NATIONAL GENERAL CERTIFICATE

THE MANAGEMENT OF SAFETY – NGC1

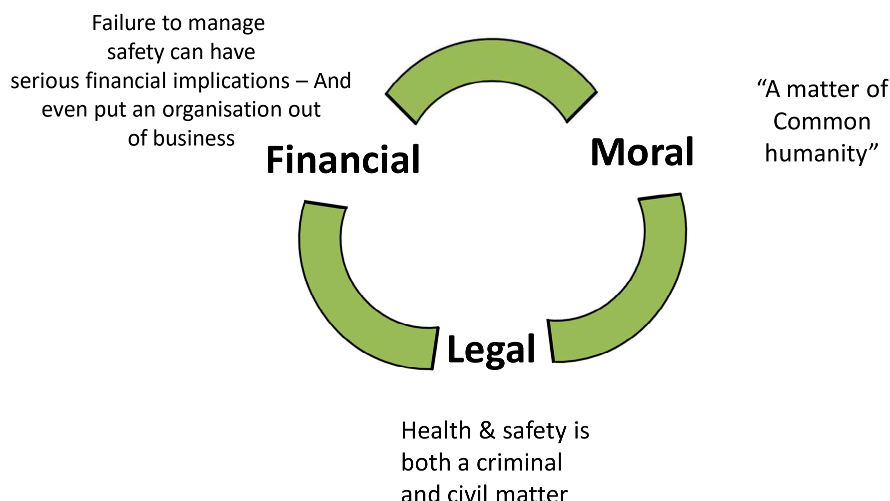
ELEMENT 1 - HEALTH AND SAFETY FOUNDATIONS LEGAL OVERVIEW

Learning Outcomes

1.1 Outline the scope and nature of occupational health and safety.
1.2 Explain the moral and financial reasons for promoting good standards of health and safety in the workplace.
1.3 Explain the legal framework for the regulation of health and safety including sources and types of law.
1.4 Explain the scope, duties and offences of employers, managers, employees and others under the Health and Safety at Work etc. Act 1974.
1.5 Explain the scope, duties and offences of employers, managers, employees and others under the Management of Health and Safety at Work Regulations.
1.6 Outline the legal and organisational health and safety roles and responsibilities of clients and their contractors.
1.7 Outline the principles of assessing and managing contractors

1.1. THE SCOPE AND NATURE OF OCCUPATIONAL HEALTH AND SAFETY

Health and safety issues impact on all businesses and all areas of its activities, whether it is a hospital, factory or office. The best managed organisations ensure that health and safety is part of every job role rather than being the remit of the company health and safety advisor. Those with responsibilities include all managers, employees, directors as well as those with specific responsibilities such as fire wardens and first aiders. Often health and safety issues may conflict with other business goals and objectives, e.g. employees are meant to use a guard on a machine but they are encouraged to remove it if an order is overdue.



As more and more civil actions are being undertaken, insurance companies are taking a higher profile in the investigation accidents and gathering evidence especially in cases where they believe there is potential for a claim. Insurance companies may influence organisations by making recommendations on the control measures required as without Employer's Liability insurance, organisations cannot legally trade.

Over the last 150 years since the very first health and safety specific legislation, the standards expected of both employers and employees have increased. It was once acceptable for the employer to set their employee any task, regardless of its hazardous nature, with injuries incurred accepted as just part of the job. It is now legally and societally unacceptable for an employee to be put at risk without reasonable controls being implemented.

There are a number of reasons why we need to work safely. They can be summarised in three main groups; ethical and moral considerations, legal requirements and financial matters.

1.1.1. Ethical and Moral Considerations

Most people would agree that, whatever risks they choose to take themselves, it is unacceptable to put other people at risk, particularly when this is done without their knowledge or consent. Put simply, everyone is entitled to feel confident that they will go home in one piece! No-one wants to suffer an injury or to see a colleague injured.

Key annual figures 2015/16

Injuries

- **144** workers were killed at work, a rate of 0.46 per 100,000 workers.
- **72,702** other injuries to employees were reported under RIDDOR.
- **152,000** reportable injuries (defined as over 7 day absence) occurred, according to the Labour Force Survey.

  The most common kind of non-fatal accidents involved slips and trips (20,294) and manual handling (16,159).
  Over 7 days injuries were caused by handling, lifting and carrying (14,911) and slips and trips (12,466).
  Falls from height remain the biggest killer (37), followed by being struck by a moving vehicle (27).

1.1.2. Legal Requirements

Health and safety legislation places a number of duties on organisations, managers and employees alike. Failure to carry out these duties can result in fines and, in extreme cases, imprisonment. The basic principle is that every employee must take reasonable care for the safety of themselves and of others who may be affected by their acts or omissions. Both companies and employers can find themselves being sued if their employees injure third parties or prosecuted by the enforcement inspector if they are found to have breached statute law.

1.1.3. Financial Matters

Financial penalties should be obvious. If you are injured and cannot work, insurance will never fully compensate you for the financial loss. There is also the risk of being fined

following action by the Health & Safety Executive (HSE) or Environmental Health Officer (EHO).

Many companies and managers complain that health and safety initiatives cost them money. Few consider the costs which are incurred from any one incident, even those where an injury does not result.

Consider the costs of a typical workplace accident where an employee is injured seriously enough to have to take 2 weeks off work. List your ideas of the costs incurred by the employer, the individual and then more generally e.g. what accident related costs are incurred by the nation. Consider those costs which can be stated in monetary terms such as sick pay but also consider the intangible costs such as loss of business or quality.

Employer	**Individual**	**Nation**
Sick Pay	Loss of pay	HSE investigation time

Many employers believe that most of the costs of accidents are covered by insurance but in some cases insurance only covers a very small percentage of the costs involved.

Insured costs are predominantly covered by the sum of those insurance premiums or risk transfer payments made by the organisation to insurers to offset certain financial losses arising as a result of unmanaged risks.

The uninsured (or in some cases uninsurable) costs should also be established. Uninsured costs associated with accidents include:

- safety administration/accident investigation
- medical/first aid treatment
- lost time of injured person
- lost time of other employees
- replacement labour
- payments to injured person
- loss of production/business interruption
- repair to damaged plant/equipment
- replacement of damaged materials
- court fines
- legal fees
- consumer confidence
- Other, e.g. photographs, line diagrams, transport, provision of wages details to insurers, specialist fees, etc.

The HSE web site www.hse.gov.uk/costs enables individuals and organisations to quantify the costs of accidents, incidents, injuries and ill-health. There are online calculators and

downloadable spread sheets to enable companies to estimate the typical costs. Although the costing data is based on 2002. The HSE may be taking the data off the web site as it is now very out of date.

Typical costs for any accident with time off can cost over £2,000, for any accident where first aid is administered the cost is £35, with damage incidents costing at least £151, HSE data identified that any accident with a reportable injury under RIDDOR may cost between £17,000 and £19,000.

Examples

- An employee had half a finger amputated. He was polishing a metal component when his glove became caught on a rotating machine spindle. He was **off work for around 10 weeks**. The company costed the accident at just **over £4000**. This does not include any costs relating to the compensation claim (which is ongoing).
- A worker fell over a delivery ramp while walking in front of an office building. She injured her shoulder and was **off work for two weeks**. The company calculated the total cost of the accident to be **£14800**.
- A farmer was changing the attachment on the back of a tractor. As he did this, his hand was crushed by it, causing severe injuries. **Costs were incurred for 3 years** following the accident. The net total cost to the family business was **over £96000**.
- A butcher cut his hand on a knife left in an animal carcass by another worker. He needed hospital treatment and a **week off work**. The costs to the company so far are **£351** plus 2.5 hours investigating the accident. There are ongoing legal costs.

1.1.4 Cost of work-related ill-health

There are many different types of occupational ill-health. For example:

- musculoskeletal disorders (including bad backs, strains, 'RSI' etc);
- cancers;
- asthma;
- dermatitis and other skin disorders;
- deafness or hearing loss;
- vibration white finger;
- occupationally related stress;
- asbestos related disease.

Each can seriously affect an individual's quality of life, their ability to work and their employer’s business.

The business costs of ill-health in the workforce come in many forms e.g.

- sickness absence;
- overtime payments;
- lost production;
- missed deadlines;
- cost of recruiting and re-training of staff after other injured employees leave.

There is also the additional strain put on other workers to cover the work of their colleagues.

