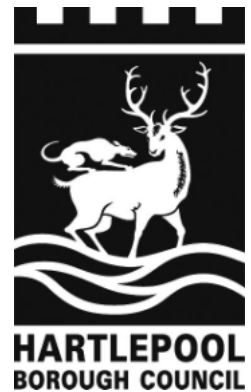


PERFORMANCE PORTFOLIO (HEALTH AND SAFETY CONSULTATIVE GROUP) DECISION SCHEDULE



Wednesday 3rd August 2011

At 3.30 pm

**(or immediately following Performance Portfolio starting at 3.00 pm
whichever is the later)**

**in Committee Room C
Civic Centre, Hartlepool**

Councillor J Brash, Cabinet Member responsible for Performance will consider the following items.

1. KEY DECISIONS

No items.

2. OTHER ITEMS REQUIRING DECISION

No items

3. ITEMS FOR INFORMATION

- 3.1 Proposed changes to the National Health and Safety Regime – *Chief Customer and Workforce Services Officer*

**PERFORMANCE PORTFOLIO
(HEALTH AND SAFETY CONSULTATIVE GROUP)**
Report to Portfolio Holder
3 August 2011



Report of: Chief Customer and Workforce Services Officer

Subject: PROPOSED CHANGES TO THE NATIONAL HEALTH
AND SAFETY REGIME

SUMMARY

1. PURPOSE OF REPORT

To advise the Portfolio Holder's of proposals to change the national health and safety regime.

2. SUMMARY OF CONTENTS

The report provides an update on the national situation regarding health and safety.

3. RELEVANCE TO PORTFOLIO HOLDER

Corporate issues.

4. TYPE OF DECISION

Non-key decision.

5. DECISION MAKING ROUTE

Portfolio Holder only.

6. DECISION(S) REQUIRED

For information.

Report of: Chief Customer and Workforce Services Officer

Subject:: PROPOSED CHANGES TO THE NATIONAL HEALTH AND SAFETY REGIME

1.0 PURPOSE OF REPORT

- 1.1 To advise the Portfolio Holder's of proposals to change the national health and safety regime.

2.0 BACKGROUND

- 2.1 At the last Performance Portfolio (Health and Safety Consultative Group) on 22nd February 2011 you requested an update on the health and safety situation following the publication of the Lord Young of Graffham's report Common Sense Common Safety. The report was commissioned by the Prime Minister and welcomed by the government on its publication. At the time the only change which had been put in place was proposed changes to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) and the creation of an Occupational Safety and Health Consultants Register. This register is voluntary but all suitably qualified health and safety professionals are encouraged to register.
- 2.2 Since your meeting in February the Government through the Department of Work and Pensions has published a new document Good Health and Safety Good for Everyone (a copy of which is attached as **Appendix 1**) and this document proposes much more significant and wide ranging changes.

3.0 CONSIDERATION OF ISSUES

- 3.1 The government is of the opinion that there is a significant burden on businesses as a result of red tape and the current perception is that health and safety has become one of these significant burdens because of an increasingly risk averse culture. It is apparent some businesses and managers are making unpopular decisions and using health and safety as an excuse. It is also apparent that some health and safety advice has been of poor quality. Unfortunately this has resulted in substantial negative press and concern that the health and safety regime has become a burden. This is summed up in a key extract from the publication; "A key part of our deregulatory agenda is changing the health and safety culture that causes so much frustration in Britain today. Protecting people in the workplace and in society as a whole remains a key priority. No business benefits from having a bad safety record. But the burden of health and safety red tape has become too great, with too many inspections of relatively low risk and good performing workplaces, frequently poor health and safety advice to businesses from badly qualified consultants, and a complex structure for regulation. The time has come for all of this to change."

