# 6 Health and Safety

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6 HEALTH AND SAFETY

6.1 INTRODUCTION

Accidents and ill health at work cost the UK in excess of £10 billion annually. It is estimated that only half of all reportable accidents are ever reported to the Health and Safety Executive (HSE) under the Reporting of Injuries Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR). Of those reported the main causes of injury are:

- slips, trips and falls
- handling, lifting and carrying; and
- being struck by moving objects.

The main work-related illnesses are back injuries, stress, respiratory disease and deafness.

An accident at work is defined as unplanned and uncontrolled events that could lead to injury, ill health, damage or other loss or error. The cost of accidents in the workplace is not just measured in terms of monetary value but also in terms of human suffering – such as injury, pain, stress, grief, death, loss of income, unemployment and additional expenses. The potential costs to employers include:

- compensation claims and higher insurance premiums
- prosecution, fines, prohibition and legal fees
- lower staff morale, reduced productivity, absenteeism, sick pay, increases in staff turnover and replacement costs.

Other costs include repairs to damaged buildings and equipment, loss of reputation and customer confidence and increases in management and administration costs.

The term occupational health and safety is used in relation to measures that are necessary to reduce and control risks to the health and/or safety of anyone who might be affected by the activities of people at work. There are three main factors that affect health and safety at work:

- occupational
- environmental
- human.

Occupational factors are those associated with the job (occupation). For example, occupational factors that might affect a computer operator are those relating to the workstation and its layout. Environmental factors include such things such as lighting, heating, ventilation, noise, dust and fumes. Human factors are the behaviours of workers themselves that can pose a risk, such as carelessness, larking around, not paying attention, complacency, influence of alcohol or drugs, disregard for safety rules, distraction, and lack of training and instruction. It is the human factors that are the cause of most workplace accidents.

6.2 AN OVERVIEW OF HEALTH AND SAFETY LEGISLATION

The Health and Safety at Work etc Act 1974 (HSWA) sought to move away from prescriptive legislation to a self-regulating system, which focused on the need for better systems of safety organisation, management initiatives and more involvement of the workforce. The emphasis is on good and effective management, and a detailed health and safety policy and objectives.
The report of the committee described existing legislation as being ‘a haphazard mass of ill assorted and intricate detail’, and recommended that there should be ‘a comprehensive and orderly set of revised provisions under a new enabling Act’. But it was not until the advent of the 1989 Framework Directive (89/391/EEC of 12 June 1989) that real impetus for change started to take place.

6.2.1 Legal duties

The HSWA is now the basis of British health and safety law. The law says that employers have a ‘duty of care’ towards everyone working for them or on their premises, and anyone who could be affected by what they do, including the public. The HSWA covers all work premises and everyone at work (with the exception of a domestic servant in a private household). Self-employed individuals have to make sure that what they do does not affect the health or safety of anybody else. Employees have a duty to look after themselves and make sure that what they do cannot harm others.

6.2.2 Regulations

Under the HSWA the Health and Safety Commission (HSC) can propose health and safety regulations which, following approval by Parliament, must be complied with. Minimum standards for the health and safety of workers were introduced by Article 118A to the Treaty of Rome, and are implemented via Directives. The principal Directive is the Framework Directive. This is supplemented by six ‘daughter’ Directives which, in the UK, have been transposed into six main Regulations – commonly known as the ‘six pack’. These are the:

- Management of Health & Safety at Work Regulations 1992 (updated 1999)
- Workplace (Health, Safety and Welfare) Regulations 1992
- Provision and Use of Work Equipment 1992 (replaced by the 1998 Regulations)
- Personal Protective Equipment at Work Regulations 1992 (replaced by the 2002 Regulations)

The 1974 Act and the Regulations are ‘goal setting’, which means employers have the freedom to decide how to control risks in their particular business. However, some Regulations are more detailed and prescriptive and set out explicit action that must be taken. These include the Control of Substances Hazardous to Health Regulations and the Noise at Work Regulations 1989 (replaced by the Control of Noise at Work Regulations 2005).

6.2.3 Approved Codes of Practice

The consent of the secretary of state, the HSC, can introduce Approved Codes of Practice (ACoPs). These provide practical advice on how to comply with the law. Following the advice will ensure compliance with the law in respect of the specific matters on which the Code gives advice. Although alternative methods to those set out in the Code can be applied, ACoPs have special legal status. A person – the law regards a company as a person – prosecuted for breach of health and safety legislation, and who did not follow the relevant provisions of the ACoP, will need to show some other way of achieving compliance or a court will find them at fault.
6.2.4 Guidance

Guidance on complying with Regulations can be issued by the authorities or trade bodies. Although it is not compulsory to follow such information, failure to do so may mean an employer is not doing enough to comply with the law. Health and safety inspectors and the courts often refer to guidance as illustrating good practice. The HSE publishes a range of guidance on different topics. It can either be specific to the health and safety issues in a particular industry, or to a particular process used across different industries. The main purpose of guidance is to help people understand and comply with the law. HSE publications tend to contain guidance on particular Regulations plus the accompanying ACoP.

6.2.5 Codes of Practice

A Code of Practice (CoP) is a document drawn up by organisations with an interest in a particular industry or topic and provides practical guidance and information. Unlike an ACoP, a CoP has not been approved by the HSC, and therefore cannot be used in court proceedings in the same way. However, if there is no other guidance available, a court or tribunal may refer to a CoP for guidance with respect to best practice and good safety activity. CoPs are not definitive, particularly as technology and methodology in the workplace is continuously being developed and improved, so should only be regarded as offering best practice at the date of issue.

6.2.6 Administration of health and safety legislation

Health and safety legislation is administered by the HSC and enforced by the HSE. The HSC consists of representatives from employers’ and employees’ organisations, including the CBI and the TUC. It is responsible for developing health and safety policies and making proposals for Regulations. The HSE is a separate statutory body; its inspectors enforce the law and provide advice on health and safety issues. HSE inspectors aim to protect the health, safety and welfare of everyone at work. Environmental health officers, who are employed by local authorities, also enforce health and safety legislation. The HSC consults fully with those affected by their legislative proposals, and all consultative documents can be freely downloaded from HSE’s website (www.hse.gov.uk). Individual views are welcomed along with those of official bodies.

6.2.7 Employers’ duty of care

Employers have duties relating to employees, to persons other than employees – for example, members of the public, customers, delivery personnel and other workers, including the self-employed, who may be working close to their own employees – and to premises.

**Case law**

The following two case law examples illustrate the general nature of an employer’s obligation: In *Vaughan v Ropner & Co Ltd*[1947] 80 LI L Rep 119, it was considered by Scott LJ that there are three main areas encompassing a ‘duty of care’. These are to: provide proper premises in which, and proper plant and appliances by means of which, the workman’s duty is to be performed; maintain premises, plant and apparatus in a proper condition; and establish and enforce a proper system of working.
In *Wilson and Clyde Coal Co Ltd v English* [1937] 3 All ER 628, Lord Wright explained that: There was a duty on the employer, and which is personal to the employer, to take reasonable care for the safety of his workmen, whether the employer be an individual, a firm, or a company, and whether or not the employer takes any share in the conduct of the operations.’

Since the ruling in *Wilson and Clyde Coal Co Ltd v English*, the House of Lords has generally treated the duty as one ‘to take reasonable care for his servant’s safety in all the circumstances of the case’, adding where appropriate references to the more specific duties.

Both *Vaughan v Ropner & Co Ltd* and *Wilson and Clyde Coal Co Ltd v English* provide guides to the scope and nature of an employer’s ‘duty of care’, establishing that there should be safe plant, premises and systems in place to ensure the safety of employees.

It follows that in order for an employer to successfully undertake his/her ‘duty of care’ obligations, a system for health and safety is required. This system should be developed, adopted and driven by senior management and encompass all aspects of the enterprise with the objective of providing safe methods of working.

**Safe system of work**

The employer must look at every aspect of a job, and think about what is used, who does what, when, where and how. The employer must look for any hazards, evaluate the risks, and remove or control all of the potential hazards. If the hazards cannot be eliminated, the employer will need to put together safe systems of work to deal with them. Work needs to be planned, so that people know who is in charge, what to do and in what order. Employees also need to know what could go wrong if the system is not followed and what to do if things do go wrong. It is not down to the employee to produce a safe system of work: the duty is on the employer to provide his employees with the information, systems and equipment to undertake the job in a safe manner.

**Case law**

The concept a ‘safe system of work’ was explored in 1952 by the House of Lords in 1952 in the case of *General Cleaning Contractors Ltd v Christmas* (1952) 2 ALL ER 1110. In the judgment, Lord Oakley said:

‘It is the duty of an employer to give such general safety instructions as a reasonably careful employer who has considered the problems presented by the work would give his workmen.’

In the same case, Lord Reid said: ‘Where the practice of ignoring an obvious danger has grown up, I do not think that it is reasonable to expect an individual workman to take the initiative in devising and using precautions. It is the duty of the employer to consider the situation, to devise a suitable system, to instruct his men what they must do and to supply any implements that may be required.’