1.2 INTRODUCING A FEW KEY TERMS

Health *– the absence of illness*
Safety *– the absence of danger*
Welfare *– the presence of conditions which promote or facilitate well-being e.g. drinking water or access to toilets.*
Accident *– an uncontrolled, unplanned, random or unexpected event which could result in loss, harm, damage or injury. "Near miss" and "incident" are names given to accidents which did not result in injury but had the potential to do so. HSE definition 2009 'any unplanned event that results in injury or ill-health to people, or damages equipment, property or materials but where there was a risk of harm'.*
Hazard *- a condition that has the potential to cause harm.*
Risk *– the likelihood of harm from a hazard is realised and the possible severity*

1.3 LEGAL FOUNDATIONS

There are two main **sources** of English law, these two are independent of each other, operating separately, yet are connected like two sides of the same coin. One side of the coin is statute law, the law of the land set by regulations and legislation, the second side is common law, the law which has evolved over a period of time through case law and precedents.

1.3.1 COMMON LAW

This is the law of contract between individuals which has evolved through court precedents. Decisions made in one case can be used in future cases to determine whether a duty of care was owed. These judicial precedents can only be set by the High Court or its peers. Common law is based on the rights between individuals and the contracts they enter into, whether written or not. A majority of common law cases are heard by the civil courts as a "tort" or civil wrong-doing.

However, one wrongful act may result in civil and criminal proceedings. Under common law we all owe a duty of care to our neighbours, who are those who we could foresee being affected by our actions.

Employee's Duty of Care (The individual):

Not to endanger anyone by their acts or omissions.

Employer's Duty of Care (The Organisation):

The company must take reasonable care not to subject employees to unnecessary risk by providing:-

- competent employees
- safe plant and equipment
- safe place of work
- safe systems of work
- adequate instruction and training
- safe supervision
- safe environment
- safe access and egress

This is a short list but in reality there are hundreds of precedents which affect employers, new ones may be set in court each year. Employers and individuals owe a duty to those they can foresee being affected by their acts or omissions, these are known as “Neighbours”. Both the employer and employee must therefore take care to avoid acts or omissions that could injure other people.

WHO IS A NEIGHBOUR? – person or persons closely and directly affected by your actions, e.g. A car driver owes care to pedestrians who might be affected by his / her actions. Employers owe a duty of care to employees, visitors and contractors.

Relevant Case

> **BOURHILL V YOUNG 1943** – This accident involved a motorcyclist who was killed in a fatal crash. A lady two streets away did not see the accident where the motor cyclist was killed but heard the noise and came across the scene on her journey. She took out a civil claim against the dead motorcyclist because she had a miscarriage and lost her baby. The accident was found to be the fault of the motorcyclist. The verdict was that there was no duty of care was owed to her by the motorcyclist as she was too far removed from the scene of the accident when the accident occurred. She was not close enough to be deemed a “Neighbour”.

1.3.2 NEGLIGENCE

This is failure to exercise reasonable care, where a person or company commits a tort by breaching a common law duty. It includes careless conduct which injures someone. We all have a duty of care to try to avoid injuring each other, if we breach this duty we are being negligent.

Case Law Definition: “omission to do something which a reasonable man, guided upon those considerations which regulate human affairs, would do, or something which a prudent and reasonable man would not do”.

Negligence is when the individual or an organisation does not take reasonable care and this results in loss or injury either to themselves or a third party.

There are three criteria which must be met in any claim for negligence:

- Duty of care was owed (e.g. employee was at work at the time and it was foreseeable they could be injured)
- Duty of care was breached (e.g. employer did not take reasonable steps to prevent fall from height)
- Injury or loss occurred due to that breach of duty (e.g. injury resulted from falling from a damaged ladder)

Common Law Defences:

Contributory negligence - Was the injured individual in any way responsible for their accident/injury? If so, the amount of damages awarded can be reduced by a certain percentage.

Negligence due to the sole fault of the claimant

Volenti non fit injuria - "to one who is willing no harm is done". The individual was aware of the hazards and consented to them. If proven, no damages would be awarded.

No duty of care was owed – e.g. employee was not acting during the course of their

employment or it was not foreseeable that the accident could occur.

Duty of care was not breached – the employer acted reasonably to prevent the accident by providing training, correct equipment and supervision.

No injury or damage resulted – the injury could relate to a pre-existing condition.

Injury not caused by the breach – person fell down stairs because they had a epileptic fit not because of the lack of hand rail.

Act of God or nature

Time barred – there is a three year time limit in which to start civil proceedings.

1.3.3. THE SOCIAL ACTION, RESPONSIBILITY AND HEROISM ACT 2015

This Act has been brought in to deal with the belief that people who try to do the right thing might end up being sued, if when doing this their actions lead to an injury. The Act does not stop the action but ensures the court takes the circumstances of the event into account which may mean certain cases are rejected before they even go to court.

In summary, the four sections confirm the Act’s core aim to provide reassurance to people acting: (i) in socially beneficial ways; (ii) in a predominantly responsible manner; or (iii) acting selflessly to protect someone in danger, by ensuring that the courts recognise, and account for, both the actions and context of the alleged negligence.

If a person acts in an emergency situation, trying to do the right thing, the Act is intended to protect the person from civil claims.

In conjunction with section 1 of the Compensation Act 2006, the Act is intended to signify a strong message from the Government to the courts that persons will be safeguarded from unreasonable exposure to negligence liability or breach of statutory duty when acting for the benefit of society.

Lord Faulks summarised the core aim of the Act as:

“to provide reassurance to people who act in socially beneficial ways, behave in a generally responsible manner, or act selflessly to protect someone in danger by ensuring that the courts recognise their actions and always take that context into account in the event that something goes wrong and they are sued.”

Section 2, *Social action*, states:

> "*The court must have regard to whether the alleged negligence or breach of statutory duty occurred when the person was acting for the benefit of society or any of its members.*"

Section 3, *Responsibility,* states:

> "*The court must have regard to whether the person, in carrying out the activity in the course of which the alleged negligence or breach of statutory duty occurred, demonstrated a predominantly responsible approach towards protecting the safety or other interests of others.*"

This section, by requiring the court to have regard, when something goes wrong, to whether the person sued demonstrated a predominantly responsible approach towards protecting the safety or other interests of others, represents an actual change in the law.

Section 4, *Heroism,* states:

> *"The court must have regard to whether the alleged negligence or breach of statutory duty occurred when the person was acting heroically by intervening in an emergency to assist an individual in danger and without regard to the person's own safety or other interests."*

1.3.4 VICARIOUS LIABILITY

Employers are automatically responsible for the torts of their employees committed during the course of employment even though they personally could not have prevented the accident. If the employee injures a third party, their employer could be sued by the injured party.

- Injury / damage must arise from act committed during employment
- The individual themselves could also be sued
- The employee must have been carrying out the duties of their job for the employer when the breach occurred

Even if the employee is not following rules and procedures, if they cause injury to a third party, the employer can still be held liable for any injury incurred.

1.4 CIVIL LAW

A civil action is one taken between individuals even if one is a company or organisation. The claimant (injured party) will attempt to sue the defendant for compensation in the form of damages, once at court the claimant becomes known as the plaintiff. Damages are a financial award. Today, in the climate of litigation, more and more cases are being taken under common law. "Have you been involved in an accident in the last three years?" is a phrase which appears in many different advertising campaigns. Individuals normally have three years from the date of the injury to pursue their claim, although there are certain cases where this three year period can be extended.

A tort is a civil wrong (tortus is the Latin for twisted), in Scotland they are known as delicts. The Burden of Proof in civil cases is the "Balance of Probabilities" not "Beyond All Reasonable Doubt" as in criminal law. This means that less evidence is needed to prove a civil case than in a criminal one. Thus it is possible for someone to be found not guilty under statute law and yet have damages awarded against them under a common law action. The balance of probabilities only requires the scales of justice to be tipped one way, even very slightly, so that establishing proof by just 51% would tip the balance in favour of the plaintiff.