- 3.2 The main proposals are the creation of an Occupational Safety and Health Consultants Register, a revised health and safety framework (whereby emphasis will be placed on those businesses providing highest risk such as the major hazard industries) and the introduction of a cost recovery system (for those businesses who do not comply with the law). For none major hazard industries the HSE will significantly change its approach to the businesses it regulates by:
- 3.2.1 Increasing joint initiatives with industry to promote safe and healthy workplaces.
 - 3.2.2 Targeting inspections more effectively on areas of greatest risk and substantially reducing the overall number of proactive inspections (by about a third equating to about 11000 fewer inspections per annum) for businesses in lower risk areas who meet their legal obligations; and
 - 3.2.3 Introducing the recovery of HSE costs from businesses that put their employees and the public at risk by flouting health and safety law. Responsible businesses will benefit from a lighter touch regulatory regime and will not face cost recovery.
- 3.3 These proposals will have an impact on the Council in that the targeted inspections will be on areas of perceived higher risk and one of those areas is waste. As the Council has significant involvement in both the collection and procurement of waste services the Council and its contracting organisations have been subject to HSE investigations and site visits in relation to this issue.
- 3.4 One of the areas classed as lower risk and therefore the HSE will not routinely visit is local authority administered education provision which reduces the chances of HSE intervention. It is therefore essential that schools continue to take their responsibilities seriously as there is currently a move away from prescriptive guidance for example the Health and Safety of Pupils on Educational Visits (HASPEV1998) guidance and replace it with goal setting guidance such as the recent publication Health and Safety – Department for Education Advice on Legal duties and Powers for Local authorities, Headteachers, Staff and Governing Bodies. A copy of this guidance is attached as **Appendix 2**.
- 3.5 Although there is a push to avoid unnecessary health and safety interventions (such as banning conkers, three legged races etc) some recent cases on this issue have demonstrated that local authorities will continue to be held to account where failures occur in School. Warrington Borough Council having recently been fined £5000 and £4717 costs for a science experiment going wrong and injuring 11 pupils at a school. There have also been incidences where school trips were so badly planned that the teacher who arranged the trip (in the case of Glenridding Beck) receiving a custodial sentence after pleading guilty to manslaughter due to the death of a ten year old boy. Whilst in the Glenridding case Lancashire county Council were cleared by the court the cases involve significant officer time in the aftermath

of the investigation never mind the trauma of the people, families and officers involved.

- 3.6 The proposal for cost recovery which will involve what has been termed by industry as “fee for fault principle” whereby if a breach is found following an HSE inspection or investigation even though a criminal prosecution is not instigated then the company being investigated will pay for the inspecting officer’s time. As yet no detail has been provided as to how this may work in practice but could be introduced as early as next April.
- 3.7 Finally there is a review to be undertaken of current health and safety legislation known as the Lofstedt review in which Professor Lofstedt (supported by an independent panel) will be investigating health and safety law and the burdens this places on business. This review is also aimed at addressing some of the concerns that the UK is somehow “gold plating” EU directives when making the law for this country.

4.0 RECOMMENDATION

- 4.1 That the Portfolio Holder notes the content of the report.

Good Health and Safety, Good for Everyone

The next steps in the Government's plans for reform of the health and safety system in Britain

21 March 2011

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Introduction/Background

If the Government is to achieve its goal of making Britain a more growth-focused, entrepreneurial nation, a key priority must be to ease the burden of bureaucracy on business. The more barriers we place in the way of entrepreneurs and investors, the less successful we will be economically. The culture of red tape will have to change.

A key part of our deregulatory agenda is changing the health and safety culture that causes so much frustration in Britain today. Protecting people in the workplace and in society as a whole remains a key priority. No business benefits from having a bad safety record. But the burden of health and safety red tape has become too great, with too many inspections of relatively low risk and good performing workplaces, frequently poor health and safety advice to businesses from badly qualified consultants, and a complex structure for regulation. The time has come for all of this to change.

These proposals set out a new start for health and safety regulation for Britain's businesses. In future we will shift the whole focus of our health and safety regime to a lighter touch approach, concentrating efforts on higher risk industries and on tackling serious breaches of the rules. We will leave those organisations which pose a lesser risk and which do the right thing for their employees free of unwarranted scrutiny.

There will be three key aspects to the changes we are introducing:

- We will clamp down on the rogue health and safety advisers who cost industry so much money by giving them advice which bears little relation to the actual requirements of legislation. To make it easier for businesses to secure competent and ethical consultancy, we are launching an official **register of Occupational Safety and Health Consultants** for those health and safety practitioners who are properly accredited to one of the professional bodies in the industry. This will make it easier to access reliable, reputable advice.
- We will shift the focus of health and safety activity away from businesses that do the right thing, and concentrate on higher risk areas and on dealing with serious breaches of health and safety regulation. This will mean a very substantial drop in the number of health and safety inspections carried out in the UK. We will also shift the cost burden of health and safety away from the taxpayer, and instead make those organisations that gain competitive advantage by flouting the rules pay for the costs of putting things right. **The new Health and Safety Framework** contains more detail of our proposals in this area.
- We will also seek to simplify health and safety regulation and legislation, and in doing to ease the burden on business. To do this we are launching new **"Health and Safety Made Simple"** guidance to provide lower risk small and medium-sized businesses with the information they need to achieve a basic level of health and safety management in their workplace. We are also setting up an immediate **review of health and safety regulation**. The Chair of the

review, Professor Ragnar Löfstedt, will be backed by an independent advisory panel. The review will be asked to make recommendations for simplifying the current rules by autumn 2011.