Although the outcome of *General Cleaning Contractors Ltd v Christmas* still applies, the HSWA and subsequent Regulations put a duty on the employee to assist the employer in carrying out the duty of care obligation by telling the employer of any situations that could cause harm.
Further responsibilities of employers

An employer with at least five employees will have to produce a written statement of general policy for health and safety in the organisation and details of arrangements for carrying it out. This should:

- put into practice a safety management system
- ensure systems of work are safe, including operations that are carried out infrequently
- consider that sometimes special safety systems, such as permits to work are required
- ensure that plant and equipment is safe and regularly maintained and inspected
- ensure the safety and absence of risks to health from the use, handling, storage and transport of hazardous substances
- provide safe access/egress to/from their premises
- provide adequate facilities and arrangements for welfare at work; and
- carry out suitable and sufficient risk assessment and provide preventive and protective measures.

There is also an obligation on the employer to provide any necessary information, training and supervision to ensure the health and safety at work of employees. In addition, employers need to consider the personal capabilities of employees and any specific training needs, particularly if jobs are considered to be hazardous.

Consultation with employees must take place on any matter which may affect their health, safety or welfare. Before making any decisions relating to work equipment, processes or organisation that could have an effect on employees’ health, safety or welfare the employer must give the employees or their elected representatives the time and opportunity to express their views.

The employer must not charge his employees for things done or provided to protect them at work – for example, the provision of machinery guards or personal protective equipment.

6.2.8 Employees’ responsibilities

Employees are required to take reasonable care for their own health and safety and that of others affected by their work. Staff must also help the employer comply with its duties. Employees have a duty not to interfere with or misuse anything provided to ensure their health, safety and welfare, such as machinery guards, barriers and safety signs as well as refrain from using equipment they are not trained to use. A further duty exists for employees to tell a supervisor/manager if they identify something that could be dangerous.

Case law

Recent cases posted on the website of the HSE (www.hse-databases.co.uk/prosecutions/breach) reveal a large number of breaches under section 7 of the HSWA, where employees have either used equipment they were not trained to use or misused equipment, such as fork lift trucks. For example:

S. Carroll: case no. F080000383
A colleague injured when the defendant raised him in a potato box balanced on the tines of a forklift truck. The colleague fell from the box and suffered bruising and cracked/fractured ribs. The defendant was a trained forklift truck operator who should have been aware that this was not acceptable behaviour yet he exposed a colleague to the risks of falling from a height thereby failing to take reasonable care for the safety of other persons who might be affected by his acts. The case is compounded by the fact that the defendant had approached another colleague to lift the injured person using the forklift truck but this employee refused.

Outcome: £250 fine.

John Patton Bell: case no. F140000365

Patton Bell injured himself whilst driving a ‘Boss Side loader’. He did not take reasonable care for the health and safety of himself and others, including a child of school age to whom he gave a ride immediately before his accident.

Outcome: £150 fine.

6.2.9 Powers of the Enforcement Agencies

HSE inspectors and local authority environmental health officers (EHOs) are appointed by warrant, which enables them to enter workplace premises at any ‘reasonable time’ to carry out an inspection or investigation following an accident or incident. They do not have to make an appointment and must be allowed entry. There are a number of free leaflets available from HSE Books describing what can happen when an inspector calls, including: ‘When an Inspector Calls’ and ‘Your rights when health and safety inspectors take action’.

Employers’ liability compulsory insurance

Employers are required to have liability insurance – called employers’ liability insurance (ELI) – covering them against injury or disease to an employee. The employer has to display a valid ELI certificate of insurance in each place of business. As well as enforcing health and safety legislation, the HSE is also the enforcing authority for ensuring an employer has the appropriate ELI cover under the Employers’ Liability (Compulsory Insurance) Act 1969 (ELCI). An inspector can, when visiting for a routine inspection look for a certificate being displayed. If not satisfied with the findings he can request to see the policy or a copy. Generally, a failure to display a valid ELI certificate will not result in prosecution. But if investigations show that there is employment and no insurance, then the employer is liable to be prosecuted.

Businesses will also need to be in possession of public liability insurance (PLI) cover. Underwriters often offer this as a joint policy with the ELI. PLI covers employers if they or an employee causes harm or injury to somebody who is not in their employ, such as a member of the public, contractor or client.

Letter of visit

Following a visit by an HSE inspector or local authority officer, they may send a letter detailing their visit and, if they uncover problems, outlining what the employer must do to rectify these issues. Inspectors/officers will give a timeframe for making the necessary change and the reasons for having to do it. Employers have two weeks from receiving a letter to appeal against the decision to the line manager of the inspector/officer. Employers should never ignore a letter from the enforcing authorities. It is an offence not to cooperate with the HSE or local authority.
Improvement notice

An improvement notice can be issued if the inspector/officer believes there is a breach of the HSWA or Regulations. If an improvement notice is issued, it either has to be complied with or an appeal lodged. When the notice is issued the inspector/EHO will provide details of what has to be done to comply and the time allowed for compliance. The recipient would also be informed of the appeal procedure, which is a formal process. Industrial Tribunals hear appeals. It will consider the reasons for the notice and the employer’s objections. Once an appeal is submitted, the actions required by the improvement notice are suspended until the case is heard. If there is no appeal the requirements specified in the notice will have to be complied with.

Prohibition notice

If an inspector/officer believes that activities being carried out are, or are likely to, present imminent risk of injury then they can stop the activity by issuing a prohibition notice. The inspector/officer only has to be of the opinion that there is a risk of serious personal injury. The prohibition can be issued on a particular process, piece of equipment or even a whole workplace and has immediate effect.

The inspector/officer will provide details of what has to be done to comply with the notice and the time allowed for compliance. An appeal may be made to the Industrial Tribunal and the effects of the notice are suspended until after the hearing. It must be borne in mind that if a notice has been issued and an activity stopped for safety issues, there will be grounds for the inspector’s action so a decision to appeal must not be taken lightly. If a person appeals and continues with the action in dispute and there is an accident, they could be liable for more serious action. The seriousness is heightened when there is a failure to act upon advice provided. This leaves no defence and the sanction by the courts will reflect the displeasure of the legal system for such disregard.

6.2.10 Possible sanctions

Prosecution in the Magistrates and the Crown Courts

To ensure compliance with health and safety legislation it is the general policy of the HSE to give advice and use persuasion rather than resort to the courts. Prosecution is usually a last resort and may depend on the track record of the company and its general attitude to health and safety. Prosecution is likely to take place if there is constant disregard for safety or non-compliance with notices. As with all criminal offences, prosecutions are initially heard in the Magistrates Court where there is a maximum fine of £20,000 plus prosecution costs. Pleading guilty reduces court costs and reduces the size of the fine. For more serious offences the magistrates can pass the case to the Crown Court for trial where fines are unlimited and the costs increase.

Magistrates can also hear a case in the lower court and send it to the Crown Court for sentencing if they feel their sanctions are not high enough. In both courts imprisonment is a possibility if found guilty.

For a criminal prosecution to succeed it must be proven beyond all reasonable doubt that a duty existed and that it was breached. It is not possible to insure against the sanctions of the court in criminal cases.

Imprisonment

Custodial sentences are common for health and safety offences. Imprisonment is usually reserved for cases resulting in serious injury or death. One of the most serious criminal acts is
perverting the course of justice and those found guilty inevitably receive a custodial sentence. Tampering with evidence in a health and safety case can be construed as perverting the course of justice.

Since the HSWA was introduced, there has been a reluctance to commit an individual to prison as workplace incidents have often tended to be viewed as civil matters, where compensation is seen as the principal legal outcome.

**Civil courts**

Employers can insure themselves against civil claims through their ELCI. And very often, civil cases are settled out of court, with the insurers making an offer to the injured party. In the civil court the burden of proof is based upon the balance of probabilities. The focus of the civil court is to determine if there is a case for damages to be made, and if so the value of such compensation.

**Directors’ disqualification**

In addition to fines/custodial sentence for individual breaches of health and safety legislation, the courts can also disqualify directors from holding office under the Company Directors Disqualification Act 1986. Breach of an order under this Act is in itself a criminal offence carrying a term of imprisonment of up to two years.

**Manslaughter**

A new offence of corporate killing is to be introduced, replacing the very restrictive current legal standing of corporate manslaughter which has had limited success in the courts. Under the draft proposals, an organisation would be guilty if the way in which its senior management organised its activities caused a person’s death. The organisation’s conduct would be assessed against a number of criteria, including the extent to which it had breached relevant health and safety legislation, and whether it had sought to profit from non-compliance.

### 6.3 HEALTH AND SAFETY LEGISLATION

The HSWA and the Management of Health and Safety at Work Regulations 1999 (MHSWR) place duties on both employers and employees. Employers are required to ensure the health, safety and welfare of their employees and prepare a statement of general health and safety policy. If five or more people are employed it must be a written statement.

**6.3.1 Health and Safety at Work etc. Act 1974**

**General duties of employers**

**HSWA section 2**

Section 2 lays out general duties of employers to their employees:

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.