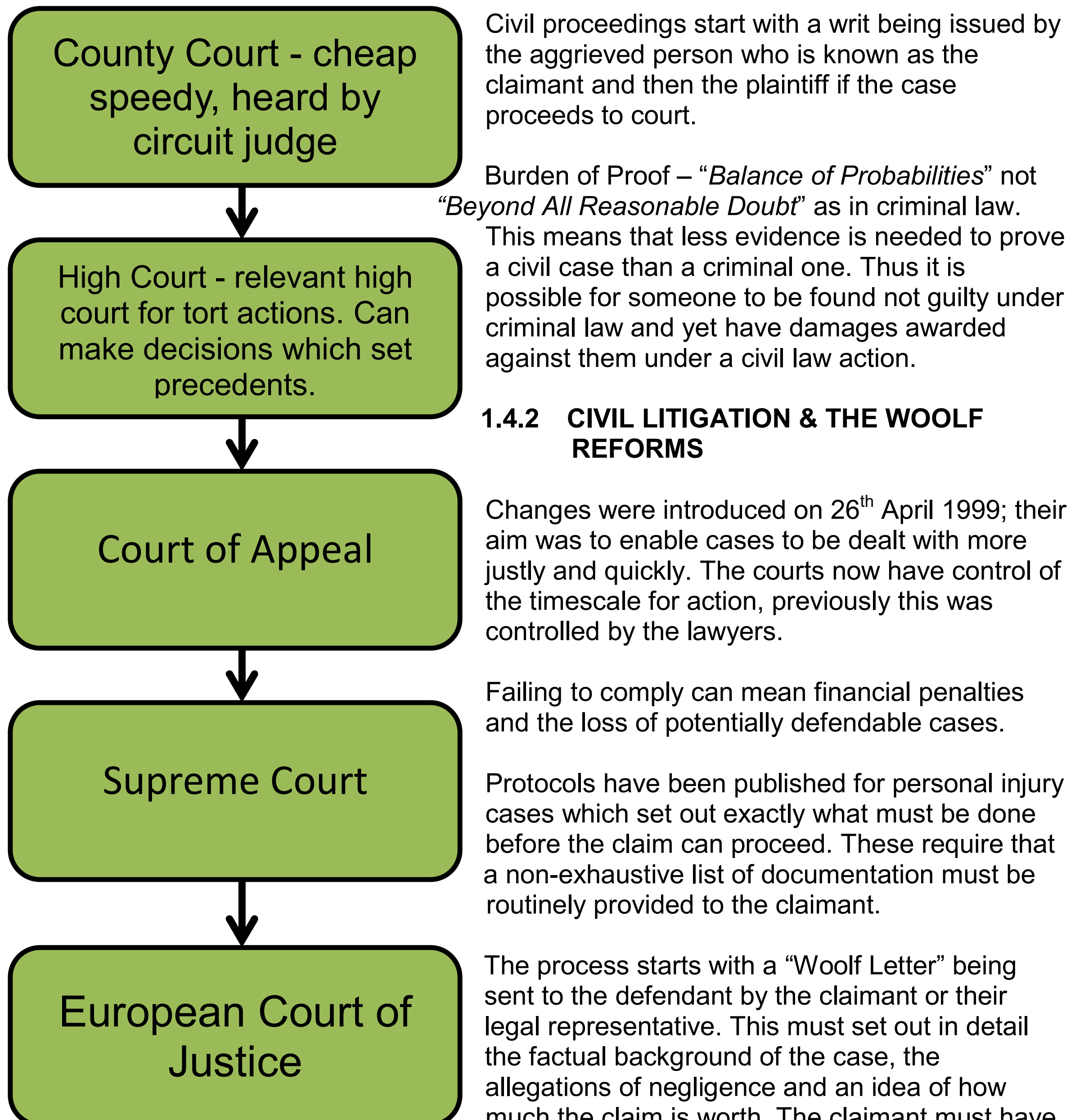
In October 2013 there was a change introduced into UK law via a piece of statute law. Its effect was to almost remove the tort of "breach of statutory duty". This means that if any employee or other person is injured as a result of a work activity they will need to take an action for negligence if they wish to obtain compensation.

Breach of statutory duty is a tort but can now only be used by pregnant or nursing mothers if their employers do not comply with the requirements of the Management of Health and Safety at Work Regulations, which require risk assessments to be undertaken on pregnant workers, and for control measures to be implemented, If the risks cannot be minimised

sufficiently then the employee must be suspended on full pay until they commence their maternity leave.

A double barrelled action is where a pregnant or new mother sues for negligence and breach of statutory duty at the same time for compensation or damages.

1.4.1 CIVIL LAW COURTS



Civil proceedings start with a writ being issued by the aggrieved person who is known as the claimant and then the plaintiff if the case proceeds to court.

Burden of Proof – "*Balance of Probabilities*" not "*Beyond All Reasonable Doubt*" as in criminal law. This means that less evidence is needed to prove a civil case than a criminal one. Thus it is possible for someone to be found not guilty under criminal law and yet have damages awarded against them under a civil law action.

1.4.2 CIVIL LITIGATION & THE WOOLF REFORMS

Changes were introduced on 26th April 1999; their aim was to enable cases to be dealt with more justly and quickly. The courts now have control of the timescale for action, previously this was controlled by the lawyers.

Failing to comply can mean financial penalties and the loss of potentially defendable cases.

Protocols have been published for personal injury cases which set out exactly what must be done before the claim can proceed. These require that a non-exhaustive list of documentation must be routinely provided to the claimant.

The process starts with a "Woolf Letter" being sent to the defendant by the claimant or their legal representative. This must set out in detail the factual background of the case, the allegations of negligence and an idea of how much the claim is worth. The claimant must have fully investigated the matter before the letter is sent – in the past, a solicitor's letter has been sent on the merest outline – this no longer occurs.

The employer (known as the defendant) must acknowledge this letter within 21 days – then the claimant must wait 3 months before proceeding.

If the letter is not acknowledged within 21 days – the claimant can go ahead straight away and the employer has lost their 3 months to prepare and gather information.

Arrangements must be in place in your organisation to ensure these “Woolf letters” are passed directly to your legal department or the firm handling your claims.
Within 3 months the employer must respond either accepting or denying liability and saying why it is disputed. It is no longer acceptable to just say “we deny liability” without giving any specific reasons.

If these protocols are not followed, the employer could find themselves with very high financial penalties and could lose a defendable case.

For the first time the claimant can make an offer to settle for a particular sum. If the employer refuses this and the claimant achieves a higher award then the claimant could be awarded an additional amount of interest at 6% above the base rate on both damages and costs.

When documents are requested but are not available, a disclosure statement will be required – this may need to be signed by the head of department – any inaccuracies will be dealt with as contempt of court.

The judge in charge of the case will set the timetable and can force representatives to attend a pre-trial review. It is essential that you have a robust accident reporting system to ensure accident records are available – equally it is important that cases are answered rapidly.

PERSONAL INJURY PROTOCOL

STANDARD DISCLOSURE LIST – NON-EXHAUSTIVE

The following records may need to be disclosed if there is a workplace compensation claim so it is essential that they are in place for all work areas.

1. Accident book / form
2. First aider report
3. Surgery report – in-house
4. Accident investigation report – including remedial action taken
5. Safety representative’s report
6. RIDDOR report
7. HSE correspondence
8. DSS reports
9. Previous accidents / incidents / complaints
10. Earnings information
11. Risk Assessments – general and specific where required e.g. manual handling
12. Health Surveillance records
13. Information given to staff on H&S & local issues
14. Training given
15. Maintenance records for equipment
16. Workplace inspections

1.5 STATUTE LAW

Statute law consists of Acts of Parliament and sets of legally enforceable Regulations. The principle of having three readings before a Bill can become an Act of Parliament was introduced by the Tudors.

The very first factory legislation was produced in 1802; this aimed to stop the exploitation of children in workhouses. However this was ineffective due to the fact that it was enforced by parish visitors, many of who had connections with the mill owners.

The first major statute came with the 1833 Factory Act which created the factory inspector who had rights of entry and powers of enforcement. Several pieces of reactive legislation were passed but accidents still occurred in their droves. The main problem of this legislation was that it was too reactive, dealing only with symptoms rather than causes.

In 1972 the Robens Committee published a framework that criticised the existing H&S legislation, they felt that:-

- enforcement was unrealistic
- there was little cover for visitors or others
- there was little emphasis on people
- little emphasis was placed on managers and their responsibilities
- little focus was paid to accident reduction

The recommendations made were formulated into the Health & Safety at Work etc. Act. This was formulated in the UK but as a member of the European Community much of the current H&S legislation has its origins in Europe. This starts with the issuing of an EU directive which is then enacted in the UK by the introduction of either an Act of Parliament or a new set of Regulations.

The Health and Safety at Work etc. Act 1974 (HASAWA) is an enabling Act which enables other legislation to be introduced under it such as the Management of Health & Safety At Work Regulations, the Control of Substances Hazardous to Health Regulations and the Control of Noise At Work Regulations. It is HASAWA which provides these regulations with their power.

Statutory instruments are usually known as delegated legislation. This is legislation produced by the Health and Safety Executive after consultation with local authorities, and industry. This is put forward to the Secretary of State for Employment who arranges for it to be laid before Parliament. Since HASAWA was introduced, most regulations concerning workplace health, safety and welfare have been introduced in this way. Breaches of statute law may lead to criminal and civil law actions.

