

South East Regional Assessment Centre Limited
(SERAC)
WASTE MANAGEMENT &
ENVIRONMENTAL LEGISLATION COURSE NOTES

Disclaimer: The following is designed as training information to provide the delegates with the background knowledge as part of a learning and assessment package. It is not intended to be a detailed legal reference and must not be used as such. Where required further legal advice must be sought, to check errors or omissions.

Safety law

Under-pinning knowledge notes

These notes aim to give managers and others a brief outline of safety law in the UK. The notes below do not cover every item of safety law relevant to the waste management industry, but do cover most of the main items of legislation and some areas of general safety management.

The below notes can be used by COTC candidates to revise for their under-pinning knowledge assessment under unit 3 of their COTC.

Please note that use of these notes is for background information only – if managers or others have any doubts they must contact the HSE for more detailed advice. Please also note that the below notes do not include all areas of safety law which managers may need to be familiar with – just the basics.

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Please note that these notes do not include fire as a topic area and COTC candidates will need to refer to HSE

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documents on fire.

1. Why do safety?

Commonly three main reasons are given for companies spending considerable time and resource on safety:

- The moral dimension
- Avoidance of criminal prosecution and/or civil litigation
- The financial implications of ignoring safety

The moral dimension

Most directors of companies when asked why they promote health and safety will give their moral responsibility as the first reason. Whether this is believed or not, or whether it is enlightened self-interest, is debatable. But, it is still the first answer normally given. No one comes to work to be hurt, with, perhaps, the exception of the armed forces, police etc (although this is now changing). Employers have a moral duty to protect their employees, but this is not simply a pure moral decision. Surveys have shown that companies with poor safety records suffer from:

- Low morale amongst their workforce and lower productivity
- Increased employee relation problems
- Poor public image

Safety is synonymous with success. Name virtually any successful company and it is likely that they are also known for their good safety record (or at least not known for their poor record):

ESSO	Good safety record?	Successful company?
Railtrack	Good safety record?	Successful company?
Dupont	Good safety record?	Successful company?

In extreme cases a poor safety record can result in a company ceasing to exist. For example, Townsend Thorson went under following the Herald of Free Enterprise ferry disaster. Ultimately, employees work better if they believe the company cares for them - this duty of care must start with looking after safety and welfare.

The legal case

Companies which breach health and safety law and/or have a poor accident record may suffer criminal prosecution and/or civil litigation. The consequences of these can be severe:

Criminal prosecution can result in very high fines (the current safety law record is nearly £700,000 for one count). Defending criminal prosecutions is also expensive - spending in excess of £50,000 on legal fees and then losing and being fined £250,000 will do nothing to benefit a company's bank balance. Criminal prosecution will also affect a company's ability to get business through poor image - most large companies ask about any criminal prosecutions before awarding tenders.

In addition to fines and legal costs, criminal prosecution can end up in jail for directors, managers and individual employees (although this is rare). Directors can also be banned from holding a company directorship and may face corporate manslaughter charges - a charge which carries sentencing powers well beyond most safety law.

Civil litigation can be more expensive than criminal prosecution. A serious accident, which results in an employee being disabled for life, may cost a company in excess of £1 million. While insurance will pay for this in the short term, no insurance company ever made a loss and will gain the money back through increased premiums.

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The financial case

Accidents cost money. It is estimated that accidents at work have cost one particular organisation in the UK nearly £1 million a year. These are just the uninsured costs and insured costs can be added to the total. Accident costs come straight off a company's profit margin, not turn-over. The costs of a poor safety record do not just stop there:

- Tenders and new customers may be lost
- Insurers may ask for higher premiums
- Criminal prosecution and civil litigation costs will be higher

All of the above cases (moral and legal), in the end, may be reduced to a financial argument. Add-up:

- Lost productivity
- The cost of poor employee morale
- The cost of poor publicity and lost custom
- Legal, criminal and civil costs
- The costs of accidents and insurance costs

And then ask yourself if you can really say that successful companies are not safe companies?

2. The legal system in Britain

British law is split into two main areas:

- Criminal law
- Civil law

Each has their own set of courts, punishments/remedies, statutory acts and level of proof required:

Criminal law

Nearly always statute
Fines and imprisonment
Beyond all reasonable doubt
Regulators (HSE/EHOs)
Wrong against state

Civil law

Some statute, mainly case law
Damages
On the balance of probabilities
No regulators
Wrong against person

Taking each branch of law in turn:

Criminal law

Criminal law is nearly all statute law - a breach of criminal law is a 'crime against the state'. In safety terms, virtually all written (statute) law is criminal (there are some exceptions - see below). The Health and Safety Executive regulate criminal safety law in Britain for industrial premises and local environmental health officers for shops and offices.

If a company or person is found guilty under criminal law the remedies are either fines and/or imprisonment. Insurance etc cannot pay for criminal law fines (nor can imprisonment be given to a 'stand-in'). The aim of the remedies is punishment, rehabilitation (ie, not to do it again) and deterrence (ie, for other persons).

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The burden of proof in criminal law is 'beyond all reasonable doubt' - not surprising as punishments such as imprisonment are available. The courts for criminal law are:

- **Magistrates court** - lowest level. Maximum fines are £5,000 for technical regulation breaches and £20,000 for general safety law breaches. No imprisonment remedy is available. Either three lay-magistrates (JPs - Justices of the Peace) sit or one stipendiary magistrate. JPs are 'upstanding' members of the community and are not trained in law. Stipendiary magistrates are trained in the law and are usually solicitors.
- **Crown court** - for more serious cases. Unlimited fines are available and imprisonment for up to two years for most health and safety law breaches (more if a case of corporate manslaughter is brought). Judges are either high court judges (serious cases) or circuit judges - both are professionals. Trial by jury is the norm.
- **Court of appeal** - may overturn the decisions of lower courts. Three or more senior judges sit and decide on points of law and points of fact.
- **House of lords** - the Law Lords sit in cases where a point of law or an issue of public importance is at issue.
- **European courts** - available and may overturn British legal system decisions.

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Civil law

Civil law involves a wrong against the person, not the state (although many accidents have both criminal and civil implications). Cases under civil law are always titled, for example, Brown vs Smith, whereas criminal cases are titled, for example, R (Regina) vs Brown. The burden of proof in civil law is 'on the balance of probabilities' - that is far less than in criminal law.

There are three 'torts' (wrongs) under civil law:

- Defamation (slander and libel)
- Trespass (against the person or property)
- Negligence

In safety terms the main civil wrong is negligence. The remedies under civil law for negligence are damages (that is money to compensate for a wrong). There are no regulators for civil law and cases are brought by the wronged person. Most civil law is based on case law (previous cases), but there are some items of statute civil law, such as:

- The Occupiers Liability Act
- The Employers Liability (Defective Equipment) Act
- The Employers Liability Compulsory Insurance Act

In order to prove negligence the following path must be followed:

1. Was a duty of care owed? In the case of personal injury accidents it is normally obvious, such as employers have an obvious duty of care to their employees
2. Was this duty breached? This can be proved through case law and precedent, or through 'breach of statute' (that is a guilty verdict in a criminal case can, sometimes, be used as proof of liability)
3. Was the outcome direct, foreseeable and of a type consistent with the breach of duty?

Because of the difference in the burden of proof and the lack of regulator resources, there are far more civil cases brought each year than criminal cases. The courts for civil law are:

- **Small Claims Court** - informal court for cases where the damages which are being sought are at relatively small level
- **County Court** - circuit judges who sit alone in judgement and deal with more expensive cases in which the damages being sought are of a higher level
- **High Court (Queens, Chancery and Family divisions)** - higher level judges who sit alone and deal with unlimited damages
- **Court of appeal** - three senior judges who can overturn the decisions of lower courts
- **House of Lords** - three senior judges who can decide on points of law of fact (the House of Lords is the highest court in the UK)
- **European courts** - available and can overturn judgements in the British courts (the European Court of Justice and the European Court of Human Rights)

The Woolf Reforms

The Woolf Reforms cover all branches of law, but most affects civil claims. The aim of the Woolf Reforms is to reduce the time taken for civil claims to be settled, reduce legalistic bureaucracy and simplify the claims process. In general, the Woolf Reforms have increased the number of civil claims being made.

Evidence in criminal and civil cases

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Evidence in both civil and criminal cases tends to fall into two categories: Verbal and documentary. For example, the witness statement of a person involved in an accident and the written risk assessment for the task in question. While verbal evidence can be valuable, documentary evidence is often key.

Written records are either required by most items of safety law, or implied. For example, the Provision and Use of Work Equipment Regulations require written instructions to be given for more complex pieces of equipment. However, the Regulations also state that appropriate training must be given for other equipment - if this training is not recorded how does a company prove it has been given?

Under civil law, the Woolf Reforms include a list of documents that a solicitor representing an injured person can ask for, such as the minutes of the Health and Safety Committee where the accident was discussed. Again, this requirement for documentary evidence is key in defending.

3. The history of health and safety law and the Health and Safety at Work etc Act 1974

Safety law is one of the oldest branches of law in Britain. Early examples were normally concerned with working conditions, such as the banning of young persons from cleaning chimneys. Examples of early safety legislation include:

- Spinning by Self-Acting Mules Regulations 1907
- Lead Smelting and Manufacture Regulations 1911
- Glass Bottle etc Manufacture Welfare Order 1918
- Fruit Preserving Welfare Order 1919
- Herring Curing (Norfolk and Suffolk) Welfare Order 1920
- Manufacture of Cinematographic Film Regulations 1928

As can be seen, safety law in the early days tended to be very specific and, generally, written as the result of accidents and occupational health problems coming to light. Various attempts were made to rationalise safety law into general Acts, such as the 1961 Factories Act, but mistakes were still made.

Eventually after an enquiry headed by Lord Robens, the 1974 Health and Safety at Work Act was released and is still the main piece of safety law even today.

The Health and Safety at Work etc Act 1974

The Health and Safety at Work Act 1974 (HSWA) is 85 sections long (Acts have sections while Regulations have 'regulations') plus schedules. HSWA covers almost every area possible and was intended to be THE basis for safety law in Britain. Indeed even today more criminal prosecutions are brought under HSWA than any other item of safety law.

One of the unique features of HSWA is that for its general sections (2 - 7), the burden of proof is reversed. In most British law a defendant is innocent until proven guilty. For sections 2 - 7 of HSWA this is reversed and the defendant is presumed guilty until he/she can prove otherwise. This is a critical point - a lack of evidence, normally documentary, will result in a guilty verdict rather than innocent.

As a balance to this, sections 2 - 7 of HSWA may not be used as proof of breach of statute and, therefore, liability in civil law.

Going through all 85 sections of HSWA would be a mammoth task. However, a basic understanding of the principle sections is key to understanding safety law and an employer's duties.

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Section 2 of HSWA

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.

The critical term in the above is 'so far as is reasonably practicable'. The basic tenet of which is that there is a balance to be made between the risks faced and the time, trouble and resources required to defeat that risk. The earliest case to define the term was 'Edwards vs National Coal Board 1949'.

Edwards was an employee of the National Coal Board (NCB). The NCB had decided as a matter of policy not to shore-up all of its mine tunnels, relying instead on the advice of geologists to assess the risk of a tunnel collapse and whether shoring should be used. Despite this a section of un-shored tunnel collapsed killed Edwards. The judge's ruling was that where the risk is death the time, trouble and resources required to shore all tunnels should have been expended.

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

- (a) The provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health*
- (b) Arrangements for ensuring, so far as is reasonably practicable, safety and the absence of risks to health in connection with the use, handling, storage and transport of articles and substances*
- (c) 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*
- (d) 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*
- (e) 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*

In essence, employers must provide training, safe systems of work, safe equipment, a healthy environment and a safe workplace.

2(3) - 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 respects 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.

Companies, therefore, need a health and safety policy statement and all employees need to be aware of it.

2(4) - Regulations made by the Secretary of State may provide for the appointment in prescribed cases by recognised trade unions of safety representatives from amongst the employees and those representatives shall represent the employees in consultations with the employers under subsection (6) below and shall have other functions as may be prescribed.

2(6) - It shall be the duty of every employer to consult any such representatives with a view to making and maintenance of such arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees and in checking the effectiveness of such measures.

2(7) - In such cases as may be prescribed it shall be the duty of every employer, if requested to do so by the safety

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representatives mentioned in subsection (4) above, to establish, in accordance with regulations made by the Secretary of State, a safety committee having the function of keeping under review the measures taken to ensure the health and safety at work of his employees and other such functions as may be prescribed.

Subsections 2(4), 2(6) and 2(7) paved the way for the Safety Representatives and Safety Committees Regulations 1977. To an extent the powers in HSWA and the Regulations have also now been spread to non-union employees through the Health and Safety (Consultation with Employees) Regulations 1996. Of general interest, the CBI (Confederation of British Industry) and other employer's organisations resisted this part of HSWA and it was more than two years after HSWA was released that the Regulations were finally agreed.

Section 3 of HSWA - general duties of employers to those not in their employ

3(1) - 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 and safety.

This is the employer's primary duty to non-employees, such as contractors, temporary workers, members of the public etc. Most prosecutions brought against employers involving non-employees are under Section 3(1) of HSWA..

3(2) - repeats 3(1) for self-employed persons.