2. (c) The provision of such information, instruction, training and supervision as is necessary...
3 It shall be the duty of every employer to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangement for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all of his employees.

*MHSWR Regulation 5*

Regulation 5 identifies what should be included in a general health and safety policy:

1 Every employer shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.

2 Where the employer employs five or more employees, he shall record the arrangements referred to in paragraph 1.

There is a general duty on employers not to expose employees and other persons to risks to their health and safety so far as is reasonably practicable. This can be defined as the balance of cost against risk. When deciding upon the preventive and protective measures the employer may take into account, the cost, in terms of time, trouble and actual monetary expenditure, should be weighed against the level of risk remaining.

*HSWA section 3*

Section 3 says an employer is responsible for the health and safety of those entering his/her premises, and means that civil litigation could result from customers/visitors, for example, having accidents entering premises.

*HSWA section 4*

Section 4 places a general duty on employers to take such measures to ensure, so far as reasonably practicable, that the premises, the means of access and exit as well as any plant or substance either in the premises or provided for use there is or are safe and without risk to health.

*HSWA section 6*

Section 6 places duties on those that manufacture articles for use at work to ensure so far as is reasonably practicable that they are constructed without risks to health and safety, in respect to risks which are reasonably foreseeable. There is also a duty under the Consumer Protection Act to make and supply safe and reliable products to the consuming public.

*HSWA section 9*

Employers cannot charge employees for things done or provided pursuant to certain specific requirements. This means that employers are not allowed to charge employees for items such as personal protective equipment, such as protective footwear, goggles and hardhats.
HSWA section 37

Offences by corporate bodies:

1 Where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

To show that a director ‘consented’ or ‘connived’ in the offence committed by the company, or that the corporate offence resulted from ‘any neglect’ on his/her part, it must first be established that the company committed an offence by breaching a duty imposed by the 1974 Act itself. It also has to be established that a director consents to the commission of an offence when he or she is ‘well aware of what is going on and agrees to it’. It will be necessary to show that this agreement involved some positive action, which could be verbal, in writing or a gesture. It is important to note that the latter may offer difficulty in establishing proof to a level that would secure a conviction.

When a director is well aware of what is going on and, though not actively encouraging what happens, allows it to continue, it can be considered that he/she has ‘connived’ in an offence. There is also a need to prove ‘neglect’ on the part of a company officer who has a ‘duty’ to do whatever it is alleged they failed to do. Even in the absence of a legal duty, it does not preclude action as there is an interpretation that shows neglect can also refer to the breach of non-legal duties.

Case law

The following cases illustrate the range of offences and the focus of individual liability as well as the penalties that resulted in successful prosecutions under section 37.

*Moores Timber Merchants Ltd: case nos. 160000321/01/02/03/04*

The case follows Judicial Review and subsequent joint investigation with Greater Manchester Police into the circumstances of the death of Mohammed Omar Akhtar who was killed when in collision on the public highway with a fork-lift truck owned and operated by Moores Timber Merchants Limited. The CPS considered the evidence insufficient for a charge of involuntary manslaughter. The company was charged under section 3 of the HSWA for failure to provide a safe system of work. Mr Broadbent, director, was charged on two counts under section 37 of the HSWA.

Conclusion: The company was in breach under section 37 due to the neglect of a director. Fined £105,000 and ordered to pay £69,300 costs.

*Fresha Bakeries: case no. F090000173; Harvestime Ltd: case no. F090000174*

Two employees died at a bakery in Leicester on 16 May 1998. The two men had been sent into a giant oven to retrieve a broken part, using a slow moving conveyor belt to enter the oven where the temperature was more than 100 degrees and died as a result. Section 2 and 3 charges were brought against both companies following this tragic event. Fresha Bakeries was prosecuted under section 2 because they failed to provide a safe system of work. Harvestime was prosecuted under the same offence. Both companies were also prosecuted under section 3 for failing to ensure persons not in their employ were not exposed to danger.
Conclusion: Two directors and a manager were fined a total of £373,000 plus costs of £255,000.

**JM Enterprises of Wetherby Ltd – Mather: case nos. C911/68-75; Jackson: case nos. C921/77-82**

This was the first time that individual directors have been convicted for section 37 offences without the company being convicted of the same offence. The company, which was in receivership, and three individuals, including Mather and Jackson, pleaded guilty to 24 offences. This case was important and the precedent is quoted:

‘The HSE prosecuted the directors and manager under section 37 of the Health and Safety at Work etc Act 1974 because of the close control that they exercised over the company ... Until the JME case, the interpretation of section 37(1) has always been that to secure a section 37(1) conviction of a director, the company has first to be convicted of a parallel offence. But this case also saw the HSE secure four convictions of one director and two of the other four offences for which the company had not been convicted. This has not happened before.’

The prosecutions of Mather and Jackson were brought after firework display organiser, Mick Mason, died in a massive explosion after he took four boxes of condemned Turbo 3 Rocket fireworks from the company to burn in his kiln. The rockets had been declared unsafe by trading standards officers. A company employee who had no formal training had, because of a lack of knowledge, passed the broken up, volatile fireworks to Mr Mason. The fireworks were so unstable they could have exploded while being transported.

A very important aspect of the case was the breach of a notice, which, as opposed to section 37 offences, carries the possibility of imprisonment, though a custodial sentence was not the result on this occasion.

**General duties of employees**

**HSWA section 7 – General duties of employees at work**

It shall be the duty of every employee while at work:

- to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and
- as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

**HSWA section 8 – Duty not to interfere with or misuse things provided pursuant to certain provisions**

No person shall intentionally interfere with or misuse anything provided in the interests of health and safety or welfare pursuant of any of the relevant statutory provisions.

**HSWA sections 7 and 8; MHSWR Regulation14**

These place duties upon employees to ensure the safety of themselves and others, which means they should se all work items provided by their employer correctly, and in a manner that the employer has trained them. They also have a duty to bring to the attention of the employer any health and safety matters that may cause serious and imminent danger. In addition, employees...
must comply with written company procedures or they could be prosecuted as individuals. Using equipment or substances that they have not been trained and authorised to use could also result in prosecution.

**Case law**

The cases of *Graham Charles Parkinson and Edward James Platts — Case nos: F070000528 and F07000052* — are examples of individual employees being prosecuted for using equipment or substances they were not authorised to use.

Both employees of Redwings Horse Sanctuary, without reasonable excuse, contravened the conditions of consent related to a pesticide called Phostoxin. The reason for the prosecution is that the employees used the pesticide without adequate instruction, training and guidance in its safe, efficient and humane use. This resulted in a number of persons being exposed to phoshine gas.

**Conclusion:** Both were found guilty and fined £650 each.

**6.3.2 Management of Health and Safety at Work Regulations 1999 (MHSWR)**

Essentially the MHSWR identify that a safety management system must be in place to enable the employer to comply with the HSWA. A major part of the safety management system is a suitable and sufficient risk assessment, considered by many as being the backbone of that system.

**General duties of employers**

**MHSWR Regulation 3 – Risk assessment**

1. Every employer shall make a suitable and sufficient assessment of:
   a) the risks to the health and safety of his employees which they are exposed to whilst they are at work;
   b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking, for the purpose of identifying the measures he needs; and
   c) the risks taken to comply with the requirements and prohibitions imposed on him by or under the relevant statutory provisions.

Risk Assessment is a proactive process involving assessing the risks associated with specified activities and processes. It is an essential part of managing health, safety and environmental issues within all organisations. In carrying out a risk assessment, employers are required to assess the risks to workers and any others who may be affected by their undertaking. Employers with five or more employees must also record the significant findings of that assessment. This means that all activities, equipment and premises must be assessed. The assessment should aim to identify the hazards on the site, decide who might be harmed and how, and evaluate the risks arising. The risks should then be addressed to eliminate them or reduce them to ‘as low as reasonably practicable’. This assessment should be reviewed when any changes are made or periodically and updated as required.
**MHSWR Regulation 4 – Principles of prevention to be applied**

Where an employer implements any preventive and protective measures he shall do so on the basis of the principles specified in Schedule 1 of the MHSWR.

Schedule 1 sets out the following:

- avoiding risks
- evaluating the risks which cannot be avoided
- combating the risks at source
- adapting the work to the individual, especially as regards the design of workplaces, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health;
- adapting to technical progress
- replacing the dangerous by the non-dangerous or the less dangerous
- developing a coherent overall prevention policy which covers technology, organisation of work, working conditions, social relationships and the influence of factors relating to the working environment
- giving collective protective measures priority over individual protective measures
- giving appropriate instructions to employees.

**Case law**

Failing to conduct a risk assessment is a breach of Regulation 3 of the MHSWR as the following case illustrates.

*TH Clements & Son Ltd: case no. F130000454*

In this case, employees and gangworkers involved in labeling broccoli were exposed to carbon monoxide produced by a gas-powered forklift truck operating in an enclosed cold store known as a ‘Dutch Store’. Their health was put at risk by the exposures, resulting in three workers being admitted to hospital. Inspectors found that suitable and sufficient risk assessment was not carried out before work transferred into the cold store.