Since 1972 European Community law has overridden UK based law, EU Directives, Regulations and decisions are now sources of statute law. The European Council and Parliament passes directives which must be adopted by member states. Directives are produced on a variety of subjects which each member state must adopt and introduce into its legal framework. Within the UK, directives are reproduced in the form of regulations and brought into law via the Health and Safety at Work Act. Many new regulations have been introduced in this way for example Control of Substances Hazardous to Health, Electricity at Work, Safety Signs and those dealing with Control of Noise at Work.

There are a number of EU Bodies which influence EU legislation and standards:-

European Parliament - Elected MEPs discuss proposals and make amendments to European legislation.

The Council – Decision-making body, adopts or rejects directive proposals, this is made up of the heads of state from member countries (e.g. Prime Ministers etc.)

The Commission - Acts as a source of proposal and makes recommendations to the Council.

Advisory Committees - on various different issues e.g. healthcare, construction

European Court of Justice – hears cases against member states for non-compliance with European Law, appeals from the Supreme Court and can undertake judicial reviews as requested by the Court of Appeal.

The main emphasis of all EU legislation is on RISK ASSESSMENT and prevention rather than cure. They focus very much on the people issues like training, information and supervision. Some of these regulations have already been amended to keep them up to date and to ensure that current EU Directives are being met.

1.5.1 STATUTORY DUTIES

There are three levels of duty under statute law

Absolute – these requirements must be met.
As far as is practicable – action must be taken if it is technologically possible regardless of cost, time, effort and trouble.
So far as is reasonably practicable (SFAIRP) – The employer is permitted to weigh up the risks of injury alongside the costs and resources required to control or prevent them. The higher the risk the more effort and resources must be put into solving the problem or reducing the risks.

1.5.2 THE HEALTH AND SAFETY AT WORK ETC. ACT 1974

Objectives
- to protect people at work
- to protect other people who may be affected
- to control the keeping and use of explosive, highly flammable or dangerous substances
- to control emissions into the atmosphere (now repealed and replaced by a variety of environmental legislation)
- to maintain and improve standards of health and safety

1.5.3. THE RESPONSIBILITIES OF THE EMPLOYER

SECTION 2

2.1 It shall be the duty of every employer to ensure as far as is reasonably practicable, the HEALTH, SAFETY and WELFARE at work of all their employees. They must provide:-

2.2
- safe plant and equipment including safe systems of work
- safe use, handling, storage and transportation of articles and substances
- adequate training, instruction, supervision and information
- safe place of work & safe access and egress

- a safe working environment, with adequate facilities and welfare arrangements

2.3 Where there are five or more employees, a written health and safety policy must be provided, communicated and revised

2.4 Consultation with recognised union safety representatives in maintaining H&S arrangements (now updated to include all employees)

SECTION 3 - EMPLOYER TO OTHERS

The employer must take steps SFAIRP to protect non-employees on the premises. This could involve issuing information, training and PPE. This section also covers the self-employed, they have the same duty to those affected by the work that they do. This section applies to contractors working on other company sites, visitors and even trespassers. It could mean that training has to be provided to visitors to the site and may include the provision of personal protective equipment. Those at greater risk such as young people and those with disabilities must also be protected to a greater extent than others.

Change in 2015

In April 2015 an amendment was agreed through Parliament which will potentially exempt self- employed people from part of this requirement.

It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not exposed to risks to their health or safety.

2015 Deregulation Act comes into effect June 2015

This Act exempts self-employed people from section 3(2) HASAWA unless in a prescribed undertaking. E.g. work on the railways, work with asbestos, construction work or work where other people are put at risk.

SECTION 4 – LANDLORD'S RESPONSIBILITY

To protect people who are not employees but who are using the premises for work, e.g. an engineer working in another company's premises. The landlord must ensure that the premises and plant are safe for non-employees whilst they work there. This section also covers communal areas shared by several companies e.g. stairways, car parks, shared facilities, lift and fire alarms. The landlord must make sure they are safe for all users.

SECTION 6 - MANUFACTURERS, DESIGNERS, IMPORTERS & SUPPLIERS

It shall be the duty of any supplier etc. who designs, manufacturers or imports or supplies articles or substances for use at work to ensure as far as is reasonably practicable that the article is designed and constructed so that it will be safe and without risk to health at all times when set, used and cleaned by any person at work.

Articles must be safe for their purpose when used correctly at work. Suppliers must carry out tests and examinations necessary. Additionally they must provide information and supply revisions to purchasers.

Persons designing, manufacturing, importing or supplying articles or substances for use at work must:-

- Ensure that they are safe and without risk to health when properly used.
- Carry out tests or examinations as may be necessary to ensure that they are safe and without risk to health when properly used.
- Provide any information necessary to ensure that they are safe and without risk to health when properly used.
- Anyone erecting or installing articles for use at work must ensure that they are safe and without risk to health when properly used.

The duties can be relieved by a written undertaking from the user that he will take steps to ensure the article or substance will be safe in use.

SECTION 9 – EMPLOYER'S DUTY TO PROVIDE ITEMS FREE OF CHARGE

Employers must supply personal protective equipment (PPE) and other items provided where statutorily required, free of charge. If PPE is provided for sole use at work there must not be a charge made for it by the employer. Although normally section 9 covers PPE it could also cover the employer not charging for training it provides or even health surveillance and medicals.

1.5.4 EMPLOYEE'S DUTIES

SECTION 7

Employees must take reasonable care of themselves and others who may be affected by their ACTS or OMISSIONS at work. Employees additionally must co-operate with their employer in matters of health and safety to enable them to meet their statutory duties.

Example: An employee who leaves a bottle of acid open in a public corridor where it could injure someone.

SECTION 8

Employees must not intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare. e.g. removing guards or tampering with fire extinguishers.

SECTION 36 - OFFENCES BY OTHERS

This is where an offence is committed by a person due to the act or default of another, either or both may be prosecuted. For example, a supervisor tells an employee to work unsafely and as such break the law e.g. operate a machine without a guard, then the supervisor could be prosecuted even though he has not personally operated the machine. The level of the two employees may determine if one or both are prosecuted. In horseplay incidents where a group of employees are involved but only one actually causes an injury or breaks the law, all who aided and abetted could also be found responsible.

SECTION 37 - OFFENCES BY THE BODY CORPORATE

Where an offence is committed with the *consent, connivance of neglect* of any Director, Manager or Secretary, then they as well as the Body Corporate, shall be guilty of the offence.

Example: A new Managing Director stops all electrical testing, stating that it is a waste of profits, and as a consequence someone receives a shock from a damaged, defective portable electrical appliance. He / she could be personally prosecuted under S37 and the company itself could also be prosecuted under Section 2 for failing to provide safe work equipment.

Why do you think the enforcement agencies have been making more frequent use of Section 37 over the last few years? Reasons could include:- Individual liability Senior managers can ensure action is taken They have the overall responsibility Personal prosecutions have a higher profile than those just taken in a company name.

1.5.5 SECTION 40

In proceedings for any offence consisting of a failure to comply with a requirement which is so far as is practicable or reasonably practicable, the onus is on the accused to prove it was not practicable or reasonably practicable.

The accused must therefore show that he/she did all that was reasonably practicable; in health and safety cases the accused is assumed guilty until he/she can prove their innocence.

1.6 ENFORCEMENT OFFICIALS

There are a number of inspectors who have statutory authority to enforce health and safety related legislation, including the Health & Safety Executive (in factories, motor vehicle workshops and construction), Local Authority Environmental Health Officers (offices, shops and food safety), Fire and Rescue authorities and Environment Agency Inspectors (from either England, Wales, Scotland or Northern Ireland). There are also several other specialist inspectors dealing with radiation, the railways, offshore industries and the highways. The Office of Rail Regulation enforces health and safety issues within the rail industry.

The Police have the legal right to investigate any death and may pursue investigations into corporate manslaughter. If they decide to make a prosecution this will be taken on their behalf by the Crown Prosecution Service. In Scotland prosecutions are taken by the Procurator Fiscal.