3(3) - In such cases as may be prescribed, it shall be the duty of every employer and self-employed person, in the prescribed circumstances and in the prescribed manner, to give 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 and safety.

The above is all about giving information to non-employees about the risks posed to them. For example, the induction of contractors is relevant under Section 3(3). Other pieces of safety regulations (ie, the prescribed conditions etc) expand on this point. Section 3(3) may also apply to members of the public, such as signs indicating any hazards.

Section 4 of HSWA - general duties of persons involved in premises to persons not in their employ

4(1) - This section has effect for 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.

Disentangling the above gives the outcome that those who lease out, rent out etc premises have duties under criminal law to those who use them. Note that this is criminal law. Civil statute law such as the Occupiers Liability Act may impose civil duties (that is allow those injured on premises to sue the owner/occupier), but Section 4 of HSWA is criminal law.

4(2) - It shall be the duty of each person who has, to any extent, control of premises to which this section applies or to the means of access thereto or egress therefrom or of any plant or substance in such premises, to take such measures as 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.

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In a nutshell, if the stairs in an office leased from an owner collapse injuring a person, the owner may suffer criminal prosecution as well as civil action.

4(3) - Where a person has, by virtue of any contract a tenancy, an obligation of any extent in relation to

(a) the maintenance or repair of any premises to which this section applies or any means of access thereto or egress therefrom; or

(b) the safety or absence of risks to health arising from plant or substances in any such premises;

that person shall be treated, for the purposes of subsection (2) above, as being a person who has control of the matters to which this obligation extends.

In brief, if the maintenance of a lift has been handed over to the occupier of an office by its owner as a matter of contract, and that lift fails because of a lack of maintenance, the owner of the office may 'get off' any prosecution.

4(4) - Any reference in this section to a person having control of any premises or matter is a reference to a person having control of the premises or matter in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not).

In essence, charities etc are also covered.

Section 5 of HSWA - General duties of those in control of premises in relation to emissions to atmosphere

This section has been amended by the Environmental Protection Act 1990 and, in practice, can be largely ignored.

Section 6 of HSWA - General duties of manufacturers as regards substances and articles for use at work

The vast majority of waste management operations do not involve the manufacture of articles or substances for use at work. In addition, more specific legislation, such as the Supply of Machinery Regulations, is often more useful as a source of information on what needs to be done. In essence, Section 6 imposes a duty:

- On manufacturers to ensure equipment, substances etc are safe in use, storage, transport etc
- On installers that equipment, substances etc are erected etc in a safe manner and to use when erected etc
- Place similar duties on those who import and/or supply equipment and substances
- Has specific mention of fairground equipment

Section 7 of HSWA - General duties of employees at work

7 - It shall be the duty of every employee while at work -

(a) 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

(b) 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.

Section 7 is the counterpoint to the duties outlined in sections 2 and 3 for employers. It imposes duties on employees to co-operate with their employer in fulfilling legal obligations and to take reasonable care when working. For example, employees have a duty to provide safe systems of work, such as operational procedures etc. Once an

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employee has been inducted, and if required trained, in these if he ignores them he may suffer prosecution personally (the employer would also be likely to be prosecuted under Section 2 for failure to ensure the system is followed).

Section 8 of HSWA - Duty not to interfere or misuse things provided for safety

8 - No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of the relevant statutory provisions.

Under Section 8 it would, for example, be illegal for an employee to let-off a fire extinguisher 'for a laugh'. More relevantly, employees who, for example, deliberately remove machine guards or interfere with interlocks and/or locked-off equipment, may suffer personal prosecution.

Section 9 of HSWA - Duty not to charge for things provided for safety

9 - No employer shall levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of any specific requirement of the relevant statutory provisions.

The most common example of a breach of Section 9 is an employer who charges for personal protective equipment (PPE). However, Section 9 could also apply, for example, to employers who charge employees for health checks etc.

In synopsis, sections 1 to 9 deal with the general duties of employers, those in control of premises, manufacturers and employees. HSWA then turns to various other provisions. These are listed below, but only those of significant impact are noted in any depth.

Sections 10, 11, 12, 13, 14 of HSWA - The Health and safety Commission and the Health and Safety Executive (HSE)

These sections established the Health and Safety Commission and the HSE.

Section 15 of HSWA - Power to produce health and safety regulations

Under Section 15 the Secretary of State may cause to be written health and safety regulations. These regulations are made under HSWA and normally deal with specific issues. Examples are the Provision and Use of Work Equipment Regulations, the Control of Major Accident Hazard Regulations etc. Parliament does not need to vote on regulations unless a Member of Parliament raises an objection - they are 'passed on the nod'.

Sections 16 and 17 - Power to approve codes of practice and use in prosecution

Health and safety regulations are, by their very nature, complex and legalistic documents. The Health and Safety Commission may produce and/or approve approved codes of practice (ACOPs), which interpret the law. For example, it may produce an ACOP which interprets a requirement for warning of reversing vehicles as meaning the provision of reversing beepers, lights etc.

ACOPs are not the law; they interpret the law. However, an employer who decides to ignore an ACOP under the justification that it is not the law is unlikely to avoid prosecution. Section 17 specifically makes it clear that the courts can use the breach of an ACOP as evidence.

Section 18 of HSWA - Authorities responsible for regulating safety law

The HSE does not cover all types of premises and operation. Local environmental health officers cover some premises and operations. In general the HSE covers industrial premises and local authority environmental health

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officers shops and offices. Examples are:

HSE regulator	Environmental health regulator
Landfills	Administration offices
Incinerators	Shops
Transfer stations	Retail and warehouse customer premises
Recycling factories	Office customer premises

Please note that the HSE and local authority environmental health officers are not the only regulators - road traffic accidents typically come under the police. While the lines between different regulators are defined, one body may ask another for help. For example, it is not unusual for local authority environmental health officers to ask the HSE for advice regarding accidents at shops that involved machinery etc. Likewise the police can bring in the HSE if a road traffic accident involved someone at work, such as a sales representative who falls asleep at the wheel.

Sections 19 and 20 of HSWA - Appointment and powers of inspectors

The HSE and local authority environmental health departments can appoint officers (that is HSE inspectors and environmental health inspectors). These inspectors have significant powers (defined in Section 20 of HSWA). In brief, inspectors can:

- Enter any premises at any reasonable time without a search warrant
- Take with them a police officer (or several) if they believe they may encounter resistance
- Take measurements, photographs etc while at a premises without the owners consent
- Take any samples etc as required without the owners consent
- Take away any equipment, substances etc the inspector may require without the owners consent
- If any equipment etc presents a serious and present hazard to make it safe, if necessary by destruction
- Require any person to give him information as required, although the person being interviewed has the right to have another person present
- Require the production of any documents etc he believes may be required and take copies of such away with him
- Any other powers which may be required to carry out relevant statutory provisions

In short, HSE and local environmental health inspectors, if they have due reasons, can go anywhere, remove anything, look at anything, take copies of anything, sample anything, talk to anyone and photograph etc anything they want to. These powers are considerably in excess, for example, of those of the police.

Sections 21, 22, 23 and 24 - Improvement and prohibition notices

If they have reasonable cause inspectors can impose improvement and prohibition notices. These require employers to either make improvements in a reasonable timespan or stop doing an operation or task until various conditions are met. Both improvement and prohibition notices are formal legal documents and failure to comply with them can result in prosecution (the quickest way for a manager or director to suffer a personal prosecution is to ignore a prohibition notice). Taking each in turn:

Improvement notices - are usually imposed for breaches in health and safety law and practice, which do not involve the likelihood of an accident in the short-term. For example, an inspector may visit a site and discover that risk assessments have not been written for all tasks. An improvement notice may be issued to ensure that such risk assessments are written.

Improvement notices must give an employer a reasonable timespan to rectify any fault found (the minimum is 21 days - the time in which an appeal can be lodged - see below). Timespans imposed may be many months and inspectors need to be reasonable about how improvement notices are used.

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Improvement notices may be appealed to industrial tribunal within 21 days of being served. If an appeal is lodged the improvement notice is suspended until the appeal is heard. Tribunals can either uphold a notice, modify it (for example the timespan given) or reject a notice.

Prohibition notices - are usually served if the breach in safety law or practice is such that an accident may occur in the short-term or if the likely nature of the potential accident would be serious. For example, a prohibition notice might be served on a landfill site if it has no fall protection for HGV drivers using the site (this is a real example which resulted in the landfill in question being shut for a week until a gantry could be put in place).

A prohibition notice is lifted when the inspector is satisfied that any fault has been rectified. Such as, in the above example, when the gantry was in place. Prohibition notices can be appealed within 21 days. However, the notice is not suspended while the appeal is heard. Appeal is to an industrial tribunal, which may uphold, modify or lift a notice.

Section 25 of HSWA - Power to deal with imminent danger

If an inspector believes an article or substance to represent a imminent danger, he has the power to seize it and, if required, render it safe by destruction. This power, as might be expected, is bounded by procedure. However, in theory, an inspector may seize anything - the current record is the seizure of an oil rig.

Sections 26 - 28 of HSWA - various measures on information disclosure and indemnifying inspectors
Sections 29 - 32 of HSWA - Repealed (used to deal with agriculture, now covered elsewhere in legislation)

Section 33 of HSWA - Offences

Section 33 defines what is an offence under HSWA. For example, Section 33(1)(a) states that it is an offence to contravene sections 8 and 9 of HSWA. Section 33 also defines that it is an offence to breach regulations made under HSWA.

Sections 34 and 35 of HSWA - Provisions for time extensions and venues for hearings etc

Section 36 of HSWA - Commissioning an offence

36(1) - Where the commission by any person of an offence under any of the relevant statutory provisions is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence, by virtue of this subsection whether or not proceedings are taken against the first mentioned person.

In short if an employer commissions an offence he can be prosecuted, even if the person who actually committed the offence is not prosecuted. For example, if a company contracts another company to carry out a task and the conditions of the contract mean that this second company commits an offence, the first company can be prosecuted even if the second is not.

Section 37 of HSWA - Offences by the body corporate

37(1) - Where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary (ie company secretary) or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

This is the section, which managers and directors need to be concerned about. In essence, if an offence committed by a company is found to have been the fault of, or committed with the knowledge of or encouragement of etc of a Safety law under-pinning knowledge notes / 1 May 2002

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manager or a director, they could suffer a personal prosecution. Note that the section also covers the 'neglect' of a manager or director - inaction may also result in a personal prosecution.

Section 37 also includes the phrase 'or a person purporting to act in any such capacity'. For example, if a supervisor or any employee decides to take it upon himself to make decisions, which are outside of his remit, they can also suffer prosecution. One example of this is the case of a foreman who intimidated his manager so much that he in effect became the manager. An accident occurred as the result of a decision this foreman made and his defence was that his manager should have made the decision. This defence back-fired as the courts decided that he had acted as if he were the manager or director of the company and people considered him as such.

Sections 38 and 39 of HSWA - Various legal requirements on prosecutions

Section 40 of HSWA - Burden of proof

40 - In any proceedings for an offence under any of the relevant statutory provisions consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, or to use the best practicable means to do something, it shall be for the accused to prove (as the case may be) that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement.

This is the section, which reverses the burden of proof for sections that require something to be done 'so far as is reasonably practicable'. In the case of HSWA sections 2 - 7. For offences brought under sections 2 - 7 it is the responsibility of the accused to prove they are innocent, not for the prosecution to prove they are guilty. This overturns the common view that you are innocent until proven guilty.

Section 41 of HSWA - Use of documents as evidence

41(2) - Where an entry which is so required to be so made with respect to the observance of any of the relevant statutory provisions has not been made, that fact shall be admissible as evidence or in Scotland sufficient that the provision has not been observed.

In most law a lack of evidence cannot be used as evidence of guilt. However, in safety law it can. For example, if a regulation requires a record to be kept, such as lifting equipment test records or written risk assessments, the fact that these have not been kept can be used as evidence of guilt.

Section 42 of HSWA - Power of courts to cause offences to be remedied

Under Section 42 the courts can in addition to prosecuting a company or person (and levying fines or imprisonment), or instead of, demand that a situation be remedied. For example, under most law a company could be prosecuted for a relatively trivial offence and just keep on committing that offence and suffer a series of small fines.

This is not so under HSWA where the court can demand the company stops and remedies the situation - failure to do so would result in increasingly large punishments.

Sections 43 - 85 of HSWA - various provisions

The remaining sections of HSWA deal with a variety of provisions from HSE expenses (not much in most circumstances) and the adoption of metric units of measure to formal permission to call HSWA the Health and Safety at Work etc Act rather than its full title. While of interest to those in the legal profession, such sections can be safely left alone by operations managers.

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4. The 'Six Pack' and the impact of European Directives

HSWA was conceived and written in the 1970s as UK law and had little or no input from the rest of Europe. Indeed many continental countries have only recently introduced legislation similar to HSWA. However, from the early 1990s onward the influence of European law has been at the forefront of safety law development.

The European Commission has the power to write safety directives and pass them for voting on to the European Parliament. Unlike many items of law written in Europe, safety law only requires 'qualified majority voting' to be passed. Most other law requires a unanimous vote.

The outcome is that countries may have imposed upon them safety laws which they do not want and voted against. Such European Directives must be incorporated into national domestic law within specified timescales.