**Conclusion:** Company fined £13,000 and ordered to pay £9,280.50 costs.

**MHSWR Regulation 6 – Health surveillance**

Every employer shall ensure that his employees are provided with such health surveillance as is appropriate having regard to the risks to their health and safety which are identified by the assessment.

This means that if a risk assessment identifies a risk to an employee it may be necessary to carry out health surveillance, which, at a minimum, would require keeping an individual health record. There may be the need to discuss symptoms with an occupational health nurse or carry out a clinical examination by a qualified practitioner.
**MHSWR Regulation 7 – Health and safety assistance**

An employer is required to appoint competent persons to assist in complying with relevant statutory provisions, including conducting risk assessments. It is recommended that the competent person is employed by the organisation, though where this is not practical outside consultants may be appointed.

When appointing external persons, the employer should ensure they are ‘competent’ and can prove that competence by membership of professional bodies such as the Institution of Occupational Safety and Health (IOSH) and the International Institute of Risk and Safety Management (IIRSM).

**MHSWR Regulation 8 – Procedures for serious and imminent danger and for danger areas.**

Employers must establish and practice appropriate procedures to be followed in the event of an emergency, including nominating a sufficient number of competent persons to implement those procedures and allow the safe evacuation of premises. The competent persons must have sufficient training, experience or knowledge and other qualities to enable them to implement the evacuations procedures.

**MHSWR Regulation 9 – Contact with external services**

Where necessary the employer should arrange contact with external services particularly as regards first-aid, emergency medical care and rescue work.

**MHSWR Regulation 10 – Information for employees**

1. Employers must provide employees with information on:
   a) the risks to their health and safety identified by the risk assessment
   b) the preventive and protective measures
   c) the procedures referred to in reg 8(1)(a) and the measures referred to in reg 4(2)(a) of the Fire Precautions (Workplace) Regulations 1997
   d) how to identify the person nominated in reg 8(1)(b) and reg 4(2)(b) of the Fire Precautions (Workplace) Regulations 1997
   e) the risks notified to him in accordance with reg 11(1)(c).

2. Before employing a child (under statutory school leaving age), employers must provide a parent with comprehensible and relevant information on:
   a) the risks to his health and safety identified by the risk assessment
   b) the preventive and protective measures
   c) the risks notified to him in accordance with reg 11(1)(c).

**MHSWR Regulation 11 – Co-operation and co-ordination**

Co-operation and co-ordination applies where two or more employers are sharing a workplace and where they have obligations under the HSWA towards anyone who may be put at risk by their activities. Where the activities of different employers interact, they may need to cooperate.
with each other to ensure that their respective obligations are met. There will need to be a health and safety co-ordinator appointed and there will need to be a person in control to ensure co-operation for persons on the site.

**MHSWR Regulation 12 – Persons working in host employers’ or self-employed persons undertakings**

Employers and the self-employed must provide the employers of employees from an external organisation who are working in an undertaking with the same information afforded to their own employees in respect to the risks to their health and safety; the measures taken to reduce those risks; the person nominated for the evacuation of the premises in an emergency; and the procedures for evacuation.

**MHSWR Regulation 13 – Capabilities and training**

1. Every employer shall, in entrusting tasks to his employees, take into account their capabilities as regard health and safety.

2. Every employer shall ensure that his employees are provided with adequate health and safety training:
   a) on their being recruited into the employer’s undertaking; and
   b) on their being exposed to new or increased risks because of:
      i) their being transferred or given a change of responsibilities within the employer’s undertaking
      ii) the introduction of new work equipment or a change respecting work equipment already in use within the employer’s undertaking.
      iii) the introduction of new technology into the employer’s undertaking, or
      iv) the introduction of a new system of work into or a change respecting a system of work already in use within the employer’s undertaking.

3. The training referred to in paragraph 2 shall:
   a) be repeated periodically where appropriate
   b) be adapted to take account of any new or changed risks to the health and safety of the employees concerned; and
   c) take place during working hours.

When allocating work to employees, employers should ensure that the demands of the job do not exceed the employees’ ability to carry out the work without risk to themselves or others. Employers should take account of the employees’ capabilities and the level of their training, knowledge and experience. If additional training is needed it should be provided. Training is an important way of achieving competence and helps to convert information into safe working practices. It also contributes to the organisation’s health and safety culture and is needed at all levels, including top management. This can include basic skills training, specific on-the-job training as well as training in health and safety or emergency procedures. An employee’s competence will decline if skills are not used regularly and so training needs to be undertaken periodically to ensure continued competence.
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MHSWR Regulation 15 – Temporary workers/agency staff

Temporary workers on fixed-term contracts and agency employees should also be given comprehensive information on any special occupational qualifications or skills required to safely perform their work and any health surveillance, together with all relevant information before the employee commences his/her duties.

MHSWR Regulation 16 – Risk assessment in respect of new or expectant mothers

When the workforce includes women of childbearing age and the work is of a kind which could involve risk to the health of a new or expectant mother or to that of her baby, an assessment of such risk must be undertaken. If the assessment shows that controls would not avoid the risk, her working conditions or hours must be altered. If it is not reasonable to alter the working conditions or hours of work, under section 67 of the Employment Rights Act 1996 the employer shall suspend the employee from work on full pay for as long as is necessary to avoid such risk.

MHSWR Regulation 17 – Certificate from registered medical practitioner in respect of new or expectant mothers

Where a new or expectant mother works at night or a medical practitioner or midwife shows that it is necessary for her health or safety not to work for a certain period as identified in a certificate, the employer shall suspend her from work for so long as is necessary.

MHSWR Regulation 18 – Notification by new or expectant mothers

The employer does not have to take action under regulation 16(2) or (3) until the woman has notified him in writing that she is pregnant, has given birth within the previous six months, or is breastfeeding.

MHSWR Regulation 19 – Protection of young persons

Specific risk assessment needs to be carried out to ensure that young persons (over statutory school leaving age but under 18) are protected at work from any risks to their health or safety that are a consequence of their lack of experience, or absence of awareness of existing or potential risks or the fact that young persons have not yet fully matured. Consideration must be given to their physical or psychological capacity, their insufficient attention to safety or lack of experience or training or where there is a risk to health from extreme heat or cold, noise, vibration, radiation or exposure to harmful substances.

Regulation 19 should not prevent the employment of a young person where it is necessary for his training, and where a competent person will supervise him/her.

6.4 ADDITIONAL LEGISLATION

As well as the HSWA and the MHSWR, there are further Regulations that apply. The following are a summary of the requirements of some of these Regulations, which will help employers to comply with the law.
6.4.1 The Working Time Regulations 1998

These Regulations provide a general framework for working hours, rest breaks and minimum holidays. The Regulations cover: maximum weekly working time (Regulation 4); limits on night working (Regulation 6); entitlements to daily and weekly rest periods (Regulations 10-1); and paid annual leave (Regulation 13).

The Working Time Regulations require that an employee does not work more than 48 hours per week (seven days) averaged over a reference period of 17 weeks unless the employee has given written agreement (‘opt out clause’) to do so (Regulation 5). There are some ‘special circumstances’ where the average is extended to 26 weeks and can be raised to 52 weeks by collective or workforce agreement. Workers are entitled to 11 uninterrupted hours rest period between each working day, with one whole day off a week. No employee may work for more than 11 days without a complete 24-hour break, though days off can be averaged over a two-week period. The definition of work here includes office and site work, loading and unloading of vehicles and driving for business purposes.

6.4.2 Health and Safety (Consultation with Employees) Regulations 1996

The Health & Safety (Consultation with Employees) Regulations 1996 relate to employees that are not covered by representatives appointed by recognised trade unions. Where members of recognised trade unions are employed within an organisation the Safety Representative and Safety Committees Regulations 1977 may apply.

General duties

Regulations 3 and 4

The employer must consult employees in good time on matters relating to their health and safety at work, in particular:

- with the introduction of any measures which could substantially affect the health and safety of those employees
- his arrangements for appointing competent person(s) in accordance with the Management of Health & Safety at Work Regulations 1999
- any health & safety information required under relevant statutory provisions
- the health & safety consequences of the introduction of new technologies into the workplace.

The employer can choose to consult employees directly, or through elected representatives (representatives of employee safety).

Regulation 5

There is also duty on the employer to provide enough information to the employees or their representatives to enable them to participate fully and effectively in any consultation contained in any record, which he is required to keep by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

The employer does not have to make available information:

- the disclosure of which would be against the interests of national security
which he could not disclose without contravening a prohibition imposed relating specifically to an individual, unless he has consented which, for reasons other than its effect on health & safety would cause substantial injury to the employer’s undertaking or that of other persons obtained by the employer for the purpose of bringing or defending a prosecution He also does not have to allow the inspection of any document which is not related to health or safety.

Regulation 6
Safety representatives shall have the functions to make representation to the employer on:

- potential hazards and dangerous occurrences, which affect or could affect, the employees he represents
- general matters affecting health and safety and to represent the group of employees with inspectors appointed under section 19(1) of the 1974 Act.