Powers of the Enforcement Inspector – HASAWA Section 20

- Enter premises at any reasonable time and bring others (police or specialists)
- Enquire into circumstances and causes of accidents or incidents
- May insist that an area be left undisturbed (usually after a serious accident)
- Can demand to interview witnesses and obtain information from others
- Request facilities - secretarial, room, telephone etc.
- Examine, search, investigate records, take copies of records, take photographs and take samples and tests
- Articles and substances can be seized and destroyed if the inspector feels there is imminent danger
- Can examine safety related documentation
- Carry out investigations or routine inspections
- Any other action to assist in fulfilling their functions

The main objective of the HSE is to prevent accidents. Similar powers are also available to the other health and safety inspectors such as the Fire Officer employed by the Fire Authority, the Environment Agency and the Office of Rail Regulation.

Inspectorate Action

- Informal discussion / Informal letter
- Improvement notice (Section 21)
- Material breach (HSE using their Fees for Intervention Powers (FII))
- Prohibition notice (Section 22)
- Formal cautions
- Prosecutions

Improvement Notice

If the Inspector is of the opinion that legislation is being contravened or about to be broken then an improvement notice may be issued. The legislation breached must be identified. The improvements must be made within the specified time period.

Can be served on

- Employer / Organisation / Employee / Supplier / Designer

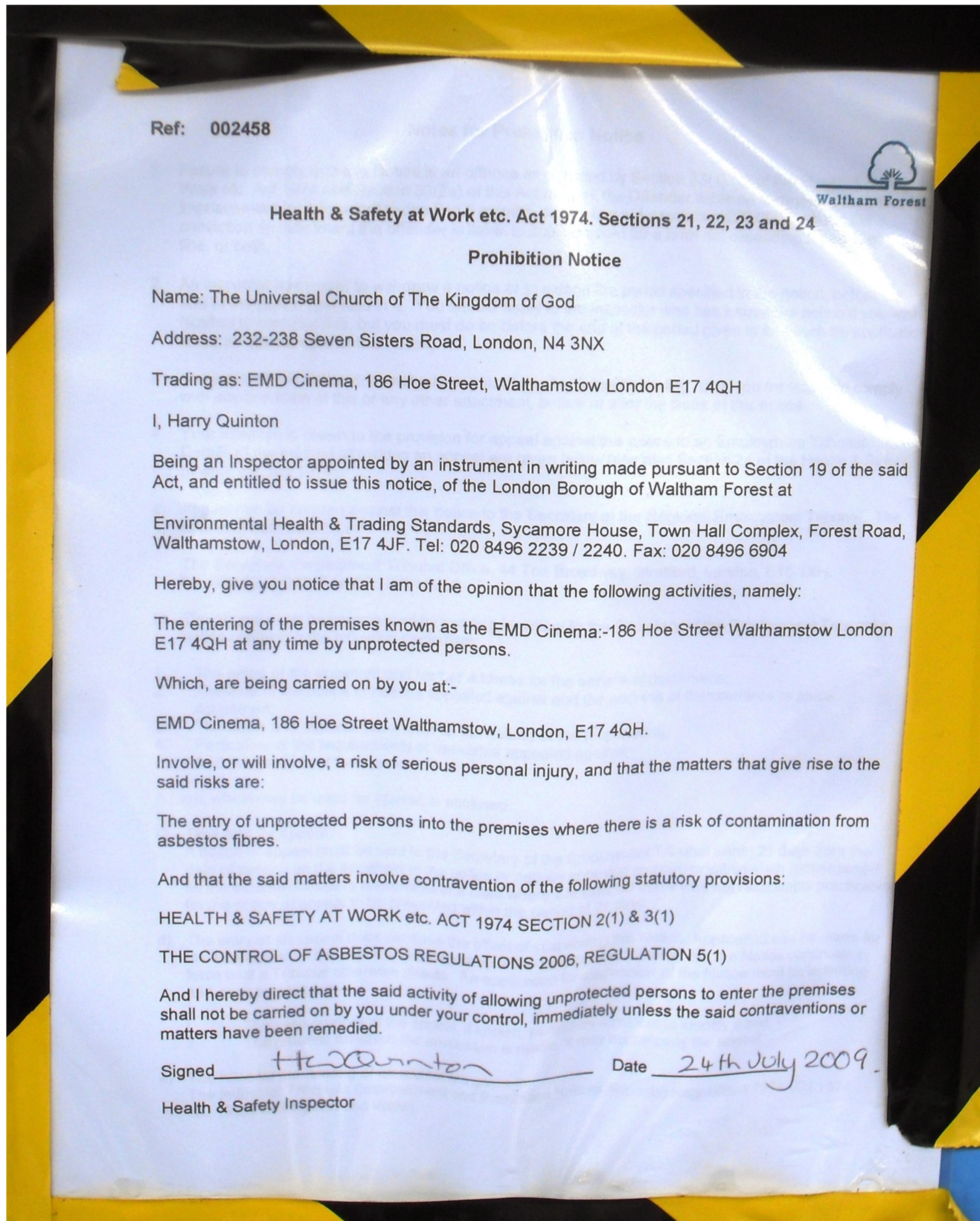
Normally employers are given at least 21 days to comply. They can appeal to an **Employment Tribunal** if they disagree with the notice.

Prohibition Notice

If an Inspector discovers a situation with a high risk of personal injury, he/she can issue a Prohibition Notice. This notice comes into effect immediately and can stop a process, use of equipment or workplace. Until remedial action has been taken, the process, equipment or area may not be used.

- Can be issued even if no direct contravention of law exists

- Can take effect immediately or at a later time
- Can be served on a person including the person in control
- Right of appeal to an **Employment Tribunal**
- Any person served with a notice which is not complied with, could be prosecuted



Ref: 002458

Waltham Forest

Health & Safety at Work etc. Act 1974. Sections 21, 22, 23 and 24

Prohibition Notice

Name: The Universal Church of The Kingdom of God

Address: 232-238 Seven Sisters Road, London, N4 3NX

Trading as: EMD Cinema, 186 Hoe Street, Walthamstow London E17 4QH

I, Harry Quinton

Being an Inspector appointed by an instrument in writing made pursuant to Section 19 of the said Act, and entitled to issue this notice, of the London Borough of Waltham Forest at

Environmental Health & Trading Standards, Sycamore House, Town Hall Complex, Forest Road, Walthamstow, London, E17 4JF. Tel: 020 8496 2239 / 2240. Fax: 020 8496 6904

Hereby, give you notice that I am of the opinion that the following activities, namely:

The entering of the premises known as the EMD Cinema:-186 Hoe Street Walthamstow London E17 4QH at any time by unprotected persons.

Which, are being carried on by you at:-

EMD Cinema, 186 Hoe Street Walthamstow, London, E17 4QH.

Involve, or will involve, a risk of serious personal injury, and that the matters that give rise to the said risks are:

The entry of unprotected persons into the premises where there is a risk of contamination from asbestos fibres.

And that the said matters involve contravention of the following statutory provisions:

HEALTH & SAFETY AT WORK etc. ACT 1974 SECTION 2(1) & 3(1)

THE CONTROL OF ASBESTOS REGULATIONS 2006, REGULATION 5(1)

And I hereby direct that the said activity of allowing unprotected persons to enter the premises shall not be carried on by you under your control, immediately unless the said contraventions or matters have been remedied.

Signed H Quinton Date 24th July 2009

Health & Safety Inspector

The Employment Tribunal can dismiss the appeal and uphold the notice or overturn it and have it removed.

Formal Cautions

The use of formal cautions as an enforcement option for health and safety offences was introduced in the Health and Safety Commission's (HSC) Enforcement Policy Statement (EPS), revised in January 2002. (Note in 2008 the HSC was combined with the HSE).

HSE's policy is to use formal cautions only in exceptional circumstances, when the public interest firmly weighs against prosecution. If an offender refuses to agree a caution then prosecution should normally follow immediately. Therefore sufficient evidence should be obtained to support a prosecution hearing, in the first instance. For a formal caution to be issued:-

- there being sufficient evidence to provide a realistic prospect of conviction;
- the offender admitting the offence; and
- the offender agreeing to being cautioned.

A formal caution (FC) could be used where a court appearance would be likely to have a seriously adverse effect on a victim's health, or the accused is elderly, or was suffering significant physical or mental ill health at the time of the offence. This needs careful judgment because there may be cases which are so significant that a prosecution is warranted despite these factors being present.

A formal caution should not generally be considered where the offender has already received a caution they should not be administered to an offender in circumstances where there can be no reasonable expectation that this will curb their offending. Since an FC should only be used in rare and exceptional circumstances, it is particularly important that full consideration is given to the matter and that HSE is seen to be consistent in its approach. The offender who accepts a FC this does not guarantee that a prosecution will not be taken. Any FCs may also be referred to in court if there is a further prosecution within the next 5 years, with its details made publicly available.

