

Wilkins Safety Group

Weekly Update Newsletter



Welcome to this issue - Friday 1st July 2011 - of our Update Newsletter

Please feel free to forward this newsletter to colleagues and friends.

###



Re-cap on the HASAW Act 1974

HEALTH AND SAFETY AT WORK ETC. ACT 1974 AN OUTLINE OF THE MAIN PROVISIONS

The Health and Safety at Work etc. Act 1974 makes provision with regard to health, safety and welfare of persons at work, to protect others against risks to health or safety in connection with those activities, controlling the keeping and use of, and preventing unlawful acquisition, possession and use of, dangerous substances and controlling some emissions into the atmosphere. There has been a plethora of modernising and deregulating legislation since the 1974 Act. These Regulations cover all aspect of health and safety at work and many are very specific to certain industries and types of employment.

To carry out the provisions of the 1974 Act, a Health and Safety Commission and a Health and Safety Executive were set up. The Commission is an independent body, although it is funded from government finances, i.e. the taxpayer. It is the responsibility of the Secretary of State for Employment to supervise control and give the Commission directions for discharging its statutory duties.

An overview of the Act is as follows:

HEALTH AND SAFETY AT WORK ACT - MAIN PROVISIONS:

1. Covers everyone involved with work or affected by it.
2. Built on general duties to cover all possible hazards.
3. Encourages employers to improve organisation and systems.
4. Seeks to involve employees through unions and better information.
5. Provides stronger power for Inspectors.
6. Creates a framework for developing and updating detailed safety law.



PART 1: HEALTH AND SAFETY AND WELFARE

General Duties of Employer to Employees:

- The effect of Section 2 is to make criminally enforceable the common law duty to take reasonable care for the safety of employees.
- s.2 (1) "It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees".
- s.2 (2) In particular, this duty extends, so far as is reasonably practicable, to:
 - Safe plant and systems of work
 - Safe use, handling, storage and transport of articles and substances
 - The provision of any necessary information, instruction, training and supervision.
 - Safe place of work with safe means of access and egress
 - A safe working environment
- s.2 (3) Safety Policy

An employer must:-

- Prepare a written statement of his general health and safety policy
- Set down the organisation and arrangements for carrying out the policy, e.g. who is responsible and for what
- Revise and update as necessary
- Bring the policy and arrangements to the notice of all employees
- s.2 (4-7) Safety Representatives and Safety Committees

The act provides for the appointment by recognised trade unions of employee safety representatives who have functions prescribed by the Safety representatives and Committees Regulations 1977 (Note: s. (5) repealed by Employment Protection Act)

The employer must:-

- Consult with safety representatives on the arrangements for co-operation on safety measures
- Consult with safety representatives on monitoring safety measures
- When requested establish safety committees

Duties to others

- s.3 An employer (or self-employed person) must safeguard not only himself but anyone not in his employment who would be affected by his activities (e.g. the general public, contractors etc.)
- s.4 Those in control of premises must ensure that they are safe, have safe access and egress, and that any plant or substances do not endanger health. (I.e. affecting neighbours etc.)
- s.5 Those in control of prescribed premises must take the best practicable means to prevent noxious or offensive emissions into the atmosphere (I.e. affecting neighbours etc.). (Note: premises are to be prescribed by Regulations)

Duties to Suppliers

- s.6 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, (s.6(8)).

Duties of employees

- s.7 Every employee must:-
 - Take reasonable care for his own health and safety
 - Take reasonable care for the health and safety of anyone who may be affected by his acts or omissions
 - Co-operate with his employer or any other person to enable legal obligations to be met



Other duties

- s.8 No person must misuse or interfere with anything provided in the interests of health and safety at work
- s.9 Employees cannot be charged for anything done or provided to comply with specific legal obligations

Health and Safety Commission and Executive

- s.10-14 Initially, two bodies were set up:

The Health and Safety Commission had responsibility for:

- General Policy, research and dissemination of information.
- Developing the Law through proposals for Regulations and Codes of Practice and to consult with employer and employee organisations as appropriate.

The Health and Safety Executive, appointed by the Commission was responsible for:

- Implementing policy
- Inspection
- Enforcement
- Research, Information, Advice

These two bodies merged during 2008, and now the Health and Safety Executive carries out both functions.