Occupational Safety and Health Consultants Register

All reputable employers recognise the benefits of providing healthy and safe working conditions for their staff. Sensible health and safety at work helps to maintain a productive workforce and contributes to economic prosperity and growth.

But health and safety legislation is complex and employers – particularly those in small and medium businesses – are often unclear about what they need to do to meet their legal obligations. While some larger employers have in-house health and safety advisers, and there is a lot of helpful advice and guidance freely available from the Health and Safety Executive (HSE), many employers turn to health and safety consultants for professional help.

Unfortunately, the standards of consultation currently available are variable. There are no minimum standards for health and safety consultants and no way for employers to ensure that the advice they are being given is accurate and proportionate to the needs of their business.

The Government will clamp down on the rogue health and safety advisers who cost industry so much money by giving them advice which bears little relation to the actual requirements of legislation. To achieve this we are launching a voluntary Occupational Safety and Health Consultants Register (OSHCR) for those health and safety practitioners who are properly accredited to one of the professional bodies in the industry.

All eligible health and safety consultants¹ are encouraged to join the register, which began taking registrations on 31 January 2011, and demonstrate their commitment to providing good quality, sensible and proportionate advice to business.

The register, which opens today, provides business with easy access to advice on health and safety matters from consultants qualified to a professional standard recognised by the participating bodies in the registration scheme². Employers will be

¹ Applicants must be a member of a UK health and safety professional body and have a degree level qualification, a minimum of two years experience and engagement with a continued professional development scheme. This is usually at Chartered, Fellow or Registered Member status.

² The professional bodies and other stakeholders involved are: British Occupational Hygiene Society (BOHS); British Safety Council; British Safety Industry Federation (BSIF); Chartered Institute of Environmental Health (CIEH); Health and Safety Executive Northern Ireland (HSENI); Institute of Ergonomics and Human Factors (IEHF); International Institute of Risk and Safety Management (IIRSM); Institution of Occupational Safety and Health (IOSH); National Examination Board in Occupational Safety and Health (NEBOSH); Royal Environmental Health Institute of Scotland (REHIS); and Royal Society for the Prevention of Accidents (ROSPA).

able to find a consultant according to keyword(s), county, industry or topic, free of charge.

Consultants will pay a fee of £60 to join the register and for annual renewal. An initial discounted fee of £30 is offered to those eligible consultants who join the scheme by the end of April 2011.

Registered consultants who fail to maintain the high standards of the register will be subject to the disciplinary procedures of their professional bodies and - if a decision to withdraw the membership status is made - the consultants will no longer be eligible to appear on the register.

A not-for-profit company limited by guarantee (CLG), consisting of the participating professional bodies, has been set up to govern the register. The HSE will be providing administrative support for the register in the short term but is expected to hand over full responsibility to the CLG by 2012/13.

The register can be accessed at <http://www.oshcr.org/>

The new Health and Safety Framework

As the Prime Minister said in his preface to the recent report “Common Sense, Common Safety”: “Good health and safety is vitally important. But all too often good, straightforward legislation designed to protect people from major hazards has been extended inappropriately to cover every walk of life, no matter how low the risk”.

The HSE and local authorities, as joint co-regulators for health and safety legislation, have a vital role to play in ensuring that the regulatory system:

- is focused on better health and safety outcomes and not purely technical breaches of the law;
- makes it as straightforward as possible for business, and in particular, small businesses, to deliver a health and safe working environment;
- is enforced in a manner which is proportionate to risk;
- avoids placing unnecessary burdens on businesses which manage health and safety effectively; and
- maintains a strong deterrent against those who fail to meet their health and safety obligations and put their employees at material risk thereby also deriving an unfair competitive advantage.

The Health and Safety Executive

The HSE will continue to play a central role in delivering the modernisation of regulation. It will contribute both to the Government’s forthcoming review of health and safety regulation and, as set out below, to a new pattern of enforcement and assistance to industry in meeting its legal obligations.