1.6.1 Environment Agency

The Environment Agency enforces environmental legislation in a similar way to the HSE – Its main areas of responsibility are:-

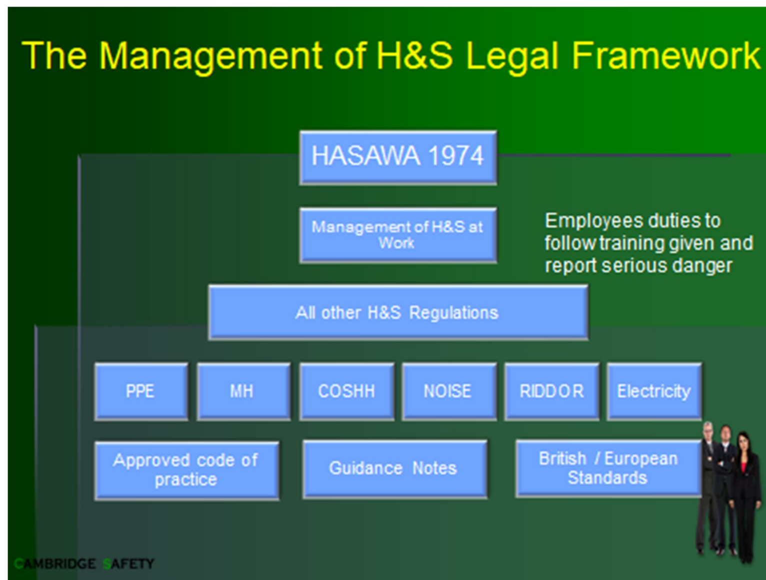
- assessment of industrial plant design and waste management proposals
- integrated pollution control
- authorisation, monitoring and prosecution
- independent advice to industry by means of guidance notes
- enforcement of Water Industry Act 1991
- registration regarding disposing of radioactive materials

1.7 FEES FOR INTERVENTION

Fee for Intervention (FFI) is HSE’s cost recovery regime which started on 1 October 2012. Duty holders who are compliant with the law, or where a breach is not material, will not be charged FFI for any work that HSE does with them. The scheme only applies to HSE enforcement not local authorities.

A material breach is when, in the opinion of the HSE inspector, there is or has been a contravention of health and safety law that requires them to issue notice in writing of that opinion to the duty holder. Companies do not have to be served with an improvement or prohibition notice to receive a material breach notice. Currently the fees are charged at £129 per hour, but this could be more if the HSE have to seek further external specialists advice. Invoices are issued by the HSE every two months.

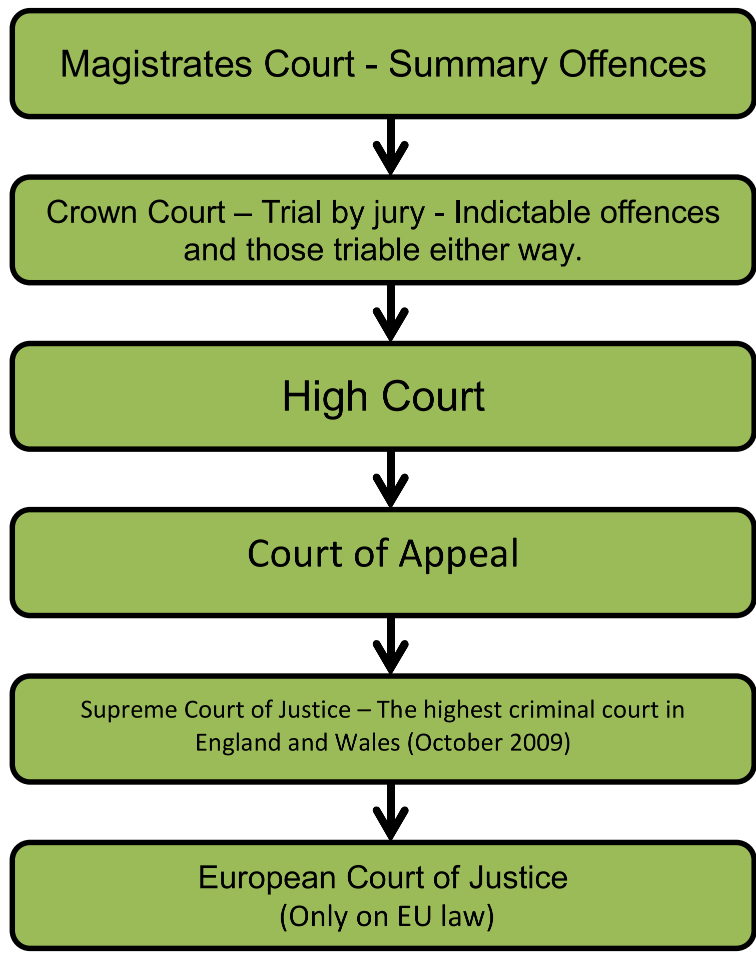
1.8 THE STRUCTURE OF HEALTH AND SAFETY STATUTE LAW



Document	Legal Status	Issued by	Example
Statute – Act	Legally binding	Parliament	Health & Safety at Work Act 1974
Regulations	Legally binding Statute law Cover specific issues Power from the enabling Act	Parliament (drafted by HSE)	Management of Health & Safety at Work Regulations
Approved Code of Practice (ACOP)	Not legally enforceable but can be used in evidence against the company or individual in a court of law. • How to comply with the legislation. • Explains definitions and key terms. • Shows general principles. • Companies must show they have complied with the ACOP or done better in a different way.	HSE	ACOPs are associated with Control of Substances Hazardous to Health Regulations, COSHH also has one on Legionella, the Provision and Use of Work Equipment Regulations has an ACOP. PUWER
Code of Practice (COP)	Not legally enforceable but provides useful guidance on meeting legal requirements.	Industry bodies	
Guidance Notes (GN)	Guidance only. Technical details. Specific issues	HSE & other organisations	Lighting at work – gives technical details on the types of lighting which should be selected

			for different situations. Manual Handling guidance associated with Manual Handling Regulations.
British or European Standards	Not legally enforceable	BSI	Safety sign, colour and shape

1.9 CRIMINAL COURT STRUCTURE



Employment Tribunal

The Employment Tribunal may be held in private or public, it has the right to request witnesses to attend and to see or receive copies of relevant documentation. Each party is required to make an opening statement, to give evidence, to call witnesses, to cross examine witnesses and to address the tribunal panel which normally consists of three people.

The tribunal's decision must be a majority one, if there are only two members the chairman has the casting vote. A decision is recorded along with the reasons for it, copies are sent

to each party. The tribunal has the power to review and revoke any of its decisions, it may also order that one of the parties pay a specified sum in relation to costs for the other party. In a majority of cases, appeals against notices are upheld.

The tribunal can overturn a notice, uphold it, extend the period for action, and appoint an external expert to investigate further or issue compensation or costs.

The key health and safety issues which may be taken to an Employment Tribunal are appeals against improvement and prohibition notices, appeals from trade union safety representatives and appeals from representatives of employee safety.

1.10 PENALTIES

Employer – The Organisation

From April 2015 onwards

Magistrate's Court	HASAWA	Unlimited Fine
	Regulations	Unlimited Fine
Crown Court & Above	Any Offence	Unlimited Fine
Crown Court	Corporate Manslaughter	Unlimited Fine Publicity order Remedial order

As part of a general review of the criminal justice system, magistrates have been given more powers to hear more serious cases, they can issue unlimited fines. Formal guidance on sentencing has been issued to support this change.

Although the primary purpose of criminal law is to punish those who have breached legislation, the Magistrate's court has the right also now to offer unlimited compensation as well. This can be done for minor cases to avoid the injured party having to take a separate civil claim for any damages or compensation. If the injury is more serious and additional compensation is required, then the only option is for a separate civil action to be taken.

Employee – Including managers, directors and chief executives

From April 2015

Magistrates Court	HASAWA	£unlimited fine +/or up to 6 months in prison
	Regulations	£Unlimited per offence +/or up to 6 months in prison
	Contravening a Notice	£Unlimited +/or 6 months in prison
Crown Court & Above	Any Offence	Unlimited Fine +/or up to 2 years in prison

SUMMARY OFFENCES – These are less serious offences and are heard at the Magistrate's Court e.g. to intentionally obstruct an inspector or falsely pretend to be an inspector. The HSE, Local Authority and Fire Authority can take their case directly to the Magistrates without a solicitor or barrister. Changes made to the guidelines for criminal actions in 2016 allow more cases to now be heard at the Magistrate's court.

