

January 2013

HEALTH AND SAFETY

Introduction

1. The Health and Safety Executive (HSE) advises that over 200 people lose their lives at work in the UK each year. Additionally, about 150,000 non-fatal injuries are reported and an estimated 2 million suffer from ill health caused or made worse by their work. Local councils are made up of over 80,000 councillors and employ over 25,000 staff and have a legal responsibility to ensure the safety of its employees and others.
2. The Health and Safety at Work etc Act 1974 imposes duties on employers, the self-employed and employees to protect health and safety. The aim of this Note is to set out some basic principles and to highlight other provisions which councils may need to research in further detail. It hardly needs to be said that this Note cannot hope to cover all of the relevant legal provisions in detail. Councils are encouraged to seek advice either from NALC or from the HSE if further information is required. The HSE issues many publications and free leaflets and their website can be accessed at www.hse.gov.uk

The General Duty of Employers

3. The duty is set out in clear language in section 2 of the Health and Safety at Work etc Act 1974 which states:

“(1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer’s duty under the preceding subsection, the matters to which that duty extends include in particular:

- *the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;*
- *arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;*
- *the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;*
- *so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;*
- *the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work."*

If a local council employs officers who work at home, they will still have duties to ensure their health, safety and welfare.

4. The general duty is supplemented by a number of Regulations which are discussed later in this Note.

Health and Safety Policies

5. Section 2(3) of the Act is in the following terms:

"Except in such cases as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all of his employees."

Notably, the Employers' Health and Safety Policy Statements (Exception) Regulations 1975/1584 confirms that employers with fewer than 5 employees are exempt from the s.2(3) duty. Although many local councils will have fewer than 5 employees, NALC strongly recommends, as a matter of good practice, that all councils should have a written policies in place.

Duties to Non-Employees (this would include contractors)

6. Sections 3(1) and 3(3) of the Act states as follows:

*“It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, **that persons not in his employment** who may be affected thereby are not thereby exposed to risks to their health or safety.”*

“In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.”

A “self employed person” is defined as an individual who works for gain or reward or otherwise than under a contract of employment, whether or not he employs himself.

Local councils commonly enter into contracts for the provision of services (e.g. the execution of repairs and improvements) and should ensure that they (i) do not expose contractors to risks to their health and safety and (ii) such contractors do not expose non-employees (e.g. visitors/public) to risks to their health and safety. On a practical level, local councils should ensure all their independent contractors are competent to undertake the work and request that they have public liability insurance cover.

Section 4 of the Act confers additional duties on local councils by:-

(1) imposing on persons duties in relation to those who—

(a) are not their employees; but

(b) use non-domestic premises made available to them as a place of work or as a place where they may use plant or substances provided for their use there, and applies to premises so made available and other non-domestic premises used in connection with them.

(2) It shall be the duty of each person who has, to any extent, control of premises to which this section applies or of the means of access thereto or egress therefrom or of any plant or substance in such premises to take such measures as it is reasonable for a person in his position to take to ensure, so far as is reasonably practicable, that the premises, all means of access thereto or egress therefrom available for use by persons using the premises, and any plant or substance in the premises or, as the case may be, provided for use there, is or are safe and without risks to health.

'Non domestic premises' are premises not occupied as a private dwelling (including garden, yard, garage and outhouse)

Local Councils regularly employ people to provide services (e.g. catering, repair work, grass cutting) to them in land or premises which they own or manage (e.g. recreational facilities, parks, and burial grounds) and should take note of the effect of section 4 above.

Duty of Employees

7. Section 7 of the Act states that it shall be the duty of every employee while at work:
 - (i) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and
 - (ii) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

Regulations and Codes of Practice

8. The 1974 Act is supplemented by a number of Regulations and Codes of Practice. A

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brief outline (only) is provided below. Councils who believe that Regulations or Codes apply to them should seek further information from the HSE.

(i) Management of Health and Safety at Work Regulations 1999 (as amended)

9. Regulation 3 requires employers to carry out “Risk Assessments”. A Risk Assessment has been described as “nothing more than a careful examination of what, in your work, could cause harm to people. Risk assessment should be a practical exercise, aimed at getting the right controls in place.” Further information is provided in a leaflet published by the HSE called ‘Five Steps to Risk Assessment’. To demonstrate how straightforward this exercise can be, the 5 steps are summarized as follows:-

Step 1 - Identify the hazards

Step 2 - Decide who might be harmed and how

Step 3 - Evaluate the risks and decide on precautions

Step 4 - Record the findings and implement them

Step 5 - Review the risk assessment and update if necessary

Regulation 7 requires employers to appoint one or more competent persons (who may or may not be in the council's employment) to assist them in undertaking the measures they need to take to comply with statutory requirements imposed upon them. Employers should ensure that the number of persons so appointed, the time available for them to fulfil their functions and the means at their disposal are adequate having regard to the size of the undertaking, the risks to which employees are exposed and the distribution of those risks throughout the undertaking.

