The rise of remote work, especially post-pandemic, has brought about new challenges. The isolation and blurring of work-life boundaries can exacerbate mental health issues.

## HOW ORGANISATIONS CAN SUPPORT THEIR PEOPLE THROUGH WELLBEING PROGRAMMES

To ensure the mental health and wellbeing of the workforce, companies must move beyond mere discussions and implement

robust wellbeing programmes. Well-designed programmes can guide organisations in this journey.

### ① Evidence-Based Assessment

#### ● Audit and Analysis

Before embarking on a new strategy, it's crucial to understand where you currently stand. It is important to audit your existing wellbeing

strategy, analyse the effectiveness of your initiatives, and assess the resilience of your organisation.

## ● Scientifically Validated Measurement

Organisations must employ scientifically validated tools for the assessment of wellbeing within the organisation.

## ● Comprehensive Assessments

Comprehensive assessments that pinpoint the factors driving health outcomes will give you the insights necessary to determine the risks underlying direct and indirect health costs.

## ② Wellbeing Strategy

### ● Tailored Approach

A one-size-fits-all approach rarely works. Organisations should take a data-driven, whole-organisation approach to develop a wellbeing strategy tailored specifically for their organisation. This ensures that the strategy not only addresses the unique challenges employees face but also aligns with business goals.

### ● Bespoke Strategy Creation

Every organisation is unique, and so should be its wellbeing strategy. Organisations should create a bespoke wellbeing strategy, ensuring it aligns with their goals and addresses the specific needs of their workforce.

## ③ Targeted Interventions

### ● Targeted Initiatives

Once the strategy is in place, develop a program of targeted initiatives, ensuring that every aspect of employee wellbeing is addressed.

### ● Employee Training

Ensuring employees have the knowledge and tools necessary to manage their wellbeing is critical to preventing ill-health across your workforce.

### ● Manager Training

Comprehensive manager training that goes beyond signposting and teaches managers how to facilitate a psychologically safe healthy workforce culture is critical to the long-term wellbeing of your organisation.

## ④ Monitoring and Evaluation

### ● Measuring Impact

Implementing a wellbeing strategy is just the beginning. It's essential to measure its impact to ensure it's delivering the desired results. Six months after launching your Wellbeing Strategy, the organisation should hold a review meeting to measure its impact, celebrate successes, and learn from any challenges. This iterative approach ensures that their strategy remains relevant and effective.

# PROTECT DUTY: ENHANCING PUBLIC SAFETY IN ALIGNMENT WITH DUTY OF CARE

According to the UK Home Office, in response to escalating concerns over public venue security and the necessity for proactive risk management, the UK government is poised to introduce new laws that “will scale up preparedness for terrorist threats”<sup>1</sup>.

The UK Home Office states, “The Terrorism (Protection of Premises) draft Bill, also known as Martyn’s Law, was included in the King’s Speech on 7 November as part of the programme of legislation the Government intends to pursue in the forthcoming Parliamentary session”<sup>2</sup>.

This proposed legislation, named after Martyn Hett, a victim of the 2017 Manchester Arena bombing, aims to address the “threat of terrorism during large gatherings”<sup>3</sup>. Martyn’s Law hopes to improve the safety and security of public venues. The bill will “impose requirements in relation to certain premises and events to increase their preparedness for, and protection from, a terrorist threat by requiring them to take proportionate steps, depending on the size and nature of the activities that take place at the premises”<sup>4</sup>.

Martyn’s Law introduces a heightened responsibility on businesses to be better prepared for potential threats, introducing obligations to take necessary steps to mitigate the impact of an incident. Creating a statutory duty toward attendees is hoped to improve the engagement of businesses with mitigating risk in line with existing regulations surrounding health and safety more generally. Preparing for an incident prior to such events is shown to reduce harm and save lives if one should take place.