Regulation 7
The employer must ensure that safety representatives:

- be provided with such training as is reasonable in all the circumstances and the employer shall meet any reasonable costs associated with such training including travelling and subsistence;
- are permitted to take such time off with pay during working hours to perform his functions.

Candidates standing for election as a safety representative are entitled to time off with pay during working hours to perform the functions of such a candidate. In addition, employers must provide facilities and assistance to enable representatives to carry out their functions under these Regulations.

6.4.3 Information disclosure
Several pieces of legislation require employers to disclose health and safety information to employees.

Management of Health and Safety at Work Regulations 1999
Requires the employer to give information on risks to health and safety identified by risk assessment, preventive and protective measures and emergency procedures, which must include the names of competent persons responsible for evacuation.

Control of Substances Hazardous to Health Regulations 2002 (as amended 2004)
Information on: risks to health created by exposure to substances hazardous to health; precautions against exposure; results of any exposure monitoring; and collective results of any health surveillance.
Chemicals (Hazards Information and Packaging) Regulations 1995
Safety data sheets or the information they contain to be made available to employees (or their representatives).

Health and Safety (Display Screen Equipment) Regulations 1992 (as amended)
Health and safety information about display screen work, for both operators and users.

Health and Safety (First Aid) Regulations 1981
Arrangements for first aid, including facilities, name of first aider or appointed person and where first aid equipment is kept.

Health and Safety (Information for Employees) Regulations 1989
HSE poster with information about employees’ health, safety and welfare to be displayed where it can be easily read; or an approved leaflet to be given to employees as soon as possible after they start.

Health & Safety (Safety Signs and Signals) Regulations 1995
Employees must be provided with comprehensible and relevant information on the measures to be taken in connection with safety signs.

Manual Handling Operations Regulations 1992 (as amended)
Information on the weight of loads for employees undertaking manual handling as well as where the heaviest side of any load is when the centre of gravity is not positioned centrally.

Control of Noise at Work Regulations 2005
Information for employees likely to be exposed to daily personal noise levels at 80dB(A) or above: risk of damage to hearing and action employees can take to minimise that risk; employees’ duties under the Regulations; the requirement on employees’ to obtain and wear personal ear protectors from the employer, how to get them, where and when they should wear them and how to get defective personal protective equipment replaced.

Provision and Use of Work Equipment Regulations 1998
Information on conditions and methods by which work equipment is to be used; foreseeable abnormal situations and the action to be taken; lessons learned from experience in using the equipment.

Personal Protective Equipment at Work Regulations 1992 (as amended)
Information on: risks that the personal protective equipment (PPE) will avoid or limit; the purpose for which and the manner in which it must be used; and any action that must be taken to keep PPE in good working order and repair.

6.4.4 Disability Discrimination Act 1995
The employment provisions of the Disability Discrimination Act 1995 (DDA) are to be found in Part II and apply to employers with 15 or more employees. There are two ways in which an employer may discriminate against a disabled employee or prospective employee. By:
• treating him or her less favourably (without justification) than other employees or job applicants because of his or her disability; or
• not making reasonable adjustments (without justification).

When applying for a job it is up to the candidate to decide whether or not they declare a disability. However, there are good reasons why an applicant should disclose their disability to a possible employer. The DDA requires employers to consider ‘reasonable adjustments’ that may be required when employing a disabled person. If an individual has not disclosed his/her disability the employer will not know to make those ‘reasonable adjustments’. Subsequently an employment tribunal might decide that the employer was justified in not making those adjustments.

Definitions

A person with a physical or mental impairment that has a substantial and long-term effect on their ability to carry out normal day-to-day activities is considered disabled under the Act. Physical or mental impairment includes sensory impairments, such as those affecting sight or hearing. A ‘substantial’ effect is one, which is more than ‘minor’ or ‘trivial’. The time taken by a person with impairment to carry out a normal day-to-day activity should be considered when assessing whether the effect of that impairment is substantial. The comparison should be with the way the person might be expected to carry out the activity if he did not have the impairment.

A long-term effect of an impairment is one which has lasted at least 12 months; or where the total period for which it lasts, from the time of the first onset, is likely to be at least twelve months; or which is likely to last for the rest of the life of the person affected.

Impairment is only to be treated as affecting the person's ability to carry out normal day-to-day activities if it affects one of the following:
• mobility
• manual dexterity
• physical co-ordination
• continence
• ability to lift, carry or otherwise move everyday objects
• speech, hearing or eyesight
• memory or ability to concentrate, learn or understand; or
• perception of the risk of physical danger.

Health and safety legislation can over-ride disability discrimination as employers have a duty to take all reasonable steps to ensure the health and safety of employees. If, following a risk assessment, it is considered that an employee is at risk of harm they may be suspended from work if it is not possible to find alternative employment. There are implications for payment during the suspension and criteria will have to be met to identify if the employee has an entitlement (see www.direct.gov.uk/disability).
Example of health and safety overriding disability discrimination

An employee with a skin condition affecting his feet making it impossible for him to wear safety boots was dismissed after an HSE inspector prosecuted the employer for not ensuring the employee was wearing personal protective equipment after a risk assessment identified the need for safety footwear in a busy warehouse. Having explored all avenues to find suitable foot protection and being unable to find alternative work the employee was dismissed. He subsequently took his complaint to an employment tribunal on the grounds of compliance with health and safety legislation. The tribunal identified that protecting the health and safety of employees at work over-rides disability discrimination.

The third and final part of the DDA comes into force on 1 October 2004. This final stage applies to businesses and providers of services to the public where physical access to their services for disabled persons is made impossible or unreasonably difficult. It is not only physical impairments that need to be taken into account when offering services, but sensory impairment – blind or partially sighted, deaf or hard of hearing – as well as mental impairment. If a business offers a service to the public then they should do all that is reasonable to provide that service to those with impairment. Service providers may have to consider making physical adjustments to their premises to allow access to all. New business premises must be built to a standard that allows entry to the disabled.

All risk assessments must be disability sensitive and health and safety policies will need to be amended to address the needs of disabled employees.

6.5 HEALTH AND SAFETY POLICY DOCUMENT

6.5.1 Requirement for a health and safety policy

It is a legal requirement of the Health and Safety at Work etc. Act 1974 and the Management of Health and Safety at Work Regulations 1999, that if a company employs five or more people then it must have a written statement on its health and safety policy. The statement should be the company’s own and specific to that organisation, setting out its general policy for protecting the health and safety of its employees and the organisation for putting that policy into practice.

6.5.2 Importance of a health and safety policy

Employers must examine their own organisation in order to identify hazards, evaluate the risks and introduce measures to control them. The legal requirement aside, a safety policy statement can bring real benefits. If it is well thought out, has full management backing and is effectively put into practice, it should lead to better standards of health, safety and welfare. A policy demonstrates that an employer is committed to, and accepts that, health and safety is an integral part of the organisation and that the highest levels of management mean to ensure that this commitment will be translated into effective action.

6.5.3 Writing the policy document

It is important that the policy is 'thought through' by the board of directors as they are the ones that have legal responsibility for the health and safety of employees. Delegating the writing of
the policy does not absolve this responsibility. The employer will be the one to sign the actual statement of policy. A ‘competent’ person should be appointed to address health and safety matters and assist the employer in complying with his ‘duty of care’.

6.5.4 Contents of the safety policy

A policy must reflect the uniqueness and special needs of the organisation for which it is written.

There are three basic elements of a safety policy:

- General statement of intent
- Organisation of carrying out that intent
- Arrangements for putting the policy into effect.

6.5.5 Statement of intent

This specifies the organisation’s objectives with respect to health and safety, including:

- acceptance of responsibility and the provision of resources
- intention to identify, eliminate and control hazards in the workplace
- commitment to monitor and revise as necessary
- commitment to others who may be affected
- a statement that the policy will be communicated to all employees
- stressing the importance of co-operation from the workforce and good communications at all levels; and
- an authoritative signature.

6.5.6 Carrying out the policy

This section will highlight the people responsible for carrying out the policy and their duties. Although the law places overall responsibility for health and safety on the employer, in practice many of the duties may be delegated to managers and supervisors. The organisation for safety should show clearly how these duties are allocated, including the names of key individuals, with their responsibilities defined. In larger companies diagrams may help to explain the company structure. Employees should be able to see from the statement how they fit into the system, what their own duties are and who they go to for advice, to report an accident or hazard, or to obtain first aid or other help. It should also include the name of the competent person concerned with monitoring safety.

6.5.7 Putting policy into effect

This element sets out the specific arrangements that have been established to manage all aspects of health and safety. These include:

- the process of carrying out risk assessments and analyzing results
- a system for the identification of training needs, procedures for health and safety training, induction and refresher courses
safe systems of work, including details for carrying out certain potentially hazardous tasks, such as manual handling

- safe place of work, including details of arrangements to keep the workplace in a clean and orderly condition

- emergency procedures in the event of a fire, bomb threat or accident, for example

- accident and ‘near miss’ reporting procedures

- procedures for assessing, controlling, purchasing and monitoring hazardous substances

- machinery and plant:
  - rules for guarding, inspection and planned maintenance and monitoring of plant and machinery; and
  - use of work equipment.