The UK Government usually does this by producing a regulation based on, and complying with, the relevant European Directive. Examples of this are:

European Directive	Equivalent UK Regulation
Noise at Work Directive The Framework Directive	Noise at Work Regulations The Management of Health and Safety at Work Regulations and others
The Machinery Directive The Work Equipment Directive	The Supply of Machinery Regulations The Provision and Use of Work Equipment Regulations and the Lifting Operations and Lifting Equipment Regulations
Working Time Directive	The Working Time Regulations

It is not always the case that there is a direct comparison between directive and regulation. For example, the Temporary Workers Directive has not been turned into the Temporary Workers Regulations. Rather the requirements of the Temporary Workers Directive have been incorporated into various regulations as separate sections within those regulations.

However directives are incorporated into domestic law, the effect has been the same: Virtually all health and safety law is driven from Europe. There are advantages to European companies in this approach. For example, a multi national organisation can use the same safety audit system in the UK, Belgium and Holland because safety law in these countries is very similar to that in the UK.

The first batch of European Directives to be incorporated into UK domestic law were called the 'Six Pack' and were released in 1992. The Six-Pack consists of:

- The Management of Health and Safety at Work Regulations - the Management Regs
- The Workplace (Health, Safety and Welfare) Regulations - the Workplace Regs
- The Health and Safety (Display Screen Equipment) Regulations - the DSE Regs
- The Manual Handling Operations Regulations - the Manual Handling Regs
- The Personal Protective Equipment Regulations - the PPE Regs
- The Provision and Use of Work Equipment Regulations - PUWER (now split into PUWER and the Lifting Operations and Lifting Equipment Regulations - LOLER)

The Six Pack made a major impact on UK health and safety practice and, along with subsequent regulations from Europe, form the basis for UK health and safety law. However, all of the above were made under HSWA and their

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powers rely on HSWA.

Of the Six Pack the regulations with the greatest impact on UK health and safety practice are undoubtedly the Management Regs. These provide a management framework for health and safety and all managers need to have at least an appreciation of them.

5. The Management of Health and Safety at Work Regulations

The 'Management Regs' form the basis for risk assessment and the operation of safety management systems. They also extend and add detail to the intent of HSWA. The Regs are relatively short for safety law and only comprise of 17 regulations (the Regs have now been updated and some of the below section numbers have changed, although the content remains largely the same). The first two regulations deal with the application of the Regs. The other relevant regulations are:

Regulation 3 of the Management Regs - Risk assessment

3(1) - Every employer will make a suitable and sufficient assessment of -

*(a) the risks to the health and safety of his employees to which they are exposed whilst at work; and
(b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,*

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions.

In brief the above piece of regulation requires employers to:

- Carry out risk assessments (accounting both for employees and non-employees)
- From these risk assessments identify what he needs to do to ensure he complies with the law

The second point is important: It is not enough to simply have written risk assessments; they must be acted upon.

3(2) - Does the same as 3(1), but for self-employed persons.

3(3) - Any assessment such as is referred to in paragraph (1) or (2) shall be reviewed by the employer or self-employed person who made it if -

*(a) there is reason to suspect that it is no longer valid; or
(b) there has been a significant change in the matters to which it relates,*

and where as a result of any such review changes to an assessment are required, the employer or self-employed person shall make them.

Obvious examples of the above are if a task changes significantly, or an accident occurs etc. The law also requires risk assessments to be reviewed on a regular basis, dependent on the overall risk posed by a task.

3(4) - Where the employer employs five or more employees he shall record -

*(a) the significant findings of the assessment; and
(b) any group of his employees identified as being especially at risk.*

Regulation 3(4) is the reason companies have written assessment systems that include identifying who is at risk.

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Regulation 4 of the Management Regs - Health and safety arrangements

4(1) - Every employer shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.

4(2) - Where the employer employs five or more employees, he shall record the arrangements referred to in paragraph (1).

Regulation 4, in effect, asks for companies to have a safety management system. The preventive and protective measures are the 'measures' mentioned in Regulation 3(1) and are often called 'control measures' in risk assessments. Control measures may be operational procedures (safe systems of work), engineering controls (such as guards etc), PPE and other measures to reduce risks.

Regulation 5 of the Management Regs - Health surveillance

5 - Every employer shall ensure that his employees are provided with such health surveillance as is appropriate having regard to the risks to their health and safety which are identified by the assessment.

While the COSHH (Control of Substances Hazardous to Health) Regulations include health surveillance for exposure to hazardous substances, the Management Regs take this further. For example, surveillance for vibration white finger would not be covered by COSHH, but would be by the Management Regs.

Regulation 6 of the Management Regs - Health and safety assistance

6(1) - Every employer shall, subject to paragraphs (6) and (7), appoint one or more competent persons to assist him in undertaking the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions.

To the relief of Safety Advisors, companies have a legal duty to appoint suitably qualified safety advisors. Other parts of Regulation 6 state that:

- The safety advisors employed need to co-operate with each other
- The number and qualifications of safety advisors need to be appropriate to the company and its activities
- That safety advisors need to have access to appropriate information to allow them to carry out their duties

It should be noted that safety advisors are there to 'assist' in complying with legal requirements, not to take on the task of complying themselves. Ensuring compliance with health and safety law is a prime responsibility of line management – this is entrenched in statute and case law. For example, when the law says 'the employer' it means the management chain.

Regulation 7 of the Management Regs - Emergencies and danger areas

7(1) - Every employer shall -

(a) establish and where necessary give effect to appropriate procedures to be followed in the event of serious and imminent danger to persons at work in his undertaking;

In other words, companies must have emergency plans.

(b) nominate a sufficient number of competent persons to implement those procedures insofar as they relate to the evacuation from premises of persons at work in his undertaking; and

In essence, companies must have people who co-ordinate in emergency situations with regard to evacuation, such as fire wardens and emergency controllers.

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(c) ensure that none of his employees has access to any area occupied by him to which it is necessary to restrict access on grounds of health and safety unless the employee concerned has received adequate health and safety instruction.

For example, the creation of 'permit required to enter' areas.

7(2) - Without prejudice to the generality of paragraph (1)(a), the procedures referred to in that sub-paragraph shall -

(a) so far as is practicable, require any persons at work who are exposed to serious and imminent danger to be informed of the nature of the hazard and of the steps taken or to be taken to protect them from it;

Note that the regulation uses the word 'persons', not employees. Induction on emergency procedures etc, therefore, also includes persons such as contractors.

(b) enable the persons concerned (if necessary by taking appropriate steps in the absence of guidance or instruction and in the light of their knowledge and the technical means at their disposal) to stop work and immediately proceed to a place of safety in the event of their being exposed to serious imminent and unavoidable danger; and
Examples of the above would be ensuring that emergency plans are workable, obvious and include the ability for persons to stop work without risks to their safety.

(c) save in exceptional cases for reasons duly substantiated (which cases and reasons shall be specified in those procedures), require persons concerned to be prevented from resuming work in any situation where there is still a serious and imminent danger.

That is, persons must be stopped from re-entering a danger area until it is safe to do so and anyone who investigates to make sure it is safe must be competent.

7(3) - A person shall be regarded as competent for the purposes of paragraph (1)(b) where he has sufficient training and experience or knowledge and other qualities to enable him properly to implement the evacuation procedures referred to in that sub-paragraph.

Issues such as the training of fire wardens and evacuation drills would fall under this part of the Regulations.

Regulation 8 of the Management Regs - Information for employees

8 - Every employer shall provide his employees with comprehensible and relevant information on -

(a) the risks to their health and safety identified by the assessment;

(b) the preventive and protective measures

(c) the procedures referred to in regulation 7(1)(a);

(d) the identity of those persons nominated by him in accordance with regulation 7(1)(b); and

(e) the risks notified to him in accordance with regulation 9(1)(c).

Employees under the above need to be inducted in the risks they face, the control measures in place to reduce these, the emergency plans in place and who will co-ordinate in emergencies and any risks notified to their employer by groups such as contractors and other companies sharing premises. By implication, as the above may need to be proved in court, records of such inductions need to be kept.

Regulation 9 of the Management Regs - Co-operation and co-ordination

Regulation 9 requires employers to co-operate where they share the same workplace, whether permanently or temporarily. For example, where two employers share the same office building they should co-operate in issues such as fire drills and fire alarm tests.

Regulation 10 of the Management Regs - Persons working at a host employer

In brief regulation 10 deals with contractors (although other groups of persons can also be covered). It requires that employers and contractors share information on the risks their activities pose to each other.

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Regulation 11 of the Management Regs - training and capabilities

11(1) - Every employer shall, in entrusting tasks to his employees, take into account their capabilities as regards health and safety.

The capabilities mentioned may be physical, knowledge based etc. For example, sending a small thin employee with a history of back problems to perform a strenuous manual task would not be wise. Likewise, sending an employee to complete a complex task when he does not have the required technical knowledge would be covered by the above.

11(2) Every employer shall ensure that his employees are provided with adequate health and safety training -

*(a) on their being recruited into the employer's undertaking, and
(b) on their being exposed to new or increased risks because of -*

- (i) their being transferred or given a change of responsibilities within the employee's undertaking*
- (ii) the introduction of new work equipment or a change respecting work equipment already in use within the employer's undertaking*
- (iii) the introduction of new technology in to the employer's undertaking, or*
- (iv) the introduction of a new system of work into or a change respecting a system of work already in use within the employer's undertaking*

In blunt terms new employees must be inducted and trained and existing employees must be inducted and trained if their position or job changes.

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11(3) - *The training referred to in paragraph (2) shall -*

(a) be repeated periodically where appropriate

(b) be adapted to take account of any new or changed risks to the health and safety of the employees concerned, and

(c) take place during working hours

Point (c) above is interesting - contracted overtime would be working hours, an evening unpaid or of un-contracted overtime would not. The issue of what training should be repeated and at what period is also a difficult one - and one in which shows inconsistencies. For example, HGV training is never repeated, but heavy plant operator training is.

Regulation 12 of the Management Regs - Employee's duties

12(1) - Every employee shall use any machinery, equipment, dangerous substance, transport equipment, means of production or safety device provided to him by his employer in accordance both with any training in the use of the equipment concerned which has been received by him and the instructions respecting that use which have been provided to him by the said employer in compliance with the requirements and prohibitions imposed upon that employer by or under the relevant statutory provisions.

In other words if an employee has been trained and instructed in the use of equipment etc and fails to heed that training, he may suffer personal prosecution. In most cases it is the employee himself who suffers the accident and legal action is rarely taken. However, cases have been brought, in particular when it is another person who suffers the accident as the result of an employee's ignorance of his training.

12(2) - Every employee shall inform his employer or any other employee of that employer with specific responsibility for the health and safety of his fellow employees -

(a) of any work situation which a person with the first-mentioned employee's training and instruction would reasonably consider represented a serious and immediate danger to health and safety; and

(b) of any matter which a person with the first-mentioned employee's training and instruction would reasonably consider represented a short-coming in the employer's protection arrangements for health and safety,

insofar as that situation or matter either affects the health and safety of that first-mentioned employee or arises out of or in connection with his own activities at work, and has not previously been reported to his employer or to any other employee of that employer in accordance with this paragraph.

Employees, therefore, have a duty to report hazards and problems with safety systems, equipment etc to their employer. They also have a duty to report serious breaches in behaviour and adherence to safe systems of work etc. For example, an employee who covers-up for a workmate who ignores safety rules could be committing a criminal offence.

Regulation 13 of the Management Regs - Temporary workers

Regulation 13 is an example of where the UK Government has decided to enact an European Directive by including it in other pieces of legislation - in this case the Temporary Workers Directive in partially incorporated in the Management regs.

Regulations 14 - 17 of the Management Regs - Various legal provisions

The remainder of the Management Regs deal with exemption certificates, civil liability (ie, that the Management Regs cannot be used as proof of civil liability, the same as with the general requirements of HSWA) and extension outside of Britain and modifications.

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The remainder of the Six Pack

Of the remaining five regulations in the Six Pack, PUWER is covered in the below notes under work equipment, PPE under personal protective equipment and the Manual Handling regs under manual handling. This leaves two regulations to be covered:

- The Display Screen (DSE) Regulations
- The Workplace Regulations

6. The Health and Safety (Display Screen Equipment) Regulations

Waste management companies have relatively few employees who would be formally described as DSE users and DSE use is a reasonably small risk for them. However, in synopsis:

The Regulations only apply to 'users'. However, the definition of a user is vague and depends on factors such as:

- The overall length of time spent in DSE use
- The amount of time in one go spent in DSE use
- How critical the avoidance of error in inputting data is
- The freedom of an employee to stop using DSE and control their own time

A secretary would certainly be a user, as would a weighbridge operator. An operational manager is very unlikely to be.

The Regulations require that:

- DSE workstations be assessed
- That workstations meet various standards
- That DSE user's work is planned to allow adequate variation and rest periods
- That free eye tests be provided for users
- That appropriate corrective appliances (glasses) are provided to users who, following an eye test, require such for DSE use
- That users be provided with training in the software etc they are expected to use
- That users are provided with information on the hazards faced and advice on how to avoid these

The provision of free eye tests applies to a test for DSE use. When managers are arranging for an employee to undergo an eye test, the optician must be made aware that the test required is for DSE use, otherwise it is likely that a simple long and short vision test will be carried out.