INDICTABLE OFFENCES – These are initially heard at the Magistrates court and then forwarded for trial at the Crown Court or more senior courts. However changes in 2015 mean some indictable cases are now heard fully at the Magistrate's court. If action is taken at the Crown Court enforcement inspectors need to have a legally qualified barrister to represent them in court. The police have their cases taken by the Crown Prosecution Service.

Example indictable offences
- Failure to discharge S 2 – 7 of the Health & Safety at Work Act
- Contravene S 8 & 9 of the Health & Safety at Work Act
- To contravene any requirement imposed by an inspector
- To make a false statement
- Corporate manslaughter or homicide

1.11 LEGAL COMPARISONS

COMMON LAW Source of Law		STATUTE LAW Source of Law
Case law	Based on	Written Law
Precedents	Form	Acts of Parliaments / Regulations
Set by judges	Set By	EU & UK Parliament
An injury/loss must have occurred - physical or mental	Injury	No injury has to have occurred
Rights of Individual	Who	Duties on society
Insurable	Insurance	Non insurable
Unwritten	Written	Always written in advance
Reactive – responds to events as they occur		Proactive – written so individuals and employers known the law in advance
Mainly goes to civil courts	Court System	Breaches mainly go to criminal courts

Civil	Criminal
Branch of law	
Compensation sought Burden of Proof – Balance of Probabilities	To protect and punish Burden of Proof – Beyond all Reasonable Doubt
Damages awarded	Fine or Prison (plus up to £5k compensation)
County court first point of action	Magistrates court – lowest criminal court
Sue	Prosecute
Commit a tort	Commit a crime

1.12 INSURANCE

Insurance provides cover so that compensation claims can be met if employees or others are injured due to work activities. It covers civil law liabilities not criminal penalties.

Organisations are legally required to have employers, public and occupier's liability insurance. Depending on the nature of their business they may also have a range of other insurance cover.

There are an increasing number of instances where the self-employed and small businesses are experiencing difficulty in obtaining public and employers' liability insurance due to the increasing number of compensation claims being made. Insurance premiums have increased dramatically but levels of cover may have been reduced**.**

EMPLOYER'S LIABILITY (DEFECTIVE EQUIPMENT) ACT 1969

Employees can sue the manufacturer of a defective item and also their employer who would seek to claim back this expense from the manufacturer / supplier.

EMPLOYER'S LIABILITY (COMPULSORY INSURANCE) ACT 1969

This is obligatory for all except nationalised industries, local authorities or police etc. Large organisations may decide to self-insure and cover the risks and possible claims directly themselves. Failure to display the relevant insurance certificate or have it available electronically, could lead to a fine; lack of insurance cover can lead to a prosecution.

Compensation from this type of insurance can be paid out for

- not reasonably foreseeable accidents
- those employees who act wrongfully
- trespass - e.g. employees going into areas from which they are prohibited and then injuring themselves

OCCUPIER'S LIABILITY ACTS 1957 & 1984

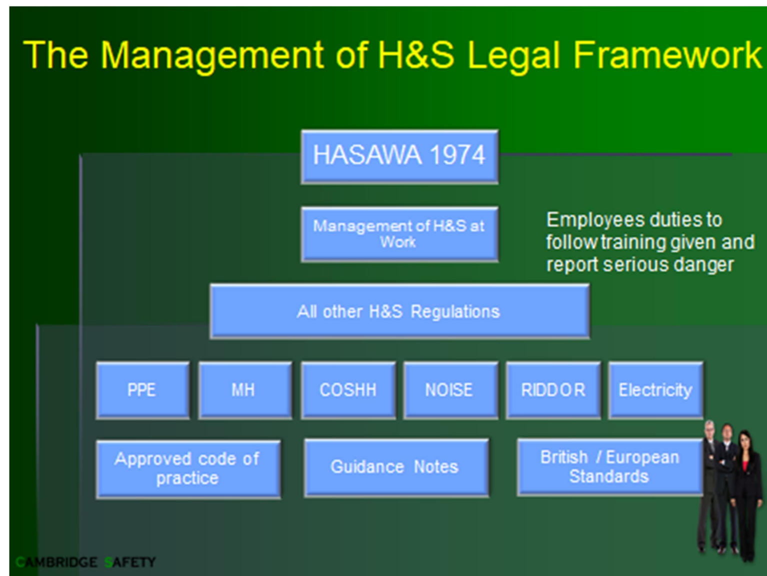
Both these Acts apply to occupiers of premises. If employees work elsewhere their employer could be responsible if a safe system of work fails, however if injury is due to a structural issue, the occupier/owner of the building is responsible whether they knew about the defect or not. The 1984 Act extended the occupier's responsibilities to authorised and unauthorised visitors.

1.13 THE MANAGEMENT OF HEALTH AND SAFETY AT WORK REGULATIONS 1999 as amended

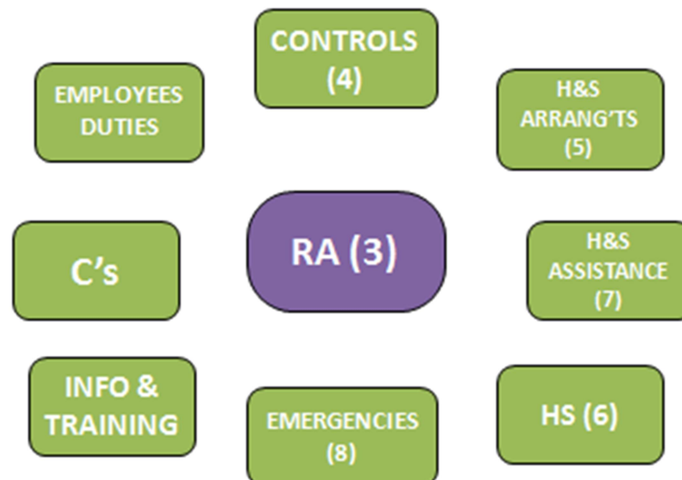
Six new sets of safety regulations came into force on 1st January 1993. These were implemented as a direct result of 6 EU Directives (six pack). The "six pack" aimed to streamline safety legislation and ensure a consistent approach to all workers in all industries throughout the EU. The goal was also to setup a framework for current and future legislation.

The broad aim of this set of regulations is to replace outdated legislation e.g. Factories Act and Offices, Shops and Railway Premises Act. They require all employers to identify the hazards in their workplaces, assess the risk and the people at risk. The risk should be controlled by engineering's means and personal protective equipment only issued as a last resort.

The Management of H&S at Work Regulations (MHSW) are placed below the Health and Safety At Work Act within the statute law structure, and all current and future regulations will stem from them. Since their original introduction, MHSW have been amended three times to include risk assessments for young people and pregnant and nursing mothers. In 1999 the regulations were extended further to ensure they met with the requirements of current EU directives.



The main requirements of the regulations are:



Regulation 3 **Risk Assessment** - "suitable and sufficient" by a "competent person"

Regulation 4 **Principles of Prevention to be Applied**

In 1999 this was extended to require the employer to implement preventative and protective measures. (Schedule 1 of the regulations):

- Avoid the risk if possible
- Evaluate
- Combat risk at source
- Adapt work to individual
- Adapt process using new technology

- Substitute or use new, less hazardous methods
- Mgt issues – policy, organisation of work etc
- Group prevention rather than individual prevention if possible
- Instruction of employees (training)
- Personal Protective Equipment as a last resort

Regulation 5 Health & Safety Arrangements

Every employer shall make appropriate arrangements for the effective planning, organisation, control, monitoring and review of safety arrangements within the organisation. (This could involve using a formal safety management system such as HSG65 or OHSAS18001.)

Regulation 6 Health Surveillance - for identifiable diseases etc. There are various different types: - inspection, biological monitoring and various clinical examinations.

Regulation 7 Health & Safety Assistance – Every organisation must have one or more named competent person to assist in implementation of safety arrangements. Ideally this should be someone in the company in preference to an external person. This should ensure greater ownership.

Regulation 8 Procedures for Serious and Imminent Danger – Procedures need to be developed to deal with major emergencies which may affect the organisation. The employer must inform those exposed to danger of the risks and provide details on the action which may need to be taken should an emergency occur.

Regulation 9 Arrangements - must be in place to liaise with the emergency services in the case of serious or imminent danger.

Regulation 10 Information Provision for Employees

Other Requirements

Co-operation & Co-ordination - shared sites & multi occupancy buildings must be co-ordinated in their approach to safety matters. This includes ensuring that contacts are made with external services such as hospitals, medical aid etc.