- details of any permits-to-work or locking off systems

- environmental control, including procedures for controlling and monitoring factors such as:
  - temperature, humidity and ventilation and noise and lighting.

- disciplinary procedures.

The following is an example of a written health and safety policy statement.

Example health and safety policy statement

It is an important duty of this organisation, in the conduct of its business operations, to ensure a safe and healthy working environment for all its employees. The organisation accepts the fact that this implies a corresponding duty of ensuring that necessary organisation, equipment and training is provided to fulfil this obligation. An effective health and safety policy requires the full collaboration and co-operation of all employees; everybody is asked to read this policy and accept their own personal responsibility for health and safety at work.

- It is the responsibility of management:
  - to maintain the spirit and letter of the principles incorporated in the relevant legislation to ensure the safest systems of work and a safe, healthy working environment
  - by consultation and joint involvement of management and employees, to enlist the active interest, participation and support of employees in promoting good standards.

- It is the responsibility of every employee:
  - to take all reasonable care for the health and safety of him/herself and of fellow employees and to report any hazard which cannot be controlled personally
  - to co-operate with the organisation by observing safety rules and complying with any measures designed to ensure a safe and healthy working environment.
• The role of ‘safety co-ordinator’ is of vital importance for maintaining a continuous and critical scrutiny of working conditions throughout the workplace, reviewing safety performance and promoting safer working.

• The managing director accepts ultimate responsibility for health and safety within the organisation as a whole. All managers and employees generally are expected to support and implement this policy wholeheartedly.

### 6.6 GOOD PRACTICE

#### 6.6.1 Developing a positive safety culture

Safety is not just about complying with legislation, providing a written health and safety policy document or even carrying out risk assessments and providing training and health surveillance. It includes all of these things, but there has also got to be leadership and commitment from the top that is genuine and visible. It is no use the managing director or company partner writing a health and safety policy statement and not showing his/her commitment to implementing it.

In writing a policy document it must be accepted that it is a long-term strategy, which requires sustained effort and interest from all the workforce. It is a living document that will need to be monitored, audited and reviewed. A policy statement with high expectations that conveys a sense of optimism about what is possible will need to be supported by adequate codes of practice and safety standards. Management must treat health and safety as seriously as other corporate aims and ensure that it is properly resourced.

Line management should have ‘ownership’ for health and safety to ensure that good practice permeates all levels of the workforce. This requires employee involvement, training and communication.

When targets are set they should be realistic and achievable and performance measured against them. Consistency of behaviour against agreed standards should be achieved by auditing and good safety behaviour should be a condition of employment.

Deficiencies revealed by an investigation or audit should be remedied promptly. Incidents/accidents should be thoroughly investigated, so as to avoid repetition.

Management must receive adequate up-to-date information through consultation to be able to assess performance. Developing the strategies of a positive safety culture and learning from experience are all part of successful health and safety management. It is not just a paperwork exercise but also an ongoing and integral part of the company.

#### 6.6.2 Ergonomics

Ergonomics is the relationship between worker and their environment. Using the principles of ergonomics is an effective way of making work safer, healthier and more productive.

Designing workstations and workplace tasks to best suit the individual carrying out the task will improve performance and raise morale. Standing can be very tiring, for example, so wherever possible tasks should be carried out sitting down. Chairs should be adjustable, stable and comfortable. Seating should provide support for the back, so that the user can sit with the back straight, a chair with swivel action will allow employees to turn without putting stress on the body. The heights of the work surface and chair should enable the user to work with hands at
elbow level. It may be necessary to provide footrests. There should be plenty of room to carry out tasks, including enough legroom. Cramped conditions not only cause physical strain but mental strain. This in turn causes stress, which could lead to accidents occurring.

### 6.6.3 Risk assessment

The Management of Health and Safety at Work Regulations 1999 say that the employer must carry out suitable and sufficient assessment of the risks and record the significant findings. The process helps to reduce accidents; increase quality standards, efficiency and productivity; raise staff morale and motivation; and reduce the costs of injuries and ill health. There will also be a reduction in damages and uninsured losses, fewer compensation claims and reduced insurance premiums which will lead to improved targeting of resources and good management practice.

Risk assessment is a proactive process of assessing the risk associated with specified activities and processes, which is an essential part of managing health and safety and environmental issues within all types of organisations.

It may be further defined as a systematic method of:

- analysing work activities
- identifying hazards, hazardous situations and hazardous events
- evaluating the extent of risks, by considering the likelihood of hazardous events and the nature and severity of the harm that ensues
- reviewing existing precautions, possible control options and action priorities; and
- judging the ‘acceptability or tolerability’ of risk.

These processes are an integral part of risk management. The evaluation process builds on the existing practice for controlling hazards and is about designing an appropriate control strategy.

In carrying out a risk assessment there is a need to identify the hazards, the likely consequence/harm caused to people by a hazard and the likelihood of harm occurring – Harm/severity x Likelihood = Risk.

**Definitions**

- **Hazard** is something with the potential to cause harm.
- **Risk** is the likelihood of that potential being realised.
- **Extent of risk** is the likelihood, number of people affected and severity of consequences.
- **Control measures** are the arrangements made to reduce risk.
- **Probability** is the term used to describe the likelihood of the hazard occurring.

Any risk assessment technique, however simple, consists of the following steps:

- estimating the probability/likelihood of a hazard or failure
- frequency
- evaluating the consequences/harm/severity of the hazard/failure
- deciding whether action is required to reduce the probability of occurrence and/or minimise the consequences of a hazard/failure.
Having identified the hazards and associated risks it is necessary to eliminate or control them so as to avoid injury and damage, thus reducing lost man-hours and cutting down on costs.

There are many techniques of risk assessment ranging from complex techniques such as fault tree analysis and reliability studies, to simple subjective judgement. In simple terms if there is the risk of a single event/fault which could result in the death of many people, then a complex quantified risk assessment (QRA) is justified. On the other hand if the worst case is a rare, single injury then a simpler method is justified. A judgement needs to be made to decide how many people are at risk at any one time and what the worst-case scenario is likely to be.

There is the need to find out what could go wrong, what will happen if it does, how serious the effect is and how likely it is to happen.

Two important laws of human nature should always be taken into account. Firstly, never rely solely on common sense, as it is much less common than is generally assumed. Second, always rely on ‘sod’s law’—‘if someone can do it, sooner or later someone will.’

Risk assessment as a management tool

By identifying hazards and assessing risks, an employer can decide what precautions are needed and put them in place to protect people, improve quality and safeguard plant and production. This way injuries can be prevented and losses reduced. Every day people undertake activities that carry some risks such as crossing the road, driving a car, travelling in a lift, sport, even gardening. These activities are carried out without a second thought. Despite the fact that these activities are risky, people are still prepared to carry on doing them in spite of the risks; at the end of the day most people believe that the level of risk is acceptable. Either because the effect of the hazard is light or it is believed the hazard is unlikely to occur.

There is not a set format for undertaking risk assessment but the HSE provides guidance in its leaflet ‘Five steps to risk assessment’. These five steps are foundation stones upon which to develop a system that best suits your organisation. Once a format is produced and those participating in its use are familiar with using it, a system of safe working will have been adopted, and if used correctly, it can be seen to be part of your organisation’s safety culture, no matter how large or small the organisation.

Before starting your assessment it will be useful to draw up an inventory of the areas to be covered in the assessments; think in terms of observing activities, inspecting equipment and premises and looking at records and documents.

Look for the hazards

Walk around your workplace and look at what could reasonably be expected to cause harm to you or your employees or visitors who you are responsible for.

A hazard is something or someone that might cause harm, and a risk is the likelihood of it happening.

Examples of common hazards to look for (but not restricted to) include:

- slipping/tripping dangers (for example, poorly maintained floors or stairs, wet surfaces, poor housekeeping)
- fire (for example, from flammable materials, sources of heat and oxygen coming together)
- chemicals
- moving parts of machinery
- electricity (for example, poor wiring, faulty equipment)
- dust (from processes such as wood working)
- manual handling (lifting, carrying, pulling, pushing)
- noise
- inadequate lighting, heating or ventilation
- movement of people
- movement of vehicles
- falls from a height
- confined space entry.

You will need to differentiate between trivial and significant hazards and the consequences of causing serious harm and non-serious harm. There is the need to decide your criteria to equate a degree of seriousness of potential harm to one person, with other degrees of seriousness of potential harm to a few or many people. It is obvious that the most serious hazards are those that could cause serious injury or loss of life.

The assessment should concentrate on the significant hazards which could result in serious harm or affect several people, but the trivial must not be ignored because a combination of seemingly trivial matters could combine to cause a major hazard. Therefore the key to a good risk assessment should focus on the main hazards and you should ask your employees or their representatives for their opinions. In many cases they have to do the job, work with the equipment or be responsible for others and they should be part of the assessment process. There may be a lot of valuable knowledge and experience that you can make use of, so it is vital to consult with employees. It is important to note that in the evaluation process there will be different perceptions of what is hazardous and how significant risks are and so there must be a method of handling disputes that allow people to understand why a particular course of action is being taken.