Major hazard industries

Much of HSE’s manpower and technical resource is devoted to the major hazard industries. Hazardous industries such as those in the chemical and offshore oil sectors are essential to our everyday life but have the potential to cause large numbers of deaths or injuries from a single event as well as potentially catastrophic long term impacts on society, the environment or the economy.

The Government believes the regulation of these industries to be soundly based and in accordance with best international practice and does not plan to reduce the current level of oversight. However, there will be a continuing programme of modernisation of regulatory approaches and co-operation between regulators to provide a consistent and proportionate approach for business. This includes the Government’s plans to

legislate for a new Office for Nuclear Regulation (ONR) to meet the requirements flowing from new civil nuclear build as well as existing plants and decommissioning.

Industry already bears much of the costs for regulation in these areas, in recognition of the inherent risks of these sectors and the comparatively high level of regulation required as a pre-condition for operation. It is the Government's intention to maintain and extend the principle that those who create risks should pay for their regulation.

Non-major hazard industries

HSE regulates a further 900,000 non-major hazard workplaces. Some, although they are not classified as major hazard, nevertheless have a comparatively high rate of injury (including fatal injury) and/or occupational disease. These include construction, agriculture, some manufacturing, waste and recycling, and quarrying. Others have a relatively low rate of injury and ill health, such as university campuses and council office premises.

HSE will significantly change its approach to the totality of businesses it regulates by:

- increasing joint initiatives with industry to promote safe and healthy workplaces.
- targeting inspections more effectively on areas of greatest risk and substantially reducing the overall number of proactive inspections for businesses in lower risk areas who meet their legal obligations; and
- introducing the recovery of HSE costs from businesses that put their employees and the public at risk by flouting health and safety law. Responsible businesses will benefit from a lighter touch regulatory regime and will not face cost recovery.

Joint working with industry

Most industries recognise the business and social benefits of good health and safety. HSE will build on and expand its joint working initiatives with industry to promote better health and safety and pass on good practice. For example, HSE as the regulator, has worked in partnership with the London Organising Committee for the Olympic Games and the Olympic Delivery Authority to facilitate a safe and successful London 2012 Games. The challenge of regulating one of the biggest infrastructure projects in Europe became an opportunity to drive up standards of health and safety. There have been no fatal accidents and few major injuries during construction.

HSE will also take forward initiatives to help businesses and in particular low risk small businesses, meet their health and safety obligations. In particular HSE will continue with the development of computer based risk assessment for low risk businesses which can be completed quickly and without the need for external

consultancy. Such risk assessments are already available for offices and are being consulted on in relation to classrooms, shops and charity shops.

Targeting and reducing inspections

The Government has identified three categorizations of non-major hazard industries:

1. those sectors which present comparatively high risk and where, in our judgement, proactive inspection remains necessary as part of the overall regulatory approach;
2. those sectors where there remains comparatively high risk but proactive inspection is not considered a useful component of future interventions; and
3. those areas where proactive inspection is not justified in terms of outcomes.

The categorizations set out above will inevitably change in their composition over time e.g. as an industrial sector improves its health and safety record, or as new industries with new health and safety challenges emerge. However, based on current analysis, the categorizations would result in the following groupings:

- (i) Comparatively high risk areas where proactive intervention to be retained. The major areas for inclusion are currently considered to be construction, waste and recycling, and areas of manufacturing which are high risk e.g. molten and base metal manufacture;
- (ii) Areas of concern but where proactive inspection is unlikely to be effective and is not proposed e.g. agriculture, quarries, and health and social care; and
- (iii) Lower risk areas where proactive inspection will no longer take place. These areas include low risk manufacturing (e.g. textiles, clothing, footwear, light engineering, electrical engineering), the transport sector (e.g. air, road haulage and docks), local authority administered education provision, electricity generation and the postal and courier services.

HSE will reduce its proactive inspections by one third (around 11,000 inspections per year) through better targeting based on hard evidence of effectiveness based on these categorizations. As now, HSE will work closely with industry bodies to manage and control specific health and safety risks, looking to industry to take the lead so that HSE can concentrate its own interventions on those areas where it has a unique contribution to make. In both areas (i) and (ii), HSE will continue to undertake inspections for enforcement purposes or to follow up complaints when such an intervention appears to be necessary. The basis on which HSE follows up complaints from workers and the public about health and safety and investigates incidents will be unchanged.

No industrial areas will be exempted from maintaining good standards of health and safety. Employers who do not take the protection of their employees, or those affected by their work activities, seriously will still face intervention by HSE.