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

10. These Regulations cover a number of diverse issues including:

- (i) ventilation;
- (ii) temperatures in indoor workplaces;
- (iii) work in hot or cold environments;
- (iv) lighting;
- (v) cleanliness and waste materials;
- (vi) room dimensions and space;

- (vii) workstations and seating;
- (viii) maintenance;
- (ix) falls into dangerous substances;
- (x) transparent or translucent doors, gates or walls and windows;
- (xi) windows doors and gates;
- (xii) escalators and moving walkways;
- (xiii) sanitary conveniences and washing facilities;
- (xiv) drinking water;
- (xv) accommodation for clothing and facilities for changing; and
- (xvi) facilities for rest and to eat meals.

11. Further information can be found in the HSE publication 'Workplace health, safety and welfare - A short guide for managers'.

(iii) Personal Protective Equipment at Work Regulations 1992

12. Personal Protective Equipments is defined by the Regulations as:

“all equipment (including clothing affording protection against the weather) which is intended to be worn or held by a person at work and which protects him against one or more risks to his health or safety.”

13. The main requirement of the regulations is that personal protective equipment is to be supplied and used at work wherever there are risks to health and safety that cannot be adequately controlled in other ways. Further information in respect of these Regulations can be found in a leaflet published by the HSE called 'A short guide to the Personal Protective Equipment at Work Regulations 1992'.

(iv) Manual Handling Operations Regulations 1992

14. Manual handling is transporting or supporting loads by hand or using bodily force. The HSE advises that manual handling causes more than a third of all over-three-day injuries reported each year to HSE and local authorities.

15. The regulations require employers to:

- (i) avoid the need for hazardous manual handling, so far as is reasonably

practicable;

- (ii) assess the risk of injury from any hazardous manual handling that cannot be avoided; and
- (iii) reduce the risk of injury from hazardous manual handling, so far as is reasonably practicable.

16. The HSE has published a leaflet called 'Getting to Grips with Manual Handling'.

(v) Health and Safety (Display Screen Equipment) Regulations 1992

17. The HSE advises that using a computer or other kinds of display screen equipment (visual display units) can give rise to back problems, repetitive strain injury, or other musculoskeletal disorders. Work with a screen does not cause eye damage, but many users experience temporary eye strain or stress. The HSE has published a guide called 'Working with VDUs'.

Other Regulations

18. There are a number of other Regulations which may be relevant to local councils. These include:

- (i) The Work at Height Regulations 2005;
- (ii) The Electricity at Work Regulations 1989;
- (iii) The Provision and Use of Work Equipment Regulations 1998;
- (iv) The Lifting Operations and Lifting Equipment Regulations 1998;
- (v) The Confined Spaces Regulations 1997;
- (vi) The Health and Safety (First Aid) Regulations 1981;
- (vii) The Regulatory Reform (Fire Safety) Order 2005; and
- (viii) The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR).

NALC has issued a legal briefing in respect of (vii) The Regulatory Reform (Fire Safety) Order 2005.

Consultation with Employees and Safety Representatives

19. Two sets of Regulations govern how and when employers should consult with their

employees. These are:

- (i) The Health and Safety (Consultation with Employees) Regulations (HSCER) 1996; and
- (ii) The Safety Representatives and Safety Committees Regulations (SRSCR) 1977.

20. Further details can be found in the HSE publication 'Consulting Employees on Health and Safety Law'.

Displaying Posters

21. Health and Safety Information for Employees Regulations 1989 (as amended) requires employers to display a Health and Safety poster at a place easily accessible and in position easily seen to employees or to give employees a copy of a leaflet which contains the same information. These Regulations require information relating to health, safety and welfare to be furnished to employees by means of posters or leaflets in a form approved and published by the HSE.

Health and Safety Enforcement

22. Inspectors from the Health and Safety Executive (HSE) or local authorities enforce Health and Safety law. Inspectors have broad powers and:

- (i) have powers of entry;
- (ii) can serve improvement notices;
- (iii) can serve prohibition notices;
- (iv) can serve a notice requiring information; and
- (v) can commence criminal proceedings for breaches of the duties and obligations set out in the Act or the regulations (as set out above).

Insurance

23. Local councils are required by the law to insure against liability for injury or disease to their employees arising out of their employment under the provisions of the Employers' Liability (Compulsory Insurance) Act 1969. Full details of the Act are set out in the HSE's publication 'Employers' Liability (Compulsory Insurance) Act 1969 - A guide for employers'.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
22	Disciplinary & Grievance Arrangements	Sets out arrangements for dealing with employment issues.
35	Contracts	Considerations for councils for tendering process and award of contracts.
40	Local Councils' Documents and Records	Sets out the employers' liability insurance documents that must be maintained by local councils.
42	Occupiers' liability	Sets out local councils' duties in respect of their occupation of land/ premises.
68	Negligence	Sets out issues relating to public liability insurance for local councils or their contractors.

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