There is a wide range of equipment that is used by organisations for training purposes: hired, sold or maintained. Your assessment should include a method of checking the reliability of manufacturers in providing information and the adequacy of the information they provide. It is also the appropriate time to review your information/data systems and see whether accident, ill-health, near miss, safety complaint, safety suggestion and other record forms can be improved to include further details which will help you better in the future.

Column 1 on the ‘five steps’ risk assessment proforma identifies hazards that can harm employers, employees and others.

**Decide who might be harmed**

Consider your employees who might be harmed – such as shop/office staff, factory, warehouse, and construction site workers, plant/equipment operators, technicians, inexperienced workers, young persons, women of childbearing age etc. You need to include other employees or other workers who may not be at the work site all the time eg contractors, maintenance staff, agency staff, delivery people etc.
You need to consider people who share your workplace. This would also include members of the public if there were a chance they could be hurt by your activities. To do this you need to establish your criteria for determining whether or not there is such a risk.

Column 2 lists groups of people who are especially at risk from hazards listed in column 1.

**Evaluate the risks arising from the hazards and decide whether existing precautions are adequate or more should be done**

In evaluating the risks you will need to identify the likelihood of harm occurring as well as the worst possible consequences. Identify the existing precautions (control measures) for each significant hazard and decide if they are adequate and are being followed. In addition column 3 can include references to other documents such as ACoPs, procedure manuals, safety rules, etc which can already offer guidance in the risk reduction process. This will assist you in deciding the criteria for differentiating between high, medium and low risks.

When this has been achieved you need to consider the effectiveness of these precautions and, for each significant hazard, make an evaluation to decide whether the remaining risk, such as the chance which remains of someone being harmed by the hazard, taking into account the precautions, is high, medium or low. The aim has to be to reduce the risk to as low as reasonably practicable.

**Case law – What does ‘reasonably practicable’ mean?**

“Reasonably practicable is narrower than physically possible and implies a computation between the quantum of risk on one hand and the time, trouble and expense of safeguards on the other, and if a gross disproportion can be shown, the duty is discharged.”

*Edwards Vs NCB (1949)*

In other words balance the risk against the cost in terms of time, trouble and effort, as well as monetary cost.

Once you have completed your evaluation, ask yourself if you have done all the specific things required by law and by reviewing your evaluation, ask yourself whether generally accepted industry standards are in place and whether good practice demands even higher standards.

Taking account of your evaluation, ask yourself if there is anything else you can do to reduce a high risk irrespective of cost. In terms of high risk if it is technically feasible to reduce the risk then it should be done. In the same way review medium or low risk in terms of money, time and effort, which is not disproportionate to the reduction in risk which can be achieved. Irrespective of whether specific requirements, industry standards or best practice are already met, anything else you can do to reduce a high risk or cost effectively reduce a medium or low risk must be done in order to comply with the general health and safety duties to protect employees and non-employees.

Make it an aim of the procedure to make all risks small by adding to your precautions if necessary, bearing in mind that hazard removal is more effective than risk control and that personal protective equipment should only be used when there is nothing else that you can reasonably do. This can be done by applying the principles for priorities below when taking further action, and record in column 4. It helps to prioritise any further action required. A timescale must be given for action. You should:
• remove the hazard
• remove the risk completely
• try a less risky option
• prevent access to the hazard
• organise work to reduce exposure to the hazard
• issue personal protective equipment; and
• provide welfare facilities (e.g., first aid, washing facilities for removal of contamination).

If the work varies at a workplace, or if employees move from one site to another, make a risk assessment of the hazards which you can reasonably foresee so that work and precautions can be planned on the basis of the assessment. Where such planning is not possible, or when hazards, which were not foreseen during planning are eventually spotted, get sufficient information to enable you to take what action is necessary to fulfil the requirements of the risk assessment. If you share a workplace, tell the other employers or self employed there of risks which your work may cause for them and precautions you are taking and think about the risks to your workforce from those with whom you share the workplace.

Record your findings (If you have five or more employees)

If you employ five or more people you must record the more significant findings of your assessment, which means firstly writing down the more significant hazards, and second recording your most important conclusions. These items can be recorded in column 5.

In recording your findings you must show that:
• a proper check was made
• you considered all groups of people which might be affected
• you dealt with all obvious significant hazards
• the precautions you decided upon are reasonable
• the remaining risk is low, although there is no need to show how you did your assessment.

You will need to inform your employees about your findings, a risk assessment is a living record and should be used by those that may be affected by the risk.

When the risk assessment is completed you can decide whether time will be saved by cross-referencing between risk assessments and other documents (such as procedure manuals, safety policy, company rules, instructions, etc) or by making risk assessments the master documents from which other relevant documents are updated, or by some other system.

Once the risk assessment is adopted as part of the safety system you should keep the written record to use (e.g., reminding you of action you decided you must take, or for review and revision and for future reference (e.g., by an inspector, a superior, or a solicitor representing you in a legal case).

Review your assessment from time to time and revise it as necessary

If there is a significant change you should review your assessment to take account of any new hazards. A risk assessment should be undertaken in respect to the change and the procedure of controlling any risks identified. It can be recorded in the normal manner and staff advised.
However, you need not amend your assessment for every trivial change. You should establish your criteria for ‘significant’ changes necessitating assessment review, and a procedure for reviewing assessments and recording revisions.

The following model document can be downloaded as a Word file from www.cipd.co.uk/elip and customised for use in your organisation.

### Example of a risk assessment, using the HSE’s ‘Five Steps to Risk Assessment’

<table>
<thead>
<tr>
<th>I</th>
<th>Hazard</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>II</td>
<td>Who might be harmed</td>
<td></td>
</tr>
</tbody>
</table>
| III | Evaluate risks:  
How might they be harmed (severity/consequences)  
What is likelihood of harm | Fall down stairs, fatal injury, Unconsciousness, fractures, concussion.  
High |
| III | Existing precautions  
Need for control measures | None  
Repair/replace worn carpet |
| IV | Record findings | Include measures taken to remove hazard |
| V | Review assessment | Ensure new carpet fitted correctly |

If a number of action points have been identified from risk assessments, prioritise their importance and action. There will need to be a visible involvement by managers to determine the priorities of the risk assessments.

**Competence of risk assessors**

The employer must ensure that a competent person is appointed. The level of competence will depend upon the kind of work carried out in your workplace. They must have knowledge and experience and familiarity with the workplace, work activities/methods, training and qualifications. An understanding of relevant current best practice is required and an awareness of their own limitations, knowledge and experience.

They may need help, for example if toxic or dangerous chemicals are used. If they get stuck they must not be afraid to ask for help and always be willing to supplement existing knowledge and experience. Personal qualities and risk assessment skills, other issues and information relating to the task is required.

The following are examples of a completed risk assessment form and safe system of work:
**Example risk assessment form**

<table>
<thead>
<tr>
<th>No: 1</th>
<th>Date of original assessment: 5 January 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site address: Generic assessment</td>
<td>Job no:</td>
</tr>
<tr>
<td>Task on which assessment is made: Use of ladders</td>
<td></td>
</tr>
<tr>
<td>Hazard(s)/risk(s) identified:</td>
<td></td>
</tr>
<tr>
<td>Movement/toppling of ladder when in use. Over reaching by user.</td>
<td></td>
</tr>
<tr>
<td>Personal injury, property damage</td>
<td></td>
</tr>
<tr>
<td>Person(s) considered to be at risk:</td>
<td>User, people in work area</td>
</tr>
<tr>
<td>Risk rating prior to control measures:</td>
<td>Likelihood high x severity high = risk rating high</td>
</tr>
<tr>
<td>Control measures:</td>
<td>Prior to using a ladder as a work platform a risk assessment must be carried out to ensure that a safer method of access cannot be used.</td>
</tr>
<tr>
<td></td>
<td>Ensure ladders are secured at the top and bottom/weighted or footed to prevent slipping.</td>
</tr>
<tr>
<td></td>
<td>Ladders to rise 1m above landing place. PPE to be used. Inspect ladder for soundness before use.</td>
</tr>
<tr>
<td></td>
<td>Further precautions should be adopted when metal ladders are used.</td>
</tr>
<tr>
<td></td>
<td>Safe system of work continues on next page</td>
</tr>
<tr>
<td>Training required. If YES, describe:</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>Training in the use of ladders for apprentices as part of their job training</td>
</tr>
<tr>
<td>Risk rating with control measures/safe systems of work in place:</td>
<td>Likelihood low x severity high = risk rating medium</td>
</tr>
<tr>
<td>Review to be carried out:</td>
<td>When new employees are employed; if new equipment is purchased, following an accident or if no changes have been made annually</td>
</tr>
<tr>
<td>Date of previous review:</td>
<td>18 January 2005</td>
</tr>
<tr>
<td>Date of this review:</td>
<td>10 January 2006</td>
</tr>
<tr>
<td>Person carrying out review:</td>
<td>Name: A. N. Other Signature: ANOther</td>
</tr>
<tr>
<td>Copy submitted to:</td>
<td>Site file, employees using ladders</td>
</tr>
</tbody>
</table>

**Example safe system of work – No. 1: Ladders**

Can ladders be ‘designed out’ of the job? (use scaffolding or other access equipment). Are ladders the right means of access for the job?