Cost recovery for breaches of the law

The Government believes that it is reasonable that businesses that are found to be in serious breach of health and safety law – rather than the taxpayer - should bear the related costs incurred by the regulator in helping them put things right. A cost recovery principle will provide a deterrent to those who would otherwise fail to meet their obligations and a level playing field for those who do.

It is proposed that HSE will recover all of the costs of an inspection/investigation at which a serious, material breach in standards is diagnosed and a requirement to rectify is formally made, together with the cost of any follow-up work. Businesses that are in compliance with the law will not be liable for any kind of charge as a result of an HSE inspection and there will be no recovery in relation to purely technical breaches. An appeal system will be operated by HSE in relation to any disputes over cost recovery.

The Government also intends to allow HSE to cost-recover from business in relation to services it provides which are a necessary part of the process of land development. In consequence HSE will recover its full costs for acting as a statutory consultee for land use planning applications and hazardous substance consents. It is also proposed for HSE to charge where it provides initial advice to large development projects at the request of developers.

Local authorities

Local authorities are responsible for health and safety regulation in around 50% of total business premises, generally lower risk areas like offices, shops and leisure activities. There are currently some 196,000 local authority inspection visits per year. The comparatively large number of local authority visits reflects in part the assistance that they are able to provide to businesses across a range of services and requirements.

The Government believes that it is right to apply similar principles to local authority health and safety activities. It will look to see a reduction of at least a third (65,000 per annum) of inspections and greater targeting where proactive inspection continues.

The Government will also encourage HSE and local authorities to increase their information provision for small businesses in a form which is both accessible and relevant to their needs.

Making health and safety simpler

The current health and safety system in Great Britain came into being with the Health and Safety at Work etc Act 1974. The 1974 Act brought together a number of previous Acts into a single goal-setting piece of legislation, based on the sound principle that those who create health and safety risks in the workplace have the responsibility to manage those risks 'as far as is reasonably practicable'.

Over the following decades, however, a plethora of legislation has grown up, compounded by the introduction of European Union legislation from 1992 onwards. There are now 17 Acts owned and enforced by HSE, and over 200 regulations owned and enforced by HSE/Local Authorities.

All reputable employers want to do their best to meet their health and safety obligations and protect their workers and those members of the public affected by their work activities. But the sheer volume of health and safety regulation can lead to confusion and uncertainty for businesses - particularly small businesses without their own health and safety advisers - about their responsibilities under the law.

The Government wants to make it easier for employers to do the right thing. The HSE has already created online risk assessment tools for offices, shops, charity shops, and classrooms.

Today we are launching "Health and Safety Made Simple" – a single, easy to use, piece of guidance aimed at small and medium sized employers in low risk businesses. This takes them quickly through their basic health and safety duties describing in plain English "what to do" and "how to do it" including:

- appointing a competent health and safety adviser;
- writing a health and safety policy;
- completing risk assessments;
- consulting with employees;
- providing adequate levels of training and welfare facilities; and
- obtaining Employers' Liability Compulsory Insurance.

Where necessary, the guidance provides signposts to more detailed help and industry-specific advice.

"Health and Safety Made Simple" can be found on the HSE website at <http://www.hse.gov.uk/simple-health-safety>

Review of health and safety regulation

We will also explore what opportunities there may be to simplify health and safety legislation and, in doing so, further ease the burden on business. To achieve this, the Government will set up an immediate independent review of health and safety regulation. As well as considering legislation with domestic origins, the review will re-examine those regulations originating from European Union Directives to ensure that, where the Directive has not simply been copied out into UK law, there is a sound justification for this and UK businesses are not being unnecessarily burdened compared to other member states. We will also ask the review to recommend changes that will clarify the legal position of employers in cases where employees act in a grossly irresponsible manner.

Professor Ragnar Löfstedt, Director of the King's Centre for Risk Management at King's College London, has been appointed to chair the review. Professor Löfstedt will develop the detailed Terms of Reference for the review. He will be supported by an independent advisory panel made up of leading politicians with appropriate experience, business people and employee representatives to work with and provide constructive challenge to the review. Professor Löfstedt has been asked to make recommendations by autumn 2011 and the Government will then decide what actions to take in the light of those recommendations.

Conclusion

The Government believes that these steps – clamping down on the cowboy consultants, cutting down the number of inspections, charging those who break the rules, and launching a major simplification of those rules – will play an important role in freeing business from unnecessary constraints. It's time to change the health and safety culture in Britain, and restore common sense to the approach we take to protecting our employees.