## UNDERSTANDING MARTYN’S LAW: A LEGISLATIVE RESPONSE TO EVOLVING THREATS

The current proposal for Martyn’s Law is designed to fortify the security measures surrounding public events, such as conferences, concerts, and sporting gatherings. Its core components mandate event organisers and organisations to:

### 1 Conduct Comprehensive Security Assessments

Thoroughly assess the security risks associated with the venue and its surroundings, identifying vulnerabilities and potential threats specific to the event.

### 2 Provide Counter-Terrorism Training

Ensure that venue staff receive adequate training in counter-terrorism measures, empowering them to recognise suspicious activities, respond effectively to potential threats, and collaborate with relevant authorities.

### 3 Establish Emergency Response Plans

Develop and implement robust emergency response plans, outlining procedures for evacuations, communication strategies, and coordination with emergency services in the event of a security incident.

#### References:

Home Office Media Blog (2022). *Martyn’s Law Factsheet*. GOV.UK (2023). *Martyn’s Law Standard Tier Consultation*.

Footnotes: 1-4: UK Home Office. (2022). *Martyn’s Law Factsheet*.

## MARTYN'S LAW AND COMPLIANCE: A FUSION OF LEGAL AND ETHICAL IMPERATIVES

Martyn's Law will introduce a regulatory framework that aligns with broader Duty of Care concepts, and outlines specific compliance measures for organisations involved in event planning. This legislation establishes legal obligations and ethical imperatives for ensuring the safety and well-being of attendees at public events. Importance of Compliance:

This legislation establishes legal obligations and ethical imperatives for ensuring the safety and well-being of attendees at public events.

### Importance of Compliance:

#### 1 Legal Obligations

Non-compliance with Martyn's Law may result in penalties and legal actions. It establishes clear expectations for event planners and organisations to adhere to prescribed security measures.

#### 2 Reputation Management

Complying with Martyn's Law is crucial for safeguarding the reputation of organisations involved in event planning. Failure to adhere to security protocols could lead to public scrutiny, diminished trust, and reputational damage.

#### 3 Enhanced Duty of Care

Martyn's Law extends the Duty of Care that UK organisations owe to their stakeholders. Compliance demonstrates a commitment to prioritising the safety and well-being of individuals attending public events.

## PRACTICAL IMPLICATIONS FOR COMPLIANCE: INTEGRATING MARTYN'S LAW INTO DUTY OF CARE

To align with Martyn's Law and fulfil their broader Duty of Care, organisations should proactively integrate security considerations into their event planning processes. This involves:

#### 1 Regular Security Risk Assessments

Conducting regular assessments to identify vulnerabilities and potential threats.

#### 2 Comprehensive Training

Providing counter-terrorism training for venue staff to enhance their ability to respond to potential threats.

#### 3 Emergency Response Planning

Establishing and practicing emergency response plans, ensuring staff are well-trained and aware of their roles during incidents.

#### 4 Collaboration and Communication

Collaborating with local law enforcement and emergency services and establishing effective communication channels for improved response coordination.

The consultation launched in February will look specifically at the impact on smaller venues, ensuring that the law finds balance between public safety and overly burdensome requirements on smaller premises. Following the consultation period mentioned herein, Martyn's Law will be introduced as soon as parliamentary time allows.

The integration of Martyn's Law into the Duty of Care framework reflects a proactive approach towards ensuring the safety and well-being of all stakeholders involved in public events.





# DUTY OF CARE AND DATA PROTECTION

Data protection at its core is about safeguarding important information about individuals and ensuring it used properly and lawfully. Employers process a variety of personal information about their employees ranging from name and address to sensitive information such as health and financial data.

Outside of collection of personal information in the ordinary course of business, a Duty of Care programme will likely consider employee monitoring. An organisation with international assignees, travellers and remote workers will want to know where their employees are and be able to locate them in a crisis. Monitoring and tracking can be critical for a proactive Duty of Care programme, especially for those in high-risk locations.

As the mobility of the workforce increases, understanding where employees are and for how long can also be necessary to understand other legal obligations, such as potential tax or employment law implications of those working abroad.