The provision of corrective glasses for those employees who require them for DSE use is not open-ended for employers. Employers have the right to restrict the choice of glasses frames for reasons of cost. For example, employers are not required to provide 'designer' frames for employees. Most companies set a limit on the cost of glasses for DSE use and require the employee to make-up any difference between this basic figure and the cost of the glasses they actually want.

The provision of items such as foot-rests, document holders, screen covers etc is also a duty of the employer if they are required. For example, a short employee may benefit from using a foot-rest. However, there is no standard package and an assessment of an employee's actual needs is required. Likewise, expending resources on complex solutions to glare etc problems with DSE is not required if blinds can be shut etc. The best solutions in this type of

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problem are often one of office layout, although satisfying one employee may often lead to another being dissatisfied.

7. The Workplace (Health, Safety and Welfare) Regulations

The Workplace Regs were introduced to comply with the European Workplace Directive. The Regs cover a wide range of topics from traffic routes and ventilation to lighting and the condition of floors. The Regs replaced 35 older pieces of legislation, including large parts of the old Factories Act 1961, and cover all places of work from factories and offices to hotels and schools.

The only types of workplace which are excluded are:

- All means of transport - except when stationary in a workplace
- Mines and quarries (note: landfills are not mines and quarries)
- Construction sites (note: neither are landfills etc construction sites)
- Temporary workplaces (only exempt from some parts of the Regs - temporary workplaces only have to comply with regulations 20 - 25 so far as is reasonably practicable)
- Outdoor farming and forestry workplaces (note: ditto above for landfills)

Regulations 1 - 3 deal with the application etc of the Regs.

Regulation 4 of the Workplace Regs - Requirements under the Regs

Employers must ensure that all of their workplaces comply with the Regs, including when they are modified or expanded. However, this does not apply to the self-employed and their workplaces.

Regulation 5 of the Workplace Regs - Maintenance of workplace

Employers must ensure that their workplaces are maintained in a suitable condition and that any equipment, systems etc in that workplace are likewise maintained. They must also ensure that any defects reported to them are rectified immediately or that access to a defected area is restricted until repairs can be carried out.

Examples of the above are:

- Maintenance regimes for fences, emergency lighting, air-conditioning systems, heating etc
- Ensuring that defects in the workplace structure such as missing treads from stairs etc are repaired
- Restricting access to defected and/or potentially hazardous areas, such as erecting no entry signs when floors are being polished or cordoning off areas of carpark which have developed potholes

Waste management companies are largely, not an office based. However, there are obvious areas, which sites need to consider such as the fencing of lagoons, maintenance of walkways, gritting carparks in icy weather etc.

Regulation 6 of the Workplace Regs - Ventilation

All enclosed workplaces need to have suitable ventilation. This would include offices, enclosed transfer stations and recycling factories etc (there may also be COSHH requirements for such workplaces). Ventilation can be general, such as opening windows etc, or mechanical, such as air conditioning systems or forced air ventilation.

Where ventilation is mechanical appropriate maintenance needs to be carried out. Where ventilation is supplied for health and safety reasons, such as local exhaust ventilation, an alarm must be fitted to warn of any breakdowns.

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Regulation 7 of the Workplace Regs - Indoor temperature

Obviously outdoor workplaces, such as landfills and most treatment plants, it is virtually impossible to control the temperature. For any indoor workplace, however, temperatures must be kept in a reasonable range, unless there are obvious practical reasons (for example, a large freezer used for storing a butter mountain), in which case suitable protective clothing must be supplied.

A reasonable minimum temperature for sedentary work (such as office work) is 16 degrees centigrade and for physical work 13 degrees. A thermometer must be available to measure workplace temperature.

Regulation 8 of the Workplace Regs - Lighting

Every workplace must have suitable and sufficient lighting and, where practical, this light should be natural. If the lighting fails suitable emergency lighting must be provided if appropriate (escaping from a portacabin is unlikely to require emergency lighting).

What is suitable lighting depends on the tasks being performed. For example, a workshop where tasks which require accuracy are being carried out will need more lighting than a drum storage area on a special waste transfer station or a bin park at a vehicles operation. Lighting surveys can be carried out using a simple light meter and advice on suitable levels for various types of task is available.

Regulation 9 of the Workplace Regs - Cleanliness and waste materials

Workplaces must be kept clean relative to the tasks being performed or used; such as a mess room needs to be cleaner than a transfer station floor. Floors should be cleaned at least once a week and waste must not be allowed to build-up except in appropriate containers, such as waste bins. Obviously, some waste management sites will have practical problems with this one - keeping a transfer station floor clear of waste would not allow it to function as a transfer station. However, the transfer station weighbridge office is a different matter.

Walls and ceilings and work surfaces are covered and must be cleaned periodically as appropriate and consideration must be given to the materials they are constructed of to allow easy cleaning.

Regulation 10 of the Workplace Regs - Space

At least 11 cubic metres of space must be provided per employee. This does not include fixed items such as filing cabinets, nor does it include any space above 3 metres height (except for workplaces built before January 1993 where a height of 4.2 metres may be used).

The above is a minimum and account must be taken of the work to be carried out in the space. For example, a chemical engineer expected to work with CAD systems and large plans would require more space.

Regulation 11 of the Workplace Regs - Workstations and seating

Indoor workstations should be equipped with suitable seating etc and be appropriate to the tasks being performed. Employees should be able to leave their workstation in an emergency quickly and without the risk of slips and trips.

Wherever practical outdoor workplaces should be equipped with protection from adverse weather etc. For example, a traffic controller on a landfill may require a cabin to shelter from adverse weather. In other workplaces, such as special waste transfer stations, the ability to come into the office to shelter would be sufficient, provided there is room.

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Regulation 12 of the Workplace Regs - Floors and traffic routes

All floors and traffic routes should be of a suitable construction for the use they are put to. This includes being free of slip and trip hazards and having suitable drainage. Again waste facilities such as landfills have problems, but provided all reasonable steps are taken inspectors are unlikely to take action - there is a difference between a mildly rutted haul road and potholes a metre deep full of water.

If a floor is damaged it must be repaired immediately or barriers and/or temporary flooring provided until a repair can be made. Account must be taken of slopes and stairs and where appropriate handrails etc fitted.

Regulation 13 of the Workplace Regs - Falls

Protection must be provided where a fall of more than 2 metres could occur, such as fencing around stairs and at work platform edges. However, the 2-metre guidance is only general and falls of less than 2 metres must be protected against if the resultant injury is likely to be serious.

Protection must also be provided for any fall hazard involving vats, pits, tanks etc with dangerous substances in them, whether the fall would be less than 2 metres or not.

Regulation 14 of the Workplace Regs - Windows and transparent doors etc

All windows and transparent doors etc shall be made of suitable glass protected against breakage, such as safety glass, and appropriately marked if relevant. For example, glass wall panels in an office should be marked to prevent people walking into them by accident and capable of withstanding a person walking into them should such occur.

Regulation 15 of the Workplace Regs - Windows, skylights and ventilators

No window, skylight etc should be positioned such that people could injure themselves by walking into it or being hit by it. Window edges should be at least 0.8 metres above the floor to avoid people falling out. Windows etc should also be capable of being opened etc without the person performing such a task being exposed to risks. For example, having to climb onto a cupboard to open a window, or the landfill favourite of being hit by a window shutter while opening it.

Regulation 16 of the Workplace Regs - Window cleaning

If windows etc cannot be safely cleaned from the ground provision must be made for safe cleaning. This could be the use of pivoting windows so they can be cleaned from the inside or the provision of cradles or safety harness anchorage points. Ladders may be used up to a height of 9 metres (some 30 feet), but above 6 metres (some 19 feet), they must be secured.

Regulation 17 of the Workplace Regs - Organisation of traffic routes

All workplaces must have traffic routing, which allows pedestrians and traffic to move safely. Experience within the waste management industry, and other sectors, has shown that more fatal accidents involve traffic than any other type and traffic management is covered in more detail later in these course notes.

Regulation 18 of the Workplace Regs - Gates and doors

All gates and doors must be constructed of suitable materials and be of an appropriate design, including the fitment of any required safety devices, such as door closing dampers. For all doors and gates:

- Sliding doors must be fitted with devices to prevent them falling off during use

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- Upward opening doors must be fitted with devices to stop them falling back
- Powered doors must be fitted with devices to prevent them crushing people
- Doors which open both ways must be fitted with vision panels so that a clear view of what is on the other side can be seen (typically another person)

Regulation 19 of the Workplace Regs - Escalators and moving floors

Not a big problems for waste management companies, but must be fitted with emergency stops and other suitable safety devices.

Regulation 20 of the Workplace Regs - Sanitary conveniences (toilets)

Suitable and sufficient toilets must be provided. The old Factories Act gave a ratio of one toilet to every 25 males and one to every 25 females, with additional toilets for every part of 25 above that. This should be viewed as an absolute minimum and most workplaces have more. All toilets must:

- Be kept clean, both the toilet and the room it is in
- Rooms in which toilets are must be well ventilated and lit
- Separate toilets must be provided for males and females unless the toilets are only of the cubicle type and are capable of being locked from the inside

Regulation 21 of the Workplace Regs - Washing facilities

Suitable washing facilities, including if the nature of the work requires such showers, must be provided. Whether showers are required is a matter for risk assessment - does not having showers pose a health risk. Washing facilities:

- Should at least be provided near toilets if no where else
- Should at least be provided near changing facilities if no where else
- Include supplies of hot and cold, or warm, water (running water wherever practical) and be supplied with soap or similar and towels or other means of drying
- Must be in well lit and ventilated rooms and kept in good clean order
- Unless washing facilities are of a 'one person only' type and provided in a room which can be locked from the inside, separate facilities must be provided for males and females

The above does not apply to washing facilities intended for washing the face and arms/hands only

Regulation 22 of the Workplace regs - Drinking water

Drinking water must be provided and, where there is a chance of it being mistaken with non-potable supplies, it must be clearly marked. The water must be readily available and if not provided in the form of a drinking fountain, suitable vessels must be provided for drinking from.

Regulation 23 of the Workplace Regs - Accommodation for clothing

Suitable accommodation, such as lockers or hooks in an office, must be provided for clothing. This accommodation must:

- Include accommodation for any non-work clothing which is not worn at work (if employees are required to change clothing when they are at work such accommodation must be secure)
- Suitable accommodation for work clothing which is not taken home
- If there is a potential risk to health, such as through contamination, the accommodation provided for work and

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home clothing must be separate

- Must be well ventilated to allow clothing to dry

Regulation 24 of the Workplace Regs - Changing facilities

Suitable changing facilities must be provided if employees are required to change into work clothing and if for reasons of health and/or decency employees cannot be expected to change in another room. Where this is the case, and dependant on the nature of changing required, separate facilities for males and females must be provided.

Regulation 25 of the Workplace Regs - Rest and eating rooms

Suitable rest facilities must be provided. Where practical these should be separate from the rest of the workplace, but provided that there is no risk to health a segregated area of another part of the workplace may be used. The same applies to facilities for eating food (in most case providing just a separate area of a room for eating is not good enough and for all operational sites the mess room should be in a separate room).

Facilities for preparing hot drinks should be available and smokers and non-smokers must be separated.

Pregnant mothers and mothers nursing the newly born must be provided with suitable facilities to rest near to sanitary facilities (this does not need to be a separate rest room all of the time).

Regulations 26 and 27 of the Workplace Regs deal with exemptions and repeals of earlier legislation.

The issues included in the Workplace Regs are often some of the most contentious raised by employees. In all cases the above should be taken as a minimum and the requirements of good employee welfare and wellbeing considered.

8. An introduction to risk management

The management of health and safety is all about risk management. In principle risk management is easy:

1. Identify all possible risks
2. Rank the risks in order of severity and/or magnitude of effect
3. Do something about the risks

In practice, of course, risk management is more complex than this. Taking the three above basic categories:

Identify the risks

Identifying risks takes a systematic approach if it is to be at all successful. Simply taking a walk about a site or operation or sitting in an office and 'making it up' is unlikely to provide the required results. Several approaches can be taken, but the most successful involve a combination of considering a range of inputs, such as:

- Previous accident and incident record - what has happened in the past
- Safety inspections and audits
- Hazard spotting exercises and near miss reports - what could happen in the future
- Independent assessment by experts (such as for chemical type sites or complex work equipment)
- HAZOP (Hazard and Operability Studies) and other high-level complex risk assessments
- Management and worker discussion groups
- Lists of tasks performed
- Lists of equipment and of substances used or worked with

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- Input from specialist surveys such as dust and noise surveys

On a practical level compiling a list of equipment, tasks, substances etc is a good starting point and then apply the other inputs as appropriate. The above process is the start of a risk assessment - identify the task and the risks.