HEALTH & SAFETY
DEPARTMENT FOR EDUCATION ADVICE ON LEGAL DUTIES AND POWERS FOR
LOCAL AUTHORITIES, HEAD TEACHERS, STAFF
AND GOVERNING BODIES

About this advice

The Government is determined to reduce burdens on schools. We want to simplify health and safety requirements and explain them better. The Government is making it easier for schools to take pupils on trips, removing paperwork and taking steps to reduce teachers' fears of legal action. Teachers should be confident that they know best how to look after pupils and keep them safe.

This document summarises the existing health and safety law relevant to schools and explains how it affects local authorities, governing bodies, head teachers and other school staff. It covers activities that take place on or off school premises, including school trips.

This advice document replaces a number of guidance documents on health, safety and security in schools, including *Health and Safety: Responsibilities and Powers* (2001) and *Health and Safety of Pupils on Educational Visits* (HASPEV 1998). You should also read a new document from the Health and Safety Executive (HSE) *School trips and outdoor learning activities: Tackling the health and safety myths*.

Expiry/review date

The document will be reviewed in Summer 2012.

The advice in this document is based on the law as it stands. The Government are reviewing health and safety laws to simplify them further.

Who is this advice for?

- School employers
- Head teachers and other school staff

Key Points

General

- Children should be able to experience a wide range of activities. Health and safety measures should help them to do this safely, not stop them,
- It is important that children learn to understand and manage the risks that are a normal part of life,
- Commonsense should be used in assessing and managing the risks of any activity. Health and safety procedures should always be

proportionate to the risks of an activity,

- Staff should be given the training they need so they can keep themselves and children safe and manage risks effectively.

The Law

The main legislation covering this area is the Health and Safety at Work etc Act 1974 and regulations made under that Act¹;

- The employer (the local authority, governing body or proprietor) is responsible for health and safety, though tasks may be delegated to staff;
- Employees also have a duty to look after their own and others' health and safety;
- It is very rare for school staff to be prosecuted under criminal law with regard to accidents involving children.

Employers, school staff and others also have a duty under the common law to take care of pupils in the same way that a prudent parent would do so.

- Most claims for negligence are brought against the employer (who has public liability insurance) and not individual members of staff.

What does assessing and managing risks mean?

Health and safety law often refers to risk assessment and risk management. These are the terms used to describe the process of thinking about the risks of any activity and taking steps to counter them. A written assessment is not required for every activity. Teachers should assume they only need to carry out a written risk assessment in exceptional circumstances. Where a risk assessment is carried out the employer must record the significant findings of the assessment².

Some activities, especially those happening away from school such as mountaineering, canoeing and sailing, involve higher levels of risk. In these cases an assessment of significant risks should be carried out. Head teachers should ensure that the person assessing the risks understands the risks and is familiar with the activity that is planned. However, a risk assessment is certainly not needed every time a school takes pupils to a local venue such as a swimming pool, parks or museums.

School employers should always take a commonsense and proportionate approach, remembering that in schools the purpose of risk assessment and management is to help children to undertake activities safely, not to prevent

¹ In particular, the Management of Health and Safety at Work Regulations 1999

² Note that this does not apply if the employer employs less than five employees.

activities from taking place. They cannot remove risk altogether and they should not require needless or unhelpful paperwork.

Tackling myths about legal action

We know that some schools and teachers worry about being prosecuted if an accident occurs. The *HSE policy statement School trips and outdoor learning activities: Tackling the health and safety myths* explains that HSE's main interest is in real risks arising from serious breaches of the law, such as a trip leader taking pupils canoeing but not ensuring they were all wearing buoyancy equipment. The HSE case study on the tragic events at Glenridding Beck, where a ten year old boy drowned in 2002, highlights some of the issues (www.hse.gov.uk/aala/index.htm).

The Statement makes clear that HSE wants to encourage all schools and local authorities to remove wasteful bureaucracy – so that they focus only on real risks and not on paperwork. It also explains what HSE takes into account when deciding whether to prosecute following an accident. This might include the severity of the injury, how far good practice was followed, the seriousness of the breach of the law and whether it is in the public interest to prosecute. More details can be found at <http://www.hse.gov.uk/enforce/enforcepolicy.htm>. Criminal cases relating to accidents in schools are very rare.