It is therefore inevitable that Duty of Care will involve questions on privacy and data protection regulation.

In the UK, the ICO published new guidance

in 2023 for employers implementing employee monitoring, “Employment practices: monitoring at work”. This guidance aims to protect employee’s data protection rights, but also provide greater regulatory certainty and enable employers to tackle questions on monitoring.

It includes actions deemed good practice. A key takeaway for employers trying to balance Duty of Care whilst complying with UK GDPR and the Data Protection Act 2018 is that monitoring at work is not prevented, but there must be a balance between an employer’s interests and an employee’s rights and freedoms.

Protecting an employee’s personal information is synonymous to the employer’s duty to keep their employees safe. Keeping personal information safe mitigates risks inherent in a data breach, such as exposure of location data, fraud, mental distress or risk of discrimination. A global workforce requires an understanding of data protection regulation outside the UK, however what appears consistent is, if done in the right way, monitoring can help to build relations with employees, creating a strong reputation as an organisation committed to protecting employee’s health, safety and wellness whilst respecting their privacy.



# CONCLUSIONS, RECOMMENDATIONS, AND OBSERVATIONS

## CONCLUSION

In conclusion, the employer's Duty of Care to employees can feel substantial and complex in an increasingly global workforce. However, with the right approach Duty of Care can be an opportunity for employers, not only to reduce their own risk (financial, legal and reputational) but also to build a strong reputation as an organisation that values their employees and is committed to protecting their health, safety and wellness in the office, when working remotely and abroad.

supporting them to defend and action and evidence they had done all that was reasonable to discharge their Duty of Care obligations.

To this end a programme that include maintaining thorough documentation and the formulation of suitable measures vital.

## RECOMMENDATIONS

Among our recommendations, we underscore the pivotal role of prevention for effective Duty of Care. Seeking legal advice, acquiring information on working conditions, and analysing operating environments are crucial steps. These actions empower employers to implement preventive measures and respond effectively to potential incidents or issues.

A proactive approach focused on prevention results in fewer incidents leading to reduced risk of involvement in litigation. Further to this, effective Duty of Care programmes, focusing on prevention, support an organisation in the event of a case,

## OBSERVATIONS

Given the requirements of effective Duty of Care as a preventative measure, it is natural that we are witnessing the emergence of roles dedicated to hygiene and health in the work environment. This trend evidences the evolving landscape of employer responsibilities and the imperative to prioritise employee well-being.

Duty of Care transcends moral or ethical considerations. It is a legal obligation and cornerstone upon which an enterprise must construct its human resources policy. Such policy must surpass mere accident or travel insurance and should be founded on comprehensive risk analysis, decisive actions, diligent monitoring, and the ability to respond effectively to identified risks. These measures surpass accident or travel insurance conclusions.

# IMPLEMENTATION GUIDE

## EXAMPLES OF MEASURES TO BE TAKEN

- Ensure Management & stakeholder buy-in
- Document travel risk processes, policy and guidelines
- Definition of risk identification, analysis and evaluation process
- Access to global medical and security intelligence
- Clarification of measures to modify risk acceptance, transference, avoidance, reduction
- Selection of accredited internal and external stakeholders/providers who are experienced and can ensure business continuity 24/7
- (Automated) pre-trip preparation based on risk profile, e.g awareness sessions, specific training, information, health check, secure accommodation/airline, compliance documentation as part of booking process
- Medical and security information during travel, e.g via assistance app, automated alerts
- Medical, emotional and security support during travel e.g doctors appointment, medication secure transfer, relocation, evacuation
- Integrated digital dashboard for monitoring travellers, assignees, operational sites/ office and other assets
- Automated localisation and communication with travellers in case of emergency
- Integrated travel risk policy, emergency, incident and crisis management procedures
- Communication of travel risk process, policy and guidelines to mobile work force as well as other stakeholders
- Review and adaptation of Travel risk management process on a regular basis





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