Risk evaluation

Having identified all the risks the next step is to evaluate them - that is assess which are the most important. Evaluation is combination of the likely severity of outcome and the likelihood of occurrence. However, most people's risk perception is not unbiased:

Most people will tend to over-estimate risks which:

- Will occur in the future not now, such as long-term health effects
- Involve an unknown or unfamiliar outcome, such as health rather than physical effects
- Are not in their control - the nervous passenger syndrome
- Have a 'dread' factor, such as HIV and incurable diseases
- Are 'invisible', such as radiation

Most people will tend to under-estimate risks which:

- Have an immediate effect, such as physical injuries
- Have an easily understood and familiar outcome, such as a cut finger
- They are familiar with, such as day-to-day tasks
- Are perceived as being in their control - the 'I can just move my hand out of the way' attitude

Unless good quality statistical data is available perceived risk is what will tend to be evaluated - this may not be accurate. For example, in waste management operations the most serious risk of a fatal accident comes from traffic movements, but many companies did not have a written procedure for this until a few years ago (the risk was familiar). Typically the risks evaluated as being the most serious will be:

- Those which result in a severe outcome, such as death, but are unlikely to occur
- Those which result in less severe outcomes, such as a strained back, but likely to occur many times

The above is the end result of a risk assessment (if taken in isolation) and is often termed the risk factor.

Dealing with risk

There are four basic ways of managing risk:

- Risk avoidance
- Risk retention
- Risk transfer
- Risk reduction

Risk avoidance

The risk evaluated may be of such a high level that a company may wish to simply avoid the risk. There are two basic ways of doing this:

Stop doing the task - for example, a company may decide that a new operation, or an existing one, is simply too risky and shut it down (financial risk is normally the factor here rather than safety risk). Or a company may decide that it will no longer accept a certain waste stream, which poses too high a risk.

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Change the system - for example, the risk of the theft of wages can be avoided by paying wages direct into employee bank accounts, or change a piece of equipment for one which does not pose the risk in question.

Risk retention

Risk retention, sometimes called risk acceptance, comes in two varieties: Risk retention with knowledge and retention without knowledge. In the later case the risks involved are those that unexpectedly 'rise up and bite'. Companies that release statements just after disasters similar to 'we could not have been expected to anticipate this would happen' have normally not carried out their risk identification exercise well.

Risk retention with knowledge itself can be split into two categories: Risk retention where nothing is done and risk retention where something is done. For example, Townsend Thorson knew that bow doors were being left open and the risks this presented, but accepted the risk without doing anything when they should have carried out risk reduction (see below). Typically for companies that have carried out a thorough risk identification and evaluation exercise risk retention comes after risk reduction measures have been applied and a residual risk is left. For example:

A company has identified the risk of cuts to employees' hands from handling sharp objects in a manufacturing process. Risk reduction measures, such as the provision of protective gloves have been applied, but a residual risk still exists. The company has calculated on the basis of its experience that five employees a year will suffer minor cuts requiring a couple of stitches a year. To reduce this risk further would mean replacing the whole production line at a cost of £5 million. The company may decide to retain the risk and accept any civil litigation costs. It may also decide to pass an amount of the risk out in a risk transfer exercise (see below).

Risk transfer

Risk transfer either means insurance, or contracting/acting as a broker. Risk transfer is rarely complete:

- Insuring against risks is sensible, but insurance companies will soon increase premiums if excessive claims are being made. Social ethics also have a role to play: The attitude 'we are insured so just claim' is increasingly not socially acceptable in the modern world. In addition some costs are not insurable, such as HSE fines and loss of company reputation.
- Transferring risks to a contractor or by acting as a broker may be sensible if that contractor or the company tasks are brokered to has technical and other skills, which make them more able to deal with the risks. If this is not the case it is likely that some level of risk will 'rebound' on the company at some point.

Risk reduction

Risk reduction is where most safety practice sits and involves a wide range of strategies aimed at reducing the risks. They include: -

- Engineering controls
- Safe systems of work
- Training
- PPE
- Discipline etc, etc, etc

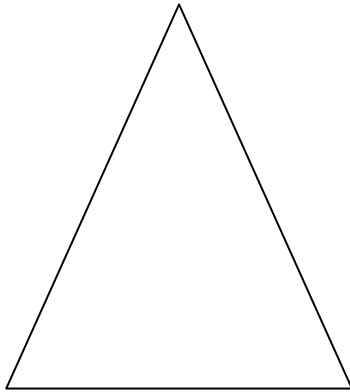
The above is an outline of the structure for risk management. Within this structure individual managers may not have access to the whole range of options. For example, site managers rarely have an input into a company's insurance policies or whether parts of a company should be shut down. For most operational managers risk reduction based on a systematic risk identification and evaluation exercise is the best and most practical approach for most tasks.

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Accident ratio studies and risk management

Several studies have been made on accident ratios, but the most extensive is probably that carried out by Frank Bird in 1969. More than 2 million incidents were included in the study that established accident ratios as a useful tool in risk management.

Bird's triangle

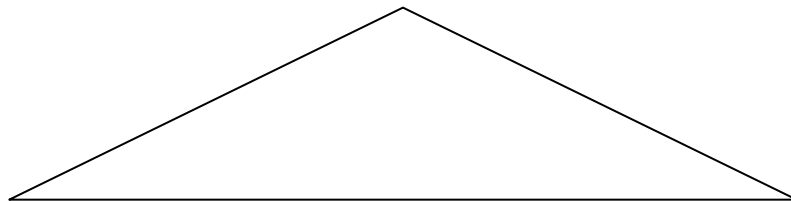


1 serious injury:
10 minor injuries:
30 property damage:
600 near misses

Bird summarised that for every serious injury around ten minor injuries would occur, 30 property damage incidents would happen and 600 near misses would be recorded. A wide variety of industries were included in Bird's study and the exact ratios will vary from industry to industry. One such company's figures reflect the above: During 1999/2000 the company in the UK recorded 54 RIDDOR reportable injuries and 518 minor injuries (roughly a ten to one ratio and consistent with what Bird predicts).

However, not only do accident ratios vary from industry to industry, they vary from type of accident to type of accident. For example, many thousands of paper cuts would need to be recorded before one resulted in a serious injury or death. Collisions with HGVs and heavy plant are a different matter - not many minor injuries will need to be recorded before a serious injury occurs (indeed very few people walk away from being hit by an HGV with a minor injury).

Paper cut triangle



HGV collision with pedestrian triangle



While the above examples are obvious (and a company will certainly spend more resource on reducing the risk of a

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HGV accident than paper cuts), the use of accident ratios can be a useful tool in risk evaluation.

9. Safe systems of work

Safe systems of work are a requirement of HSWA Section 2 which states '...to provide and maintain safe systems of work so far as is reasonably practicable'. However, what is a safe system of work and what tasks require one? Case law is full of references to safe systems of work, but two provide some useful guidance:

Rees vs Cambrian Wagon Works Ltd

While removing a large cog from a machine using a plank and a wedge the cog slipped and injured an employee (Mr Rees). The Court of Appeal ruled that the task was sufficiently complex as to require a safe system of work.

Winter vs Cardiff Rural District Council

In counterpoint to the above case, Lord Oaksey ruled that the duty of an employer to provide a safe system of work did not extend to every detail. That the employer must exercise his discretion and so must foremen and workers exercise theirs. A distinction was made between 'potentially hazardous and complicated tasks requiring a detailed safe system of work and the everyday occurrences which must remain in the realm of the supervisors controlling the task'.

There would seem to be, therefore, a definition between tasks which need a detailed safe system of work (and by inference a written one) and those which do not need such and can be dealt with in more general terms, such as being left to the training and experience of those carrying out the task.

Speed vs Swift (Thomas) and Company Ltd

In this case the court outlined the main components of a safe system of work as being:

- The co-ordination of the work
- The layout and arrangements
- The method of work
- The provision of equipment
- Information, training and supervision

The HSE's study of fatal accidents in manufacturing (Deadly Maintenance 1980 - 1982) expands on this by stating that one of the predominant causes of fatal accidents was the lack of safe systems of work. The report's main conclusions were:

- Safe working procedures must be planned and not just left to the person in charge
- Employees must receive instruction and training
- Suitable safety equipment must be provided
- The management organisation must cater for the work involved
- Resources must be devoted to making safe systems work

Several models for putting together safe systems of work have been developed, but most are aimed at specific industries such as manufacturing or fail to account for the developments made in risk assessment over the past ten years (they tend to overlap with risk assessment). None tackle directly the issue of whether a safe system of work is required or not.

However, it is certain that just one component is not a complete safe system of work on its own. For example,

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- A permit to work is not a safe system to work, although it may be part of one
- A risk assessment is not a safe system of work, although it will always be part of one and is the basis for one
- Safe equipment on its own is not a safe system to work
- Training on its own is not a safe system of work
- A written operations procedure is not a safe system of work on its own, although it may be a synopsis of one

Have I got a safe system of work?

For companies which have a well developed risk assessment, training and other systems, one of the best ways to tackle safe systems of work is to work backwards and ask the question 'do I have a safe system of work?' The below checklist is not exhaustive, but gives an outline of the process:

1. Select a task
2. Does a risk assessment exist for the task? If not, why not?
3. Do other specialised risk assessments exist for the task, such as COSHH, DSE or manual handling assessments? If not are they required?
4. Is any equipment required? If so, is it suitable for the task and safe for use? And, can you prove it?
5. Do those carrying out the task require training? If so have they received it? And, can you prove it?
6. Is the task so complex that a written operational procedure is required? If so, does one exist?

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7. Does the task require actions to be taken in a particular order? If so is an operational procedure required? Has one been written?
8. Is the task so hazardous and complex that formal systems such as permits to work required?
9. Does the task require other control measures to be taken? Are these included in the risk assessment and/or operational procedure?
10. Is there a requirement for monitoring to be done during the task? If so can you prove it is being done?
11. Does the task require PPE? If so, is the type recorded in the risk assessment?
12. Have all employees required to do the task been inducted and instructed in the relevant parts of the above? And, can you prove it?
13. Are there checks in place to ensure the safe system of work continues to be used and to be effective?

The above seems complex and managers need to make a decision about which tasks require the above analysis to be carried out. For example, the task of 'general office work' which has a comprehensive risk assessment written for it is very unlikely to benefit from the above analysis and, probably, does not even need a formal safe system of work.

Risk assessments and safe systems of work

The basis for whether a formal safe system of work is required and, if so, what its components should be is risk assessment. A risk assessment can act as an "index" for a safe system of work and point to the components of a safe system required:



The above type of 'spider diagram' with the risk assessment in the centre is another model for a safe system of work.

10. Human factors in safety

More than 90 per cent of accidents have as at least part of their causation a human factor (the other ten per cent it can be argued also have a human component). Despite this, human factors are perhaps the least considered of safety issues.

At its most basic, human factors in health and safety come down to wrong decisions being made which lead to an accident occurring. Wrong decisions can occur for a variety of reasons, from a deliberate act to not having sufficient information and/or training or knowledge to make the right decision or the poor design of equipment. For example:

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- A driver at a customer premises may decide to reverse his HGV even though he knows there are pedestrians around and that the site has poor visibility. The decision may be wrong, but it is an unusual person who deliberately decides to put another person at risk – the decision the driver made is more likely to be wrong because of the too low risk level he assigned to the task.
- A visitor to an office building is waiting in an unoccupied office when the fire alarm sounds. He walks into the corridor to find a fire exit and has two choices: To go left or to go right. He goes right and finds himself in a dead-end as the fire exit is to the left. He made a wrong decision, possibly because of a lack of information on which to base a decision such as no fire exit signs.
- A tractor driver towing a tipping trailer along a road accidentally moved the tipping mechanism control while changing gear (the tipping control lever was right next to the gear lever) resulting in the trailer tipping and the tractor becoming unstable and falling over. The designer of the equipment made a wrong decision when considering where to place controls.

The HSE's guidance on human factors (Human Factors in Industrial Safety) is based on information from a wide variety of accidents and incidents. It categorises human performance errors (wrong decisions) into five broad areas:

- Lapses of attention
- Mistaken actions
- Mis-perceptions
- Mistaken priorities
- Wilfulness

Other categories could be used, but the above are as useful as any. Taking each in turn:

Lapses of attention

In this case the person's intentions and objectives are right, but a 'slip' occurs in performance. There are some obvious reasons that may lead to the above such as other issues competing for attention, a lack of time to concentrate on detail points etc. The more skilled the operative, the more likely that a lapse will occur – in particular in respect of routine actions.

An example would be a manager who writes and agrees a method statement with a contractor including the use of a permit to work. The manager fully intends to issue a permit, but on the day is distracted by another issue leading to a permit not being issued and the correct level of care not being taken in the task.

Mistaken actions

In essence, doing the wrong thing under the impression that it is right. The person knows what needs to be done, but chooses the wrong method to do it. Generally such actions can be attributed to a lack of training or information.

An example would be a process operator who is about to enter a confined space. He has obtained the required airline breathing apparatus and is seeking an air supply to connect this to. He connects the airline on his breathing apparatus to a nearby filter line unit (a standard procedure). However, this line had only recently been put in, was unlabeled and actually contained nitrogen not air. The operator collapsed with asphyxia.

Mis-perceptions

Mis-perceptions tend to occur when a person is under stress and are characterised by 'tunnel-vision' and the

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ignorance of outside factors. A person who has already decided that a certain problem is being caused by a certain factor may pursue this factor even when it is obvious to another person that it is the wrong one. Physical reactions can be affected by this – such as the person who after buying a new car with the indicators on the other side to his current one who persists in turning on the wipers when he wants to indicate – no matter how many times he consciously tells himself not to.

