

## WHAT IS "REASONABLY PRACTICABLE" ?

Legislation requires that due diligence is performed to minimise risks – so far as is reasonably practicable (SFARP).

### **No standard formula**

There is no standard formula for determining what is “reasonably practicable”, rather there are a set of considerations required to reach a conclusion. These are detailed in the legislation (HSWA s 22) and inevitably track to the cost and whether the cost is grossly disproportionate to the risk. This is somewhat disingenuous as cost is quantified in monetary terms and this is difficult if not impossible in respect to health and safety risk.

But despite this difficulty, the courts will inevitably apply their judgement.

### **Eliminate risk unless the cost is grossly disproportionate**

Organisations need to be in a position to demonstrate they have been through the exercise of identifying and considering the need for, and availability of, controls where the risk is not eliminated. Elimination is the primary strategy and organisations need to demonstrate why not if this is not adopted.

### **Where elimination of risk is not possible**

If elimination is not possible, SFARP requires organisations implement effective (although lower level) controls consistent with the hierarchy of controls, until it's no longer reasonable or it becomes impractical for them to do more.

Short of elimination, an assurance mechanism becomes critical to ensure controls work as intended.

### **The key question is what determines what is reasonable?**

We suggest:

1. Consideration of the factors detailed in s 22 – there needs to be a record.
2. Those doing the consideration must have the ability to influence and control the matter.
3. A capacity to demonstrate sound judgement has been applied – particularly engagement with experts and use of data.

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16 March 2026

[1] For formal wording please refer to the Act

[2] Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 – s. 6