

Health and Safety at Work Act Section C

The Legal Background

Introduction

Until the Health and Safety at Work Act was passed in 1974, the State's approach to occupational safety was based on legislation that had grown up during the previous 170 years in a piecemeal fashion. The Health and Safety at Work Act was the first comprehensive piece of legislation applying to all people at work with the single exception of domestic servants in private households.

Employers have always owed a common law duty of care towards those who are in their employment or who are affected by their activities. Furthermore, a considerable body of case law has been built up over the years, which has helped to define the extent to which employers must strive to discharge their duties adequately in this regard.

Summary of the Health and Safety at Work Act 1974

The Act is based broadly on common law principles and places a duty of care on employers with respect to their employees and to members of the general public. It also places duties on employees towards each other and on manufacturers and suppliers with respect to any organisation which uses their articles or products at work.

It is important to note that the Act specifies certain principles, but unlike previous legislation on Factories, Mines, Offices and Agriculture it does not attempt to specify in any detail the safety measures or the safety standards which are to be adopted. Most of the duties are expressed in very general terms and it is in the regulations and codes of practice issued subsequently that the safety measures which employers are required to take are described in particular detail.

Before new regulations or codes of practice are issued, there is considerable consultation between the Health and Safety Executive, Governmental Departments, as well as employers' federations and trade unions.

The Principal Features Embodied in the Act

Duties of Employers

All employers are required to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees. This duty includes:

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- the provision and maintenance of plant and systems of work that are safe
- arrangements for ensuring safety in connection with the use, handling, storage, transportation and disposal of articles and substances
- provision of necessary instruction, training and supervision so as to ensure health and safety
- the provision and maintenance of a safe place of work and access to it
- the provision and maintenance of a safe and healthy working environment and adequate welfare facilities.

The Act also requires employers to conduct their undertakings in such a way as to protect persons not in their employment who may be affected by their acts or omissions, such as the general public and pupils in schools.

Employers are required to prepare and distribute to their employees a written statement of their general policy with regard to health and safety at work. Employers must also consult with safety representatives with regard to health and safety.

Duties of Employees

Employees have a duty under the Act to take reasonable care to avoid injury to themselves or to others by their work activities, and to cooperate with employers and others in meeting statutory requirements. The Act also requires employees not to interfere with or misuse anything provided to protect their health, safety or welfare.

Safety Policies

Employers with five or more employees must produce a written health and safety policy and make satisfactory arrangements for distribution to all employees.

The policy must include three specific elements:

- A statement of intent, detailing the organisation's commitment to maintaining high standards of health and safety. Compliance with relevant legislation is the minimum standard to be achieved. The document must be signed by a company director or equivalent.
- Details of the organisational aspects of managing health and safety issues, specifying who will be responsible for what.

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- Details of the arrangements that are in place to ensure compliance with health and safety legislation, thus reducing the risks to employees and any other persons who may be affected by the organisation's activities.

Enforcement Agencies

The Act created two bodies, namely the Health and Safety Commission and the Health and Safety Executive. In 2008 these were merged into one organisation called the Health and Safety Executive (HSE).

This body has general oversight of national health and safety policy, powers to initiate measures to reduce accidents at work and improve industrial health and safety generally. It also has responsibility for the preparation of health and safety regulations and codes of practice.

The HSE is the major enforcement agency with regard to Northumberland County Council. HSE Inspectors have wide ranging powers available to them in the course of their duties; as a result Inspectors have the authority to:

- Enter premises at any reasonable time
- Obtain assistance from staff
- Be afforded any necessary facilities
- Seize articles or substances for testing or evidence
- Conduct investigations as deemed necessary
- Take statements from witnesses
- Take measurements and photographs as required
- Instruct that premises remain undisturbed for any reasonable time with regard to the completion of any examination or investigation.

In order that the Inspector can enforce the health and safety legislation the following can be imposed upon the employer:

Improvement Notice

Where the Inspector considers that health and safety legislation is being contravened he/she may serve an Improvement Notice on the person or organisation. The Notice will detail the contravention(s) to which they are referring,

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the reasons why they believe an offence has been committed and the actions required in order to remedy the matter within a specified period.

Prohibition Notice

Where the inspector believes conditions exist which present a serious and imminent danger to the health or safety of employees or other persons, he/she may serve a Prohibition Notice that requires that the activity must cease with immediate effect. The Notice will specify the matters that are presenting the risk and direct that the activity should not be resumed until the matters specified have been remedied.

Prosecution

Criminal prosecution remains the ultimate sanction available to the Health and Safety Inspectors.

Should the HSE decide to pursue a prosecution the courts have considerable sentencing powers available to them for example in lower courts this has recently been increased to a maximum fine of £20,000, a maximum of 12 months imprisonment, or both. In extreme cases crown courts may impose an unlimited fine and/or up to two years imprisonment.

The Meaning of 'Reasonably Practicable'

The term "so far as is reasonably practicable" has special status when used within the context of health and safety legislation.

'Reasonably Practicable' is a narrower term than 'physically possible' and implies that a computation must be made in which the cost of preventative action is weighed against the probability of injury occurring and likely severity of the injury. Where safety hazards are slight and the cost of protection is disproportionately high, the means of protection can be shown to be not reasonably practicable. This principle has been well established in the past in civil cases and, in general, the greater the risk, the greater is the sacrifice that the employer is expected to make to guard against that risk.