Sometimes civil proceedings in negligence can be taken against an employer or an individual member of staff. However, legal action for negligence against schools is only likely to be successful if:

- the school has not taken care of a child in a way that a prudent parent would have done;
- as a result, the child has been injured; and
- the injury was a foreseeable consequence.

Duties as an employer

Under the Health and Safety at Work etc Act 1974, the employer in a school must take reasonable steps to ensure that staff and pupils are not exposed to risks to their health and safety. This applies to activities on or off school premises.

Regulations made under the Health and Safety at Work etc Act 1974 set out in more detail what actions employers are required to take. For example, the Management of Health and Safety at Work Regulations 1999 require employers to:

- assess the risks to staff and others affected by school activities in order to identify the health and safety measures that are necessary and, in certain circumstances, keep a record of the significant findings of that assessment;
- introduce measures to manage those risks (risk management);
- tell their employees about the risks and measures to be taken to

- manage the risks;
- ensure that adequate training is given to employees on health and safety matters.

Schools must set out health and safety arrangements in a written health and safety policy. The HSE's website contains useful information and a simple two page template that any employer can use to create a health and safety policy– see <http://www.hse.gov.uk/simple-health-safety/write.htm>.

Although employers retain responsibility for the health and safety of pupils, they can delegate tasks to head teachers or other school staff. What a school employer will need to consider in its policy will vary depending on the size of the school and the risks associated with the school's activities. For example, the policy for a small infant school may be very brief, whereas that for a large secondary school with a range of laboratories and workshops may be more detailed. Annex A contains information on what *may* need to be included in health and safety policies for schools. This list should not be treated as a requirement.

Duties as an employee

The law requires employees to:

- take reasonable care of their own health and safety and that of others who may be affected by what they do at work;
- co-operate with their employers on health and safety matters;
- do their work in accordance with training and instructions;
- inform the employer of any work situation representing a serious and immediate danger, so that remedial action can be taken.

In addition, teachers and other staff in schools have a common law duty to act as any prudent parent would do when in charge of pupils.

Employees should follow any health and safety procedures put in place by their employer. However if they feel that the procedure is inappropriate (e.g. it is too bureaucratic) they should discuss this with their employer and request that it is reviewed. Usually the head teacher will work with the employer to ensure that the procedures at the school are proportionate, effective and appropriate.

Training

Employers must ensure that staff are given the health and safety training they need for their job. This certainly doesn't mean that all employees have to attend a training course. It may simply mean providing them with basic instructions or information about health and safety in the school. Staff who do work which involves a greater element of risk, such as using woodworking machines, will need more training. There is more information available at <http://www.hse.gov.uk/simple-health-safety/provide.htm>

Trips abroad

Schools in England, Wales and Scotland will need to comply with their duties under health and safety law when planning trips abroad.

Any injury to or death of a member of staff or a child outside Great Britain may be subject to the law of the land in which the injury/death occurred.

A school could still be liable under civil law for injuries to children that happen abroad as a result of negligence on the part of the school or its staff.

Reporting injuries and accidents

Serious work-related injuries to a member of staff or a child must, by law, be recorded and reported. The employer is responsible for this, but staff may be asked to prepare the report. What, how, where and when to report is explained on the HSE website at <http://www.hse.gov.uk/riddor/index.htm>.

Employers must report:

- deaths
- major injuries
- over-3-day injuries – where an employee is away from work or unable to perform their normal work duties for more than 3 consecutive days
- where there is an accident connected to the work activity which causes injury to pupils, members of the public or other people not at work and they are taken from the scene of an accident to hospital
- specified dangerous occurrences – where something happens that does not result in an injury, but could have done;

The requirements are found in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR).

Adventure activities using licensed providers

When planning an activity that will involve caving, climbing, trekking, skiing or watersports schools must currently check that the provider holds a licence as required by the Adventure Activities Licensing Regulations 2004. These regulations apply to adventure activities that take place in England, Scotland and Wales but these arrangements may be subject to change in the future.

School staff driving the school minibus

School staff can drive the school minibus without any special licence, as long as their employer agrees and as long as the following conditions are met.

- The staff member obtained their car driving licence before January 1997; OR
- The staff member obtained their car driving licence later, but has held it for at least two years, AND
 - is not being paid to drive the minibus (because exemption

- depends on no consideration being received by the driver); AND
- the minibus weighs no more than 3.5 tonnes and is used not for hire or reward

Parental consent to off-site activities

Written consent from parents is not required for pupils to take part in the majority of off-site activities organised by a school (with the exception of nursery age children) as most of these activities take place during school hours and are a normal part of a child's education at school. However, parents should be told where their child will be at all times and of any extra safety measures required.