Regulations and Codes of Practice

- s.15 The Act enables regulations to be introduced:
 - To modify or replace existing legislation.
 - To provide for new situations as they arise.
- s.16 The Act enables approved codes of practice to be introduced:
 - To provide practical guidance.

N.B. Regulations are enforceable by law. Codes of Practice are not enforceable by law but are admissible in evidence as failure to comply (s.17) - Introduction of new legislation must not detract from existing standards, i.e. a Code of Practice cannot replace a regulation.

Enforcement

- s.18-19
Authorities responsible for enforcement and appointment of Inspectors



Power of Inspectors

- To enter premises at any reasonable time
- To take a Constable with him if necessary
- To take with him another authorised person and necessary equipment
- To examine and investigate, and to this end require premises to be left undisturbed
- To take samples (subject to leaving a compatible sample)
- To dismantle or test any dangerous article or substance for examination or for use in legal proceedings
- To require information, facilities and assistance

- To require the production of any relevant books and documents
- To issue improvement or prohibition notices and initiate prosecutions
- To seize, destroy or render harmless any article or substance which is a source of imminent danger

Improvement and Prohibition Notices

- s.21 An Improvement Notice:
 - Identifies a contravention of legal requirements
 - Requires that the contravention be remedied within a specified time
- s.22 A Prohibition Notice:
 - Specifies a risk
 - Identifies any contravention of any legal requirements
 - Directs that the activities cease until remedied
- s.24 Employers may appeal against an Improvement or Prohibition Notice within 21 days. If an appeal is made to an Industrial Tribunal:
 - Improvement notices are suspended until the appeal is heard
 - Prohibition notices remain in force

Summary Offences

- s.33 It is an offence for a person:
 - To obstruct enquiries authorised by the Commission (s.14)
 - To prevent or hinder any other person appearing before an Inspector for questioning
 - Intentionally to obstruct an Inspector
 - Falsely to pretend to be an Inspector

A person shall be liable on summary conviction to a fine not exceeding 2,000.

Indictable Offences

It is an offence for a person:

- To fail to discharge any General Duty (s.2-7)
- To contravene sections 8 and 9
- To contravene any requirement imposed by an Inspector
- To contravene any Improvement or Prohibition Notice
- To contravene any notice requesting information to be given to the Commission.
- To make any statement known to be false
- Intentionally to make a false entry in any document required by law
- To forge a document with intent to deceive
- To fail to comply with an Order of the Court

A person shall be liable on conviction on indictment to imprisonment for a term not exceeding two years and/or an unlimited fine.

PART IV MISCELLANEOUS AND GENERAL ASPECTS OF PERSONAL LIABILITY

- s.17 If a regulation has been contravened, failure to comply with an approved code of practice is admissible in criminal proceedings.
- s.36 Where an offence is committed by a person due to the act or default of another, either or both may be prosecuted.
- s.37 Where an offence is committed by a corporate body with the knowledge or through the neglect of a responsible person, both that person and the body corporate are liable to prosecution.
- s.40 In proceedings for an offence, the onus on proving the limits of what was reasonably practicable rests with the accused.
- s.41 The absence of entries in a statutory record is admissible as evidence of failure to comply.

SUMMARY

- a. An 'enabling' Act.
- b. A general duty of care on all people at work.
- c. Protection for public and other persons.
- d. Flexible legislation - Codes of Practice.
- e. Consultation and Representation.
- f. Powers for Inspectorate.
- g. Criminal liabilities for employers, employees, designers, manufacturers, suppliers, importers, contractors.

###



Your chance to directly influence the future of health and safety regulation

From 30 June, health and safety regulation became the focus of the Government's Red Tape Challenge, launched by the Prime Minister in April to give people the chance to have their say on regulations that affect their everyday lives. The Challenge is therefore an opportunity for people to directly influence the future of health and safety regulation, to simplify health and safety and to support business growth in Great Britain.

The Government will act on the comments they receive, so it is important that there is a well-informed debate.

You can find out more at <http://www.hse.gov.uk/news/red-tape-challenge/>, or alternatively, join the debate now at <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/> and give your views on which regulations should stay, which should go and which should change.

###

If you would like to discuss any of the issues highlighted in this newsletter, then drop an email to Jon on jon@jonwilkins.co.uk or call the office **01458 253682**



Your Business is Safer
Your Business is Safer in Our Hands

Have you visited our new website yet? Go to <http://www.wilkinssafety.co.uk/>