In the work environment an example would be a release of a hazardous substance from a chemical plant because the managers at the plant believed an over-pressurisation problem was being caused by a valve when it was really being caused by temperature problems (incomplete information and knowledge about systems can be a powerful causation of mis-perceptions – a little knowledge is a dangerous thing).

Mistaken priorities

These are typically related to a company's ethic and objectives. If a company is totally geared towards 'getting the job done' or time-scales these values will be passed onto the workforce and will affect how they do their job. If an employee is always being instructed by his manager to 'hurry-up' then it is likely that he will value speed over safety. It should be noted that this is an issue of employee perception – a company may have a copy of its safety policy in letters two metres high at every site, but if the ethic passed on by management is not consistent with this the safety policy will be ignored.

For example, a task at a site involves confined space entry for which an atmospheric test is required before employees enter the confined space. The air meter to be used is found to be faulty and a replacement cannot be obtained for several hours. A decision to go ahead without an atmospheric test may be the result of mistaken priorities – getting the job done rather than getting the job done safely.

Wilfulness

There is a fine line between wilfulness and mistaken priorities – often both may be at work in the causation of an accident. However, pure wilfulness involves the deliberate and knowing ignorance of safety rules and procedures. Wilfulness can have knock-on effects – one employee who 'gets away' with ignoring safety rules may encourage other employee to do the same.

An obvious example of wilfulness is the employee who refuses to wear an item of PPE, or only wears it when challenged by his manager (and removes it once the manager is out of sight).

Prevention of human error

Understanding the basic areas which lead to human error and the making of wrong decisions in the workplace is one side of the equation – what to do to prevent human error is the other side. Strategies to prevent, or reduce, human error are normally aimed at three areas of influence:

- The organisation
- The job
- Personal factors

The organisation

One of the major influences on behaviour at work is the organisation – that is the obvious priorities which an organisation or company has. The power of such influences is often under-estimated. For example, an electrician who has worked for ten years for a company which always avoids working live if at all possible if he moves to a company which always works live will be working live within a few weeks. This will occur no matter what previous training and instruction the electrician has had.

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The overall ethic of a company may be set by the senior management, through such means a well publicised safety policy, always having safety as the first item on team briefs and meeting agendas, directors' safety days and safety conferences etc. However, the on-the-shop-floor company ethic is likely to be set more by local management and/or supervisors and chargehands (or even sometimes employees such as union representatives or just strong personalities in the workforce).

If senior management are 'doing their bit' in terms of direction and showing commitment to safety, what are the areas managers need to concentrate on? These tend to concentrate on:

Maintaining safety procedures and rules – never passing by poor practice, always reinforcing safety rules and ensuring that all employees are fully aware of what they need to do.

Ensuring remedial actions on safety issues are carried out – very few things can defeat a good safety culture faster than a known issue that is not tackled.

Taking an active part in monitoring safety performance – physically taking part in safety inspections, reading out and briefing all employees on the results of safety inspections and what will be done about the issues raised.

Setting standards and enforcing them – set safety standards in performance review and at objectives meetings, check regularly to ensure these are being met and publicise and shortfalls or if target performance is being exceeded.

Investigating incidents – involve the workforce in incident investigation. As for safety inspections, make them part of your team briefs and ask for the opinion of employees on what could be done to avoid reoccurrence.

The job

Many wrong decisions are made as the result of a lack of information or training (see below on personal factors). Others are the result of distractions from poor job organisation and design of equipment. All tasks will have a series of critical factors which can lead to a degree of safety or not (see above on safe systems of work). Generally, the job issues which may lead to wrong decisions being made rotate around:

The environment – this includes the physical factors of the environment, such as workstation layout, to issues such as heat, cold, dust etc. If an employee is expected to make critical decisions issues such as cold, wet weather can have an effect. For example, providing a weather shelter for a traffic controller is likely to improve their ability to make correct decisions over the period of a day's work.

Equipment design and condition – is the equipment suitable for the job in hand? Using the wrong, or badly maintained, or faulty equipment will increase the likelihood of an accident as a result of the distraction such problems provide. For example, having to work around poorly designed equipment will increase the concentration needed to perform a job and leave less left for decision making. Likewise equipment controls which present the possibility of confusion or the 'wrong button' being pressed are likely to result in wrong decisions being made, albeit often inadvertently.

Job process – if a task has a critical path that involves decision-making steps, time needs to be built into the system to allow these decisions to be made. Planning jobs and resources would also come into this category. For example, if various items of equipment are required for various steps in a task planning is required to ensure they are available at the right time in the right place.

Personal factors

Employees bring to the tasks they perform a series of attributes, from personal attitudes and habits through Safety law under-pinning knowledge notes / 1 May 2002

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experience and trained skills to physical limitations and intellectual ability. Some of the above cannot be changed, such as physical ability to lift loads; others can be modified, such as attitude and level of training and skill. Taking the three basic areas in turn:

Physical and intellectual ability – no one would ask an employee with a history of back problems or an employee who is eight months pregnant to perform a strenuous manual handling task (or it is hoped they would not). Some of the selection required is carried out centrally in most companies, such as through pre-employment medical assessment. However, it is incumbent on managers to exercise discretion when handing-out tasks to their employees.

Training, skills and knowledge – well trained employees with a good experience of the jobs they carry out and sufficient knowledge to make rational decisions on safety issues are less likely to have accidents (when they do one or more of the above factors such as equipment design or organisation are normally involved). Having the required training, experience and knowledge is no guarantee in itself – monitoring of performance, reinforcement training and assessment etc also have a role to play.

Attitude and behaviour – many managers consider these two personal attributes to be the most intangible and difficult to change. In practice they are often easier to change than items of work equipment. The factors outlined above, in terms of organisation, job and personal factors, will tend to produce the desired behaviour. In particular the role of training, the leadership given by management and supervisors and clear, unambiguous instruction are critical. However, the role of monitoring and discipline should not be overlooked.

Cognitive dissonance

Human beings do not like to behave in a manner that is in conflict with their beliefs and attitudes (cognitive dissonance). For example, instructing an employee to wear a hard hat when he believes one is not needed is likely to produce resistance, even if the employee is aware of the risks. Forcing, through instruction, monitoring and, if required, discipline the wearing of hard hats will eventually change the employee's behaviour so that his behaviour (ie, wearing the hard hat) is in line with his beliefs.

Car seatbelt use is an example of this. Prior to seatbelts being mandatory in the UK many motorists did not wear them all the time and did not feel uncomfortable when not wearing a seatbelt (even though they knew the risks). By forcing motorists to wear seatbelts their attitude and behaviour changed – motorists who did not feel uncomfortable about not wearing a seatbelt before they were made a legal requirement now do feel uncomfortable when not wearing one – their attitudes, beliefs and behaviour have changed to fit with what they do.

Such change in behaviour can be highly specific. For example, many HGV drivers wear a seatbelt in their car on the way to work and then get into a lorry and do not wear a seatbelt. In addition, if a person is exposed to varying rules (such as one site where hard hats are required and another where they are not) they may choose the situation, which most closely aligns with their beliefs.

11. RIDDOR and incident investigation and reporting

- The Reporting of Incidents, Diseases and Dangerous Occurrences Regulations and the process of incident reporting is covered in a guide available from the HSE HSE31Rev1 and MISC310.

The Woolf Reforms and civil litigation

As stated above, the main area of civil law applicable to the workplace is that of negligence and employees, or other persons, claiming compensation for injuries and/or other damage.

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The Woolf Reform covers areas of change, such as time limits imposed for progressing civil cases. However, the basic principles of civil law still apply:

- It must be proved that the damage was the result of a breach of a duty of care by the company
- It must be proved that the company was negligent in the breach occurring
- It must be proved that the damage was direct and foreseeable

The second point is the one most affected by the Woolf Reforms. The Reforms present solicitors with a list of documents they are allowed to ask employers for (a list of discoverable evidence). All of these documents are requirements of various items of criminal law and/or codes of practice. Examples are given below:

Document solicitors allowed To ask for under the Woolf Reforms	Item of criminal law document required under
RIDDOR reporting form Training records for work equipment Issue of PPE records Records of workplace inspections, such as inspection of walkways and buildings Risk assessment for task Safety committee minutes	RIDDOR Provision and Use of Work Equipment Regulations PPE Regulations Workplace Regulations Management of Health and Safety at Work Regulations Safety Reps and Committees Regulations and/or Communication with Employees Regulations

As briefly discussed above, negligence can be proved either through precedent and case law, or through 'breach of statute'. Breach of statute, in a compensation claim, involves a company being successfully prosecuted under criminal law and this guilt under criminal law being used as evidence of negligence in a civil case. Breach of statute can only be used as proof of negligence provided that the item of criminal law is specific and not general (for example, HSWA's general provisions cannot be used to prove breach of statute whereas the PPE Regulations can).

For example, an employee of a company loses an arm when the blade of a power guillotine amputates it. The guillotine is missing its guards and the employee had received no training in use of the equipment. In addition, no risk assessment had been carried out. The HSE decide to prosecute under specific items of safety law:

- Provision and Use of Work Equipment Regulations – lack of training and missing guards
- Management of Health and Safety at Work Regulations – lack of risk assessment

If the company is found guilty under the above regulations, then that guilt can be used as proof of negligence. However, the use of breach of statute has not been a popular option for solicitors pursuing civil actions against companies for several reasons:

- There are many more civil actions than criminal prosecutions – that is the opportunity to prove breach of statute is rare
- Most criminal prosecutions under safety law are brought with general legislation, such as section 2 of HSWA and cannot be used as proof of breach of statute
- The solicitors who deal with civil cases are not criminal law experts and may be reluctant to use breach of statute

The Woolf Reforms, and the list of documents required under criminal law they provide to solicitors, allows the theory of breach of statute to be applied without an actual criminal prosecution having taken place. This is significant and

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tends to lead to solicitors acting for employees, and others, attempting to gain compensation to ask for a long list of documents – failure to produce these may count against a company.

Despite the above, being able to produce all of the required documents is unlikely to result in a company completely avoiding paying compensation, but it is likely to reduce the amount of any claim.

12. Work equipment, plant, vehicles etc

Work equipment is a complex and wide field ranging from hand tools such as a screwdriver to complex arrangements of plant on a production line. All managers must be fully conversant with the specific legislation, guidance and standards which apply to the work equipment on their site or used in their operations.

There are probably more items of safety law relating to work equipment than any other area. These include law on:

- Lifting equipment and operations
- Pressure vessels
- Supply of Machinery (Safety) Regulations

Plus:

- Hundreds of British Standards
- Vehicles standards and design and use criteria
- Thousands of guidance documents

In addition, there are dozens of related topics, which consider specific aspects of work equipment and its safety from lock-off and isolation to noise and guarding standards.

These notes only consider the Provision and Use of Work Equipment Regulations, although the principles of these Regs can be applied across other areas.

13. The Provision and Use of Work Equipment Regulations

PUWER covers all work equipment that is defined as being:

‘any machinery, appliance, apparatus or tool and any assembly of components which, in order to achieve a common end, are arranged and controlled so that they function as a whole’. In other words, just about anything.

Suitability of work equipment

All employers must ensure that work equipment is suitable for the purpose it is to be used for. When selecting work equipment the conditions it is to be used in and the risks posed to health and safety must be considered. And, that work equipment is only used for operations and under conditions for which it is suitable.

An obvious example would be that a standard forklift truck should not be used on rough terrain. However, how can an employer prove this?

For each item of work equipment a specification based on risk assessment must be available to demonstrate that it is suitable for the use it is put to and the conditions it is used in. For obvious choices this may only need to be a

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purchasing specification. However, any applicable issue must be considered, such as only using 'zoned' forklifts in potentially flammable atmospheres.

Maintenance

Employers must ensure that work equipment is maintained in good order. All managers must have a list of the work equipment on their sites/in their operations, what its maintenance schedule is, keep maintenance records, ensure that relevant tests and checks are performed, have a defect reporting system etc.

For example, for a bailer at a transfer station:

- Details of the bailer specification
 - Its operating manual (which should include maintenance details)
 - Its maintenance schedule
 - Proof that maintenance has been carried out
 - Its testing regime (such as statutory tests)
 - Proof that statutory tests have been carried out
 - Daily check lists
 - Proof that daily checks have been carried out
 - A defect reporting system
 - Proof that defects are rectified
- The above list is only the basics.

Employers must also ensure that only suitably competent persons carry out maintenance and repair – operatives and other non-competent persons must not carry out repairs or anything more than basic maintenance such as greasing etc.

Work equipment must also allow maintenance etc to be carried out without exposing those involved to risks to their health and safety so far as is reasonably practicable. This includes that if maintenance etc can be carried out without the equipment being 'on' then it must be shut down and locked-off before such takes place. If equipment needs to be on (such as to adjust running requirements etc) other safeguards need to be provided, such as inch controls etc).

Information and instruction

Anyone who operates work equipment must have been given sufficient information and instruction to ensure that they can do so safely. Likewise those who supervise or manage employees who use work equipment must have sufficient information and instruction to allow them to perform their roles safely. Where work equipment is at all complex this instruction and information must be written and not just verbal.

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This information and instruction, if appropriate written, must include:

- Conditions in which the equipment may be used and the methods of use (such as operating instructions)
- Any foreseeable abnormal situations and the actions to be taken (such as blockage clearance etc)
- Any specific risks and hazards and what is in place to control them

Any written instructions must be clear and understandable by those who will use the equipment.