Written consent is usually only requested for activities that need a higher level of risk management or those that take place outside school hours. The Department has prepared a "one-off" consent form which schools can ask parents to sign when a child enrolls at the school. This will cover a child's participation in any of these types of activities throughout their time at the school. These include adventure activities, off-site sporting fixtures outside the school day, residential visits and all off-site activities for nursery schools which take place at any time (including during school holidays or at the weekend). The form is available at

<http://www.education.gov.uk/schools/adminandfinance/healthandsafety>.

Parents must be told in advance of each activity and must be given the opportunity to withdraw their child from any particular school trip or activity covered by the form.

Local Authority Powers

Where the local authority is the employer (community, voluntary controlled, community special schools and maintained nursery schools), it may give a direction concerning the health and safety of persons (including pupils) on the school's premises or taking part in any school activities elsewhere. Under section 29(5) of the Education Act 2002, governing bodies of such schools must comply with any such direction from the local authority.

Role of the Educational Visits Coordinator (EVC)

There is no requirement to have an EVC. The EVC typically liaises with the local authority's outdoor education adviser and helps colleagues in schools to manage risks.

More specific advice can be found from the Outdoor Education Advisers Panel (OEAP) which is made up of expert practitioners from local authorities and is one of several organisations that offers training. The OEAP's website (<http://www.oeap.info>) also provides schools with details of local authority outdoor education advisers.

POWER TO BAR ABUSIVE PARENTS

Sometimes aggressive or abusive behaviour from a parent can present a risk

to staff and children. School premises are private property and parents will generally have permission from the school to be on school premises. However, in cases of abuse or threats to staff, pupils or other parents, schools may ban parents from entering the school.

It is also an offence under section 547 of the Education Act 1997 for any person (including a parent) to cause a nuisance or disturbance on school premises. The police may be called to assist the school in removing a parent but local authorities and governing bodies may also authorise a person to remove a person if they have reasonable cause to believe that the person is causing a nuisance or a disturbance.

Schools should have a written policy setting out the behaviour expected of parents on the premises and the procedures that will happen when the school wishes to restrict a parent's access to school premises. A parent who has been banned from entering school premises is trespassing if he or she does so without permission.

FURTHER INFORMATION

Legislative links

www.legislation.gov.uk/ukxi/1999/3242/contents/made

www.legislation.gov.uk/ukxi/2004/1309/contents/made

www.hse.gov.uk/riddor/index.htm

www.dft.gov.uk and www.dft.gov.uk/dvla/ for information on transport legislation affecting schools

External links

- www.hse.gov.uk Health and Safety Executive
- www.oeap.info Outdoor Education Advisers' Panel
- www.cleapss.org.uk provides advice on science safety
- www.ase.org.uk Association for Science Education
- www.afpe.org.uk Association for PE
- lotcqualitybadge.org.uk Council for Learning Outside the Classroom

Key Elements of a Health and Safety Policy

The HSE's website contains a simple two page template that any employer can use to create a health and safety policy – see <http://www.hse.gov.uk/simple-health-safety/write.htm>. The issues that school employers decide to include in the health and safety policy will depend on the size of the school and the nature of the risks associated with the school's activities. The template on the HSE website includes the following which should be included in any health and safety policy:

- A general statement of policy
- Who is responsible to do what (delegation of tasks)
- Arrangements to establish, monitor and review measures needed to meet satisfactory health and safety standards

In addition schools may wish to include any of the following in their health and safety policy and associated risk assessment:

- Training of staff in health and safety, including risk assessment
- Consultation arrangements with employees
- Recording and reporting accidents to staff, pupils and visitors – including those reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)
- Policy and procedures for off-site visits, including residential visits and any school-led adventure activities
- Dealing with health and safety emergencies – procedures and contacts
- First aid and supporting medical needs
- Occupational health services and managing work-related stress
- Workplace safety for teachers, pupils and visitors
- School security
- Violence to staff (may cross-refer to behaviour policy)
- Manual handling
- Slips and trips
- On-site vehicle movements
- Management of asbestos
- Control of hazardous substances
- Selecting and managing contractors
- Maintenance (and, where necessary examination and testing) of plant and equipment such as electrical equipment, local exhaust ventilation, pressure systems, gas appliances, lifting equipment and glazing safety)
- Fire safety, including testing of alarms and evacuation procedures