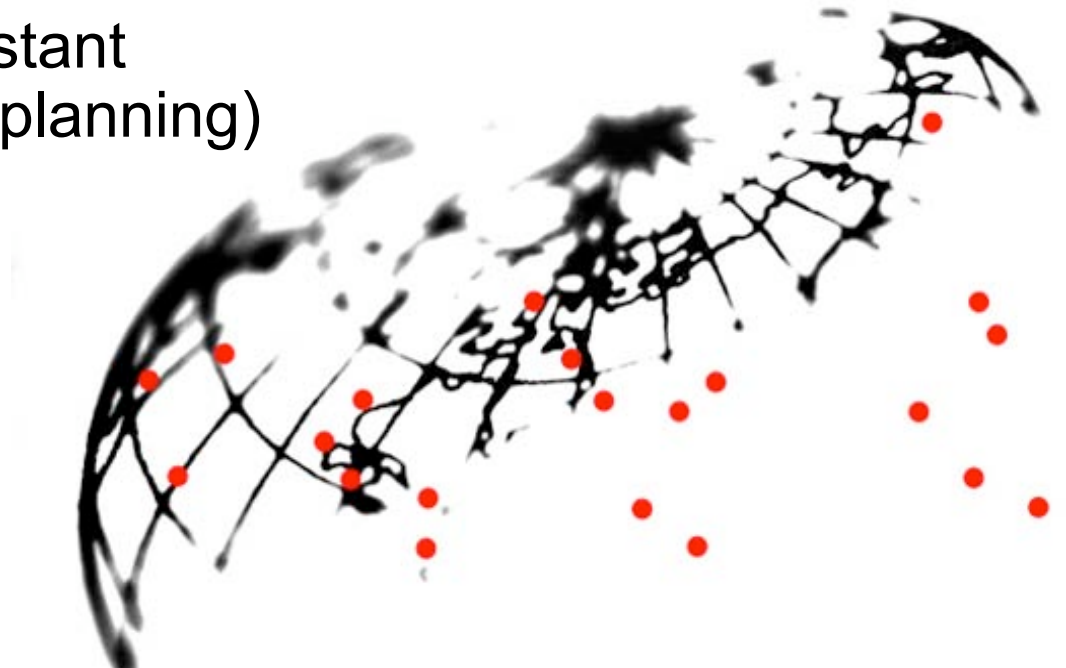


BWEA Health and Safety Seminar 2008

Reasonably practicable? – Wind Turbines and Lifts

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Reasonably practicable?

Wind turbines and lifts

- Health and Safety at Work etc. Act 1974
- “So far as is reasonably practicable”
- Use of lifts – whose choice?
- Regulator enforcement options and how to respond

Reasonably practicable?

Health and Safety at Work etc. Act 1974

- S. 2(1) “It shall be the duty of every employer to ensure *so far as is reasonably practicable*, the health, safety and welfare at work of all his employees”
- S. 3(1) “persons not in his employment”

Reasonably practicable?

So far as is reasonably practicable

- Management of Health and Safety at Work Regulations 1999
- Confined Spaces Regulations 1997
- Work at Height Regulations 2005

Reasonably practicable?

So far as is reasonably practicable

- Edwards v National Coal Board [1949] 1 All ER 743
 - “a narrower term than physically possible...make a computation in which the quantum of risk run by the worker was placed in one scale and the sacrifice of the employer involved in the measures necessary to avert the risk (whether in money, time, or trouble) was placed in the other, and, if there were a gross disproportion between them—the risk being insignificant in relation to the sacrifice—the employer has discharged the onus which was on him.”

Reasonably practicable?

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- “lifts are reasonably practicable in new turbines”
- >60m”
- “retrofit to existing turbines”
- “turbines <60m”
- “The advantages clearly outweigh the disadvantages – HSE inspectors will be taking a strong enforcement line on this particular issue”¹

Reasonably practicable?

Lifts

- Cost v benefit
 - “grossly disproportionate”
 - New build – possibly
 - Retrofit – almost certainly
- Emergency escape measures
- Additional work during construction/deconstruction
- Catastrophic failure

Reasonably practicable?

Who is the decision maker?

- HSC/E
 - “The mission is for HSC and HSE, working with LAs, to protect people’s health and safety by ensuring that risks in the changing workplace are properly controlled”²

Reasonably practicable?

Who is the decision maker?

- Operator
 - Regulator
 - Shareholder
 - Employee
- Customer
 - Drive technology forward
 - Find the best solution (not just short term)

Reasonably practicable?

Enforcement

- Prosecution
- Improvement notice
- Prohibition notice

Reasonably practicable?

Prosecution

- S. 40 HSWA
 - Reverse burden of proof

Reasonably practicable?

Improvement notice

- Appeal
 - 21 days
 - Employment Tribunal
 - Notice is automatically lifted
 - Burden of proof

Reasonably practicable?

Prohibition notice

- Appeal
 - 21 days
 - Employment Tribunal
 - Notice remains unless application to suspend is granted
 - Burden of proof

Reasonably practicable?

Summary

- Health and Safety at Work etc. Act 1974
- “So far as is reasonably practicable”
- Use of lifts – whose choice?
- Regulator enforcement options and how to respond

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