Training

All employees who use work equipment must have received adequate training. For some types of equipment, such as heavy mobile plant, this is proscribed (eg, CITB licences). Whatever the work equipment training must include the methods to be used when using the equipment, the risks of use and what precautions must be taken.

Conformity with requirements

All employers must ensure that work equipment conforms with required standards, such as British Standards or specific design and use standards or legislation etc. Managers need to be aware that not all manufacturers or suppliers reach the standards required – in particular equipment manufactured abroad may not conform with British standards.

Dangerous parts

Employers must ensure:

- That all dangerous parts are adequately guarded
- That any movement of a dangerous part of machinery stops when a person enters the 'danger zone'

The above shall be achieved by:

- Provision of fixed guards enclosing every dangerous part wherever practical
- Where not practical the provision of other guards (moving guards etc) and/or protection devices (interlocks, retained key systems. Light curtains etc)
- Provision of push sticks and other tools to (note: largely not applicable in the waste management industry and not to be used with moving machinery)
- Provision of information, instruction, training and supervision

Any guards, interlocks etc provided must:

- Be suitable for the purpose they are provided for
- Be of good construction and of adequate strength
- Maintained in good order
- Must not give rise to any additional risks to health and safety
- Must not be easily disabled or bypassed
- Be at a suitable distance from any danger zone
- Where applicable not impair vision etc
- Take account of maintenance and cleaning needs while maintaining protection

In addition to providing protection against dangerous parts guards and other types of safeguards must protect against:

- Ejected materials

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- Rupture or disintegration of equipment or parts of it
- Equipment catching fire or overheating
- Discharge of gasses, dusts, vapour etc
- Unintended explosion or release of pressure

Where equipment may produce high or low temperatures these parts must be safeguarded, such as insulating hot parts or very cold parts.

Controls

Where appropriate employers must ensure that work equipment is fitted with one or more controls for the purposes of:

- Starting, including re-starting for any reason
- Controlling changes in speed, pressure or other variables
- Stopping in a safe manner
- That stop controls switch off all sources of energy

The above may not apply to automatic equipment, but in such circumstances other safeguards need to be in place (for eg, audible warning of start).

All controls must be clearly marked, that those operating controls are not in a danger area when doing so and that those not operating controls but who may be affected are not at risk when starting, stopping equipment etc.

Emergency stops and isolation

Where appropriate all work equipment must be supplied with emergency stop controls, which are easily accessible to all.

All items of work equipment must have suitable provision for isolating it from all sources of energy, such as isolation switches. These shall be clearly identified and easily accessible. All isolation switches, valves etc must have provision for lock-off.

Stability and lighting

All work equipment must be stable, where necessary by clamping, fixing to the floor etc.

All work equipment must be provided with suitable light to allow work to be carried out safely.

Markings and warning

All work equipment must be marked in a clearly visible manner with any signs relevant to health and safety, such as warning signs.

Work equipment must, where appropriate, include other warning devices, such as audible or light based warnings. These must be clear and unambiguous.

14. Personal protective equipment (PPE)

PPE is the last resort to be taken in control measures aimed at reducing the risk faced by employees and other persons, outside of discipline. The common acronym method used to outline the 'hierarchy of control' being

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E.R.I.C.P.D.: -

E	Eliminate the risk
R	Reduce the risk
I	Isolate the person from the risk
C	Control the risk (engineering controls)
P	PPE
D	Discipline

PPE is so far down the list because if the PPE fails, the wearer is exposed to the full extent of the hazard being protected against. For example, if breathing apparatus fails in an environment where such protection is really needed, the outcome is usually death. Even with a lesser example, if a chemical waste worker does not wear his gloves, he will be exposed to the full extent of a chemical hazard if he touches a substance.

PPE, however, can be very useful outside of the protection of employees. Clean and regularly replaced PPE can give an employee the clear understanding that his company cares. PPE can also enhance the feeling of professionalism an employee may have. For example, a driver arrives at a customer premises wearing a clean company overall, with a clean high-vis waistcoat, good quality safety boots, new gloves, a pair of safety glasses in his top pocket and a hard hat in good condition. The customer's employees are wearing their own 'tracksuits etc', training shoes and dirty high-vis. Which set of employees probably feels better about their employer and the job they do?

What is PPE?

PPE is anything a person wears to protect them against a hazard. It is a broad term and includes:

- Obvious PPE such as high-vis clothing and hard hats
- Respiratory protective equipment (RPE) such as half-masks and dust masks
- Breathing apparatus (BA)
- Hearing protection such as ear plugs and ear defenders
- Workwear such as overalls and boiler suits
- Eye protection such as safety glasses and goggles

Some items may be perceived as PPE, but are not used as such. For example, a company branded overall for a HGV driver may not be PPE if it does not protect against any hazards (it may just be workwear like an accountants suit and tie).

The major definition of PPE is 'does it protect the wearer against a hazard'. For example:

Item of clothing etc	Is it PPE?
Hair net worn by a food Factory worker	Probably not PPE – it protects the food against contamination, not the employee
'Surgical' gloves worn by a food factory worker	Possibly PPE – the gloves protect the food against contamination, but may also protect the worker from bacterial hazards in the food
Hard hat on a building site	Definitely PPE

15. The Personal Protective Equipment at Work Regulations

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The main item of legislation on PPE is the Personal Protective Equipment at Work Regulations. These were introduced in the UK in 1992 as part of the Six Pack. However, other items of legislation also mention PPE. For example, Section 9 of HSWA requires employers not to charge for anything provided in the interests of safety – this includes PPE.

Other items of law also mention PPE, such as the Control of Substances Hazardous to Health Regulations (COSHH), the Noise at Work Regulations, the Construction (Head Protection) Regulations etc (see below on Regulation 3 of the PPE Regulations).

However, the PPE Regulations provide the basic framework for PPE.

Regulation 3 of the PPE Regulations – disapplication

Regulation 3 disapplies the Regulations to:

- Ordinary working clothes and uniforms which do not specifically protect the worker
- Offensive and defensive weapons and deterrent devices such as riot body armour
- Portable devices for signalling risk and/or nuisance such as radiation dosage badges
- Sports equipment such as shin pads
- Some items used on the public road such as motorcycle crash helmets

Regulation 3 also states that various provisions of the PPE Regulations do not apply if any of the following other items of the law do apply:

- The Control of Lead at Work Regulations
- The Ionising Radiation Regulations
- The Control of Asbestos at Work Regulations
- The COSHH Regulations
- The Noise at Work Regulations
- The Construction (Head Protection) Regulations

For most of the above the reason is that these regulations proscribe whether and what type of PPE will be worn. For example, the Construction (Head Protection) Regulations state that any person on a construction site must wear a hard hat – no matter what any risk assessment written by an employer etc may say.

Regulation 4 of the PPE Regulations – provision of PPE

4 (1) – Every employer shall ensure that suitable PPE is provided to his employees who may be exposed to a risk to their health and safety while at work except where and to the extent that such risk has been adequately controlled by other measures which are equally or more effective.

4 (2) – the same for self-employed persons.

Unless other controls, such as engineering controls, adequately protect employees, PPE will be provided.

4 (3) – without prejudice to the generalities of paragraphs (1) and (2) PPE will not be suitable unless –

- (a) it is appropriate for the risk or risks involved and the conditions at the place where exposure to the risk may occur;*
- (b) it takes account of ergonomic requirements and the state of health of the person or persons who may wear it;*
- (c) it is capable of fitting the wearer correctly, if necessary, after adjustments within the range for which it is designed;*
- (d) so far as is practicable, it is effective to prevent or adequately control the risk or risks involved without*

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increasing overall risk;

- (e) *it complies with any enactment (whether in an Act or instrument) which implements in Great Britain any provision on design or manufacture with respects to health and safety in any relevant Community Directive listed in Schedule 1 which is applicable to that item of PPE.*

PPE must:

- Protect against the risks posed – for example, a bump cap is not appropriate where a hard hat is required
- Fit properly and not interfere with activities etc to the extent it poses a greater risk itself – for example, heavily tinted glasses where handling hazardous substances is involved
- If a design or manufacture standard applies, the PPE must conform

Regulation 5 of the PPE Regulations – compatibility

5 (1) – Every employer shall ensure that where the presence of more than one risk to health and safety makes it necessary for his employee to wear or use simultaneously more than one item of PPE, such equipment is compatible and continues to be effective against the risk in question.

5 (2) – the same for self-employed persons.

Where someone needs to wear more than one item of PPE, these must not interfere with each other to make one or more of them ineffective. For example, wearing ear defenders with a hard hat can lead to the defenders being pushed away from the head and therefore being ineffective. In such cases either hard hats with cut-outs to allow ear defenders to fit, hard hats with built-in provision for ear defenders to be attached or ear plugs should be used. Other examples may be the use of various types of RPE which interfere with safety glasses and goggles (perhaps a face shield or full face mask would be more suitable) etc.

Regulation 6 of the PPE Regulations – assessment of PPE

6 (1) – Before choosing any PPE which by virtue of Regulation 4 he is required to ensure is provided, and employer, or self-employed person, shall ensure that an assessment is made to determine whether the PPE he intends will be provided is suitable.

6 (2) – The assessment required by paragraph (1) shall include –

- (a) *an assessment of any risk or risks to health and safety which have not been avoided by other means*
- (b) *the definition of the characteristics which PPE must have in order to be effective against the risks referred to in sub-paragraph (a) of this paragraph, taking into account any risks the equipment itself may create*
- (c) *comparison of the characteristics of the PPE available with the characteristics referred to in sub-paragraph (b) of this paragraph.*

6 (3) – Every employer of self-employed person who is required by paragraph (1) to ensure that any assessment is made shall ensure that any such assessment is reviewed if –

- (a) *there is reason to suspect it is no longer valid; or*
- (b) *there has been a significant change in the matters to which it relates,*

and as a result of any such review changes in the assessment are required, the relevant employer of self-employed person shall ensure that they are made.

Some companies produce specific PPE risk assessments. These are generally a separate assessment in which the general risks posed by tasks at a site or in an operation are collated together and the PPE to be used listed against these risks. However, there are problems with this approach if various different tasks required different

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PPE to be worn.

Every site will have a list of basic PPE which must be worn at all times, such as high-vis clothing, hard hat, safety boots, safety glasses etc. These are recorded in the site rules and are the result of the various risk assessments carried out at the site. However,

- Does your site/operation have a list of the basic PPE to be worn (even if this is simply the list in the general site rules document)?
- If your operation is not site based, do you have a list of the basic PPE to be worn?
- If various tasks require further PPE to be worn, are these additional items of PPE specified on the risk assessments for these tasks?

Many people who write risk assessments have a habit of simply writing 'PPE' in a control measures column and leaving it at that. If the PPE to be worn is simply the basic for the site or operation AND a list exists of what this basic PPE is (even if this is only in a site rules document), this approach is fine. However, if additional PPE is required this must be noted on the risk assessment.

For example, a site may have a site rules document, which states that at least high-visibility clothing; safety boots, hard hat and safety glasses must be worn on site. If a task to be carried out on site also requires protective gloves to be worn, the risk assessment for that task must state this – and what type of protective gloves.

The review of risk assessments is similar to the requirements of the Management Regulations. However, if an accident occurs how many managers include a review of the PPE worn as part of their general review of a risk assessment for the task involved. For example, if a person on a site is 'nudged' by a HGV or other vehicle, does the risk assessment review include how effective high-vis clothing was at preventing the accident?

Regulation 7 of the PPE Regulations – maintenance and replacement of PPE

7 (1) – Every employer shall ensure that any PPE provided to his employees is maintained (including replaced or cleaned as appropriate) in an efficient state, in efficient working order and in good repair.

7 (2) – the same for self-employed persons.

Most items of PPE are of a nature that replacement rather than maintenance is the policy. For example, dust masks are simply replaced rather than being maintained or cleaned in some way. However, some types of PPE do require maintenance, such as ear defenders and RPE with replaceable filters. In these cases records must be kept to ensure that maintenance can be proved.

Some items of PPE, while not requiring maintenance do require cleaning, such as hard hat cradles, safety glasses etc. If specialist equipment, such as glasses wipes, are required they should be provided with the PPE.

Maintained in an effective working order and in good repair can apply to virtually all PPE. For example, how dirty does a high-vis waistcoat need to be before it stops being high-vis? Likewise hard hats need replacing if damaged etc.

Finally, most PPE has a working life (normally this is stated in the instructions with the PPE). Such timescales must be adhered to. For example, most hard hats last two or three years.

Regulation 8 of the PPE regulations – accommodation for PPE

8 – Where an employer or self-employed person is required, by virtue of regulation 4, to ensure PPE is provided, he shall also ensure that appropriate accommodation is provided for that PPE when it is not being used.

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Appropriate accommodation may simply mean a locker or a hook on a changing room wall. However, consideration must be given to the nature of the PPE, what effect accommodation conditions may have on it and what effect the PPE, or any contamination it may have acquired, may have on persons or the environment.

For example, if high-vis jackets regularly become contaminated with waste solvents or other volatile substances, a well-aired room would be more appropriate than a small-unventilated cupboard. Likewise, expecting muddy safety boots to be worn in canteens may not be appropriate.