- Ladders are best used as a means of getting to a workplace and should only be used as a work platform for short-term work and only if no other more appropriate equipment is available
• Where possible fall prevention equipment should be used

• Operatives must ensure that ladders are in good condition prior to starting work, if they are not they must be returned to the company office and new equipment issued. (Look for cracked welds at rung/stile connections on metallic equipment; missing rungs; lack of integrity and play between rungs and stiles; missing anti-slip devices, bent stiles)

• Ensure that ladders are secured to prevent them slipping sideways or outwards

• Ensure that ladders rise a sufficient height above the landing place, if this is not possible, are there other hand-holds available? It is preferable that ladders rise 1m above their landing place

• Ensure that the ladders are positioned so that users don’t have to over-stretch or climb over obstacles to work

• Ensure that the ladder rests against a solid surface and not on fragile or insecure materials

• Ensure that ladders do not touch overhead lines.

• The ladder should be angled to minimise the risk of slipping outwards and as a rule of thumb needs to be ‘one out for every four up’

• Make sure: a good handhold is available; that one hand remains on the ladder; the work only requires one hand to be used; the work can be reached without stretching; and the ladder can be fixed to prevent slipping.

Metal ladders may conduct electricity, therefore safeguards should be employed. This could involve rubber insulation, top and bottom. If insulation is adopted, it must be maintained in good condition to be effective. Or ensure that any local electrical sources which may come into contact with the ladder are isolated.

Other Regulations requiring specific risk assessment

• Management of Health and Safety at Work Regulations 1999

• The Fire Precautions (Workplace)(Amendment) Regulations 1999

• Manual Handling Operations Regulations 1992

• Health and Safety (Display Screen Equipment) Regulations 1992

• Control of Substances Hazardous to Health 2002 Regulations(amended 2004)

• Control of Asbestos at Work Regulations 2002

• Control of Lead at Work Regulations 2002

• Control of Noise at Work Regulations 2005


Further relevant Regulations

• The Workplace (Health, Safety and Welfare) Regulations 1992

• The Provision and Use of Work Equipment Regulations 1998

• The Electricity at Work Regulations 1989.
Although these three sets of Regulations do not specify risk assessment, the guidance for each provides useful reference material for the risk assessment process.

**Fire Precautions (Workplace) Regulations 1997 (as amended 1999)**

New Regulations are due to come into force in October 2006.

Employers are to take account of general fire precaution requirements in risk assessments. These include:

- Fire fighting
- Fire detection
- Emergency routes and exits and their maintenance.

Employers must appoint competent assistance for general fire safety risks. Information must be given to employees on fire provisions. In shared workplaces:

- Employers and self-employed to co-operate and co-ordinate their arrangements
- Outside employees must be provided with information (ie agency workers, temporary employees, contractors).

### 6.6.4 Stress

Stress is the reaction people have to excessive demands or pressures placed on them and it arises when people try to cope with the tasks, responsibilities or other types of pressure connected with their lives but find difficulty, strain or worry in doing so. Immediate physical effects include raised heart rate, increased perspiration, dry mouth and excessive palm sweating.

People under stress from their work or personal lives often develop behavioural effects, such as increased anxiety and irritability, a tendency to drink more alcohol and smoke more, difficulty sleeping and poor concentration. This means that they may be unable to deal calmly with normal tasks and situations, let alone emergency situations. What is a daunting task to one person may be a welcome challenge to another. The critical issue is identifying those who show signs of anxiety and in doing so avoid getting into situations of possible danger.

There are in fact two categories of stress, namely beneficial stress and harmful stress. Beneficial stress results from pleasurable activities and it increases energy and drive. When people’s attitudes, personal skills and personal support from others are sufficient to meet challenges, they will feel exhilarated by the achievement of a difficult task.

The reaction people have to excessive pressures or other types of demand placed upon them results in harmful stress and is sometimes referred to as distress. It arises when the individual worries that he or she cannot cope. The task or the circumstances will eventually defeat the person if these demands are not relieved and they have insufficient resources to find a solution.

The *Churchill Livingstone Pocket Medical Dictionary* identifies stress as: ‘the wear and tear on the body in response to stressful agents.’ Selye called such agents stressors and said that they could be physical, physiological, psychological or sociocultural. In terms of the Disability Discrimination Act (DDA), stress may be recognised as a mental illness and can be a ‘disability’ provided that it is ‘clinically well-recognised’ (DDA, Schedule 1 para 1(1)). In cases so far, it has either been assumed or accepted that a serious depressive illness can come within this. When considering the stress context ‘reasonable adjustments’ will need to be considered:
possibly allocating some of the disabled person's duties to another person without stressing them

• altering working hours

• allowing absences for rehabilitation or treatment

• assignment to a different place of work

• providing counselling; and

• providing specific support in times of stress.

For those 'at work', the Health and Safety at Work etc Act 1974 still provides the overall framework for the psychological and physical wellbeing of employees at work in the UK. The Management of Health and Safety at Work Regulations 1999 require employers to assess the nature and scale of risks to health in the workplace. The results of the risk assessment should form the basis of the organisation's health and safety plan. Therefore, they need to be aware of stress-related issues and influence decision-making so that the remedial actions resulting from risk assessments will ensure that risks of ill-health from occupational stress in addition to the other safety and health risks are minimised so far as is reasonably practicable.

The starting point for any concerned employee must be an appreciation of the factors which induce stress or contribute to it. The employer must ensure that there are sufficient, competent members in the team. What an employer may consider to be a reasonable workload may not be so for the individual. Therefore, working practices may be modified, working environments improved and employees' concerns addressed and in most cases improvements can be effected at little or no cost to the employer.

Post-traumatic stress disorder

Post-traumatic stress disorder can happen to anyone who has experienced a traumatic event such as an accident, which may involve the loss of life, personal injury or exposure to death. The people involved in the immediate aftermath of an accident can suffer from delayed shock. No two people react in the same way, each person is unique. Feelings and emotions that may be experienced are helplessness, sadness, guilt, shame, anger and fear. Feelings may be more intense if many people died, their deaths occurred under violent or horrifying circumstances or if no bodies were recovered.

The effects upon rescuers or witnesses may be physical as well as psychological. Various bodily sensations may develop even months after the event, such as extreme tiredness, sleeplessness, bad dreams, loss of memory, palpitations, nausea, diarrhoea, muscular tension and headaches. The employer may need to provide counselling for employees who witness or are involved in a stressful event in the workplace.

Case law

It has been almost ten years since the landmark case of Walker v Northumberland County Council (1995) 1 All ER 737. Mr Walker was a social worker and due to the pressure of work had a nervous breakdown and was off work sick for some time. On his return to work his employers indicated that they would reduce his workload and provide additional help. But the work started to increase again and six months later Walker was off work again with a stress-related illness. He was eventually dismissed on the grounds of permanent ill health, and sued his employers for damages.
Because he had been off work previously for similar illness and his employers had known he was over-worked it was considered that there was a reasonably foreseeable risk to his mental health. Had the employers provided additional assistance or reduced the workload, on the balance of probabilities, the second breakdown would not have occurred.

**Conclusion**: The case identified that the employer has a common law duty to take reasonable care to ensure that employees do not suffer from mental as well as physical damage.

**Further information**


*Your Guide to the Working Time Regulations* DTI Guidance, March 2000, DTI/Pub 6792/25k/07/03/NP URN 03/1068


*Code of Practice – Elimination of discrimination in the field of employment against disabled persons or persons who have had a disability*, The Stationery Office

*Code of Practice – Rights of access, goods, facilities, services and premises*, Disability Rights Commission

Lacey A, *A case study of a hairdressing salon* [October 2000], Disability Rights Commission

*Improving access to goods and services for disabled customers*, Disability Rights Commission

*Bringing the DDA to life for small shops*, Disability Rights Commission

*Factsheet 53 – Ensuring the Health and Safety of Workers with Disabilities*, The European Agency for Safety and Health at Work, Bilbao

*Hazards at Work – Organising for Safe and Healthy Workplaces*, Trades Union Congress (TUC) ISBN 1 85006 754 6

**Table of Cases**

*Vaughan v Ropner & Co Ltd* [1947] 80 LI L Rep 119

*Wilson and Clyde Coal Co Ltd v English* [1937]1 3 All ER 628

*Donoghue v Stevenson* [1932] AC 562

*R v Kite and OLL Ltd* [1994] Unreported


Update 0 June 2006
Useful websites

www.hse.gov.uk
www.hsebooks.co.uk
www.hse-databases.co.uk/prosecutions/breach
www.direct.gov.uk/disability
www.tso.co.uk
www.drc-gb.org
http://agency.osha.eu.int