Persons Working in Host Employers or Self- Employed Undertaking

These individuals must be provided with adequate information on the risks involved and any safe systems to be followed, (e.g. contractors working on site).

Capabilities and Training - upon recruitment, with any increase in risk & periodically.

Regulation 14 Employee Duties - extended from HASAWA

All employees have a duty to use equipment and carry out processes in accordance with instructions and training given. They must also report any problem which could cause serious or imminent danger within the workplace and report any weaknesses in the training they have received.

Temporary Workers - must be given the same information, health surveillance, etc. as is required for employees.

Risk Assessment for pregnant and nursing mothers. A medical practitioner may certificate a pregnant worker to say they are unfit for work. The employer is only duty bound to carry out the above risk assessment if they have been informed of the pregnancy.

Risk Assessment for young people under the age of 18. When young people under the age of 18 are in the workplace a risk assessment must be carried out to ensure they are adequately protected. (Children are classed as those under school leaving age e.g.16).

1.14 CORPORATE MANSLAUGHTER

In 2008 the Corporate Manslaughter and Homicide Act 2007 was introduced. This enables the Crown Prosecution Service (CPS) to prosecute organisations if employees or others have been killed due to management or corporate failure**.**

It applies to companies and other corporate bodies, in the public and private sector, Government departments, police forces and certain unincorporated bodies, such as partnerships, where these are employers. This compliments the current law under which individuals can be prosecuted for gross negligence, manslaughter and health and safety offences. (e.g. HASAWA S37)

The Offence

"a management failure by the corporation is the cause or one of the causes of a person's death and that failure is conduct falling far below what can be reasonably expected of the corporation in the circumstances"

An organisation is guilty of the offence only if the way in which its activities are **managed** or **organised** by its **senior management** is a substantial element of the gross breach of a relevant duty of care owed by the organisation to the deceased.

Penalties

On conviction, an organisation faces an unlimited fine, subject to its means, as well as meeting any legal costs. There is the possibility the organisation could face a remedial order to rectify issues and/or a publicity order, ordering the publication in the press of the prosecution.

1.15 CONTRACTOR SAFETY

Many organisations are now contracting out some of their services, this can include the traditional work undertaken by contractors such as building alterations and electrical work in addition to cleaning and catering services.

Many employers are under the false impression that if they call in a contractor then safety responsibilities rest solely with the contractor. This is not so as under HASAWA the “Employer”, i.e. the company, still has overall responsibility for health and safety even though the contractor has some responsibilities as well under S3.

There is a legal requirement under the Management of Health & Safety at Work Regulations to co-ordinate and co-operate; this applies where employees of more than one organisation will be working together. The Construction (Design & Mgt) Regulations require a more formal system of managing contractors where the Client (Main Employer) must ensure they select competent contractors who have adequate resources to undertake the project.

It is essential therefore that whether the contract is for a one off job or a major contract, that major checks are undertaken to ensure the quality of the contractors selected. Much of this checking can be undertaken prior to the company coming on site. From the information gathered, many organisations compile an approved list and only these contractors will be used for work on site.

1.15.1. SELECTING SUITABLE CONTRACTORS

It is important that contractors are not only competent to undertake the work but also that they have sufficient resources to complete the work to be undertaken.

Information to assess competency

- H&S policy
- Sample risk assessments
- H&S responsibilities within the organisation
- Training arrangements
- Method statements/SSOW
- Evidence of H&S monitoring
- Details of the qualifications of their named competent person
- Details of accident records
- Enforcement action
- Civil claims
- Membership of trade bodies
- Accreditations for safety management systems

Resources

- Insurance details and cover
- Details of whether workers will be employees or sub-contractors
- Annual accounts
- Details of plant and equipment available
- Admin support
- Other work being undertaken at the same time

Information to be provided to the contractor

- Local rules – e.g. no smoking, wearing of PPE, only electrically tested equipment allowed on site, no use of host company's equipment without permission
- Arrangements for permits to work
- Arrangements for reporting at beginning and end of work
- Contact points
- Prohibited areas
- Details of the job and any hazards present (overhead cables, fire, biological contamination etc.)
- Welfare arrangements

1.15.2 CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2015

Legal obligations are placed on everyone involved in the construction process, including the Client, to provide for site safety at every stage of a project. The Contractor will no longer take sole responsibility. The main focus of the regulations is on the four C's: Communication, Competence, Co-operation and Control.

a. When do the Regulations apply?

Construction work includes:

- construction, alteration, conversion, renovation
- repair, redecoration, maintenance, decommissioning and demolition
- preparation for a structure
- assembly and disassembly of prefabricated elements
- removal of a structure

CDM now covers all construction work, small and large projects, as all work needs to be properly managed.

HSE Notification Required with Form F10 online

If the construction phase is......

- 30 days with 20 or more people on site at any one time
- 500 person days - all days on which construction work is undertaken count.

b. The Client

This is the person including domestic clients or a company who actually commissions the project. The client is the person or company who pays the bills!

The Client must:

- Ensure project is managed – time and resources
- SFAIRP construction work carried out without risk to H&S
- To ensure welfare facilities are provided
- Review mgt arrangements as the project progresses
- Provide pre-construction information (ASAIP)
- Ensure construction work does not start until the construction phase plan is in place
- A H&S file is prepared & available
- Report the project to the HSE if it is notifiable, by completing the F10 online form

Example: The client believes that there may be asbestos present so commissions an asbestos survey prior to the start of refurbishment of a 1960's office building. The results were included in the pre-construction plan so the potential contractors can consider how they are going to manage these risks on site.

Domestic clients will in the main meet their duties by passing these on to their contractor once appointed.

c. The Principal Designer

The Principal Designer (whether an individual or organisation):

- Appointed by client
- Must have skills, knowledge and experience
- Report anything likely to endanger their own H&S or that of others
- This role may be combined with other roles e.g. project manager
- Plan, manage and monitor co-ordination of pre-construction phase
- Ensure technical & organisational aspects for staging of work
- Estimate work stages and timing
- Take into account principles of prevention
- Assist client is gathering pre-construction information
- Provide pre construction information to designers and contractors
- Liaise with Principal Contractor

d. The Designer

Designers' duties

- Not to start work unless client is aware of CDM and its duties
- Apply the principles of prevention in the design and use design information to eliminate and reduce foreseeable risks to H&S
- Must cover people effected by construction, those maintaining or cleaning or using the structure as a building
- Where risks cannot be eliminated:
    - Take steps to reduce risks through design
    - Provide information on the risks to the Principal Designer
    - Ensure information is added to the H&S file
    - Provide information to assist other duty holders to meet their duties (considering design, construction and maintenance of the structure)

Examples: A designer identifies that floor tiles have to be fixed with a solvent based glue, on investigation he found a similar tile which met the specification which could be fixed with a water based glue.

e. The Principal Contractor

The duties of the Principal Contractor include:

- Providing site induction
- Liaison with client
- Liaison with designer and principal designer
- Share information

- Provide welfare facilities
- Apply the principles of prevention throughout the project
- Prepare construction phase plan
- Managing the plan
- Co-operation and co-ordination of tasks
- Co-operation and co-ordination of contractors
- Monitoring the plan
- Revising the plan
- Checking work is carried out without risk to H&S
- Securing the site – preventing unauthorized access
- Give employees and others information on risks
- Set, communicate and enforce rules on site

f. The Paperwork

Pre-construction information (Information for tendering)

This is really a collection of information which any contractor would need to be able to put in a realistic tender to complete a construction project. It is compiled by the Principal Designer e.g. site access, existing hazards on site and details of work to be completed.

Construction Phase Safety Plan

Once the principle contractor has been appointed it is their job to develop a plan covering the construction work to be completed. This is the Construction phase plan. This will include details of how they will manage safety on site. It will include issues such as risk assessments, welfare arrangements, emergency procedures, site rules and measures to be taken to ensure the security of the site. It is **the Principal Contractor** who prepares this part of the plan.

This document should show how the principal contractor is going to manage the project on site and deal with the key risks involved.

Construction phase plans are now needed for all construction projects whether they are completed by one or multiple contractors, so they will need to be completed by contractors as well as principle contractors.

The Health and Safety File

This is required for all projects involving more than one contractor. It is this document which is completed at the end of the job, and it is provided to the Client to allow them manage, maintain, repair and even demolish the structure in the future. This should include any information the client will need in future to be able to maintain the building. It should contain details of how it was built, as built drawings, any services in place, materials used, and manufacturers' instruction manuals for any fixtures and fittings etc. The H&S file should be passed on with the building as it changes ownership to enable the new owner to manage and maintain the building.