The PPE itself may suffer from exposure to the environment and the nature of its accommodation. Hard hats, for example, should be stored in cool, dark conditions to prolong their shelf life. RPE filters will continue to absorb contaminants even when not being used if simply hung on a peg or 'thrown in the corner'. Such RPE should be stored between use in sealed plastic bags (as are provided with most RPE).

Regulation 9 of the PPE Regulations – information, instruction and training

9 (1) – Where an employer is required to ensure that PPE is provided to an employee, the employer shall also ensure that the employee is provided with such information, instruction and training as is adequate and appropriate to enable the employee to know –

- (a) the risk or risk which the PPE will avoid or limit;*
- (b) the purpose for which and the manner in which PPE is to be used; and*
- (c) any action to be taken by the employee to ensure that the PPE remains in an efficient state, in efficient working order and in good repair as required by regulation 7 (1).*

9 (2) – Without prejudice to the generality of paragraph (1), the information and instruction provided by virtue of that paragraph shall not be adequate and appropriate unless it is comprehensible to the person to whom it is provided.

As with many items of safety law, the above mentions information, instruction and training. These are separate issues.

Information – this is the passing of information to an employee. For example, informing an employee of the hazards faced and why an item of PPE needs to be worn.

Instruction – this is telling an employee what to do. For example, instructing an employee that they must wear a hard hat while on site.

Training – this is actual training in a process or operation. For example, training someone in the maintenance processes required for re-usable RPE.

To illustrate the above, a new employee at a landfill site will need to be instructed that he will wear high-vis clothing at all times on site. He also needs informing of the risks he faces and why high-vis clothing is a protection – in this case the number of HGVs on site and the risks of collision. No real training needs to be given, although he will need to be informed of the procedure for replacing his high-vis when it is dirty.

In order to prove that the above has been carried out, records need to be kept. Using the above example:

- Proof of instruction to wear high-vis would be through the employee's induction checklist, which includes PPE requirements and site rules.
- Proof of information regarding high-vis would be through induction on risk assessments such as the site's traffic management risk assessment.

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- Proof of training, in the case of high-vis, would be via the initial PPE issue form (although the training element of high-vis is low). For more complex training, such as the use of breathing apparatus, a formal certificate is issued and a copy kept in the employee's training file. Likewise, and training on the maintenance of PPE given by another experienced employee can be logged on the on-the-job training section of a training record form.

Regulation 10 of the PPE Regulations – use of PPE

10 (1) – Every employer shall take all reasonable steps to ensure that any PPE provided to his employees by virtue of regulation 4 (1) is properly used.

Note that the above uses the word 'reasonable' rather than any phrase such as 'reasonably practicable'. This is a higher level of duty and must be fulfilled. For example, an employee who repeatedly refuses or 'forgets' to wear his PPE must be taken seriously, if necessary by being taken through disciplinary procedures.

For example, if an employee point-blank refuses to wear an item of PPE, which is required, he must not be allowed to proceed with a task until he is wearing that PPE. Likewise an employee who repeatedly 'forgets' or resists wearing PPE must be taken through the route of counselling, verbal warning, written warning and, in extreme cases, dismissal. However, the required documentary records must be in place – a manager will need to be able to prove that the required information, instruction and training processes have been adhered to and recorded.

10 (2) – Every employee shall use any PPE provided to him by virtue of these regulations in accordance both with any training in the use of the PPE concerned which has been received by him and the instructions respecting that use which have been provided to him by virtue of regulation 9.

10 (3) – same for self-employed persons.

10 (4) – Every employee and self-employed person who has been provided with PPE by virtue of regulation 4 shall take all reasonable steps to ensure that it is returned to the accommodation provided for it after use.

The above is the employee's part of the deal. In short, employees must wear the PPE they are given and use it as instructed and trained. This would include, for example, wearing hard hats the right way round and not like baseball caps in the Bronx.

Employees also have a duty to return PPE to the accommodation provided. For example, if lockers are provided, dumping high-vis jackets on the ground is not acceptable and neither is throwing RPE in a heap in the corner.

Regulation 11 of the PPE Regulations – reporting of loss or defect

11 – Every employee who has been provided with PPE by virtue of regulation 4 (1) shall forthwith report to his employer any loss or obvious defect in that PPE.

The above does not apply to routine replacement (that is managers would be expected to carry sufficient stocks of replacement PPE and not leave ordering until employees ask for a replacement). However, the duty is on the employee to report loss and defects. Note that the word 'forthwith' is used – that is waiting a week to report the loss of a hard hat is not acceptable.

Regulations 12, 13 and 14 deal with exemptions and the revocation of earlier law.

The remainder of the PPE Regulations are schedules which cover issues such as the assessment of RPE and breathing apparatus and the regulation's application to other laws, such as those mentioned above which also

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have PPE requirements in them.

16. The Construction Design and Management Regulations

Although most waste management companies are not construction companies, at one time or another virtually all of the waste sites will be subject to construction work. This can range from civil engineering work on a landfill site and concrete laying at a transfer station through building a new recycling factory and demolishing storage tanks at a special waste site to building a new accommodation block and large-scale repair and maintenance at a high temperature incinerator.

The Construction Design and Management Regulations (the CDM Regulations) are aimed at controlling such works, in particular the contract nature of the majority of such, and allocating responsibilities to the various parties involved.

The reason that the CDM Regulations exist is that the construction industry has a notoriously bad accident record. There are several reasons for this including:

- The nature of the work carried out often presents significant risks (in particular demolition, working at heights and confined spaces)
- Often a whole series of contractors and sub-contractors are involved and co-ordination is, at best, difficult
- The culture of the construction industry is, largely, of 'get the job done'
- Construction projects are often constrained to a tight time schedule which can lead to corner-cutting

There are other reasons, but the construction industry's accident and prosecution record speaks for itself – the CDM Regulations were aimed at trying to improve this.

What types of project do the CDM Regulations apply to?

There are three stages when considering whether the CDM Regulations apply to a project. The first is to establish whether the project is a construction project, the second whether the project is notifiable to the HSE (most CDM projects are notifiable to the HSE under regulation 7 of the regulations) and the third is whether, despite the project being classified as construction, the CDM Regulations apply at all.

1. Is the work construction work?

The definition of what is a construction project is wide ranging and includes virtually all of the civil engineering type tasks performed or contractors perform. The definition also includes the removal and/or replacement and/or repair of storage tanks etc. Most especially, the definition includes all demolition work. Exceptions are:

- Work carried out in shops and offices when the normal work of the building is not interrupted
- The removal or maintenance/repair of insulation on pipes, boilers etc

Virtually anything else that involves digging holes, knocking things down, repairing and maintaining things, cleaning things, etc can be defined as construction work. One set of definitions is:

- Preparations for, or assembly of a structure or construction, alteration or conversion of a structure AND/OR
- Fitting out or commissioning of a structure AND/OR
- Renovation, repair, upkeep or redecoration of a structure, maintenance, decommissioning, demolition or dismantling of a structure

From the above, the term 'structure' has a wide meaning from building to reservoir and from roads to any fixed

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plant where a fall of more than 2 metres could occur. Construction includes the removal and/or installing services such as gas and water. The above includes cleaning, such as window cleaning, pressure cleaning etc.

2. Does the project need to be notified to the HSE?

Construction projects, as under the above definitions, must be notified to the HSE unless:

- The length of the project is less than 30 days AND
- The total number of person days on the project will be less than 500 days

3. Do the CDM Regulations apply?

If the project being considered is not notifiable to the HSE, for reason of the above limits on days and person days worked, the CDM Regulation will STILL apply unless:

- Less than 5 people will be involved
- The work is for a domestic client (most of the regulations do not apply)

In synopsis, first is the job a construction project (as defined above in point 1.), second if it is a construction job s the project notifiable to the HSE and thirdly even if it is not notifiable to the HSE, do the regulations still apply.

Application of duties under the CDM Regulations

One of the main aims of the CDM Regulations is to identify various parties involved and allocate various duties to these parties. One of the main problems in construction projects is the number of parties typically involved and that duties which need to be carried out can 'fall between the lines'. The Regulations define five groups involved in construction work:

The client – this is the person for whom the work is being carried out (for example, the waste management company would normally be the client for civil engineering works on its sites).

The planning supervisor – this is the person, or group of persons, appointed by the client to oversee the works. Note – the planning supervisor must be appointed early enough in the project to ensure the competence of designers and contractors.

The designer – the person or group of persons who prepares drawings, designs structures etc (for example, if the project is the installation of new storage tanks etc at a special waste site, the designer is likely to be a chemical engineer).

The principle contractor – this is normally the main contractor involved (there may only be one contractor involved, but normally there will also be other sub-contractors etc).

Contractors – any other contractor not the principle contractor.

Each of the above persons or groups of persons has specified duties under the CDM Regulations:

The client

The client is the person the work is being carried out for, even if this is an internal client – for example, one department in a company carrying out construction work for another department. The client may appoint an agent to act on his behalf, but must be reasonably satisfied that this agent is competent. The client's duties are:

- Notify the HSE of the appointment of any agent acting on his behalf (in these cases the legal duties of the

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client pass to the agent, but the client must be satisfied as to the competence of the agent)

- Appoint a planning supervisor (see below) as soon as possible to enable this person to give competent advice and assess the competence of contractors and designers early in the process
- Where a principle contractor is to be appointed the client must do this as soon as sufficient information is available about the project for a decision to be made – in particular with regard to competence and resource allocation

(Note. The positions of both planning supervisor and principle contractor must remain filled throughout the project)

(Note. There is no problem with the client acting as the planning supervisor, provided he is competent to do so, nor acting as the principle contractor, again provided he is competent. Nor is there any problem with the principle contractor acting as the planning supervisor. In extreme cases, one company may be the client, planning supervisor and principle contractor – provided the required competencies exist)

- Ensure that a safety plan has been prepared (see below) BEFORE the construction phase commences
- Provide the planning supervisor with such information relating to health and safety on the state or condition of the premises involved and other matters in his control
- Once the project has finished, ensure that the safety file (see below) is kept available for inspection and passed onto any subsequent owner of the premises

In most of the above the client has a responsibility to be reasonably satisfied regarding the competence of the planning supervisor and, by inference, principle contractor. The client must also be reasonably satisfied as to the adequacy of resource allocation. In short, it is not good enough to pick a name out of the phonebook and then 'screw' the price down as far as possible with no regard to health and safety.

The planning supervisor

The planning supervisor must be competent and appointment sufficiently early in the project to allow him to carry out his duties. The planning supervisor does not need to be a single person and can be a company or group of people, although one person must co-ordinate. Indeed, there is a weight of opinion that no one person can fulfil all the duties of the planning supervisor – that is no one person is an expert on all the issues to be covered.

The planning supervisor's duties are:

- Notify the HSE of the CDM project
- Ensure that a safety plan (see below) for the project has been completed before construction commences (a duty shared with the client)
- Ensure that designers and contractors are competent before they are appointed
- Ensure that any structure is designed with health and safety in mind regarding the construction of the structure and its cleaning
- Ensure that sufficient design information is passed onto those involved in construction or cleaning
- Ensure that designers co-operate in achieving health and safety requirements (for example, when building a special waste site chemical and civil engineering designers will need to co-operate)
- Advise the client and/or contractor on competence and/or resource allocation requirements for design work and potential designers (for example, what design work will cost to achieve good health and safety and/or any qualifications and/or experience a designer may need to ensure good health and safety)
- Advise the client on competence and/or resource allocation requirements for potential contractors (for example, how much employing contractors will cost to achieve good health and safety and what competencies such contractors will need to achieve good standards of health and safety)
- Advise the client of the requirement for a safety plan to be compiled before construction starts
- Prepare a health and safety file (see below)

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The designer

The designer prepares drawings, designs details, produces specifications and formulates the bill of quantities for the work. There may be more than one designer and, in such cases, the planning supervisor must ensure that they co-operate with each other. The planning supervisor will also feed information to the designer, such as the risk and hazard information provided by the client, and assist the designer in ensuring that risks are reduced through good design.

The planning supervisor will also need to gain information from the designer on topics and issues to be covered in the safety plan. Designers have a duty to ensure that they provide such information. Designers also have a duty to inform the client of any legal and good practice issues which come to light while they are translating the client's wishes into a final design.

The designer's duties are:

- Avoid foreseeable risks to health and safety to anyone during construction or during cleaning work either in or on the structure
- Combat risk at source if avoidance is not reasonably practicable through good design
- Use controls in their design which protect all persons, not just those involved in construction of cleaning
- Provide adequate information about the project, structure and/or materials used in design documents so that those involved in the project can take the appropriate decisions regarding health and safety

When considering design, at least the following issues need to be considered:

- Is the design based on current or well-established practice?
- Does the design conform to legislation, good principles and practice, current British or EU standards etc?
- Do design drawings point out any specific or unusual hazards, particularly those that may be encountered during construction?
- Is the design 'construction friendly'?
- Has adequate consideration been given to the subsequent maintenance, cleaning etc of the structure?

The principle contractor

With advice from the planning supervisor, the client, or his agent, will appoint a competent principle contractor (there may only be one contractors, but more normally others will also be involved). It is the principle contractor's main duty to manage the construction work for the client.

Before construction commences the principle contractor should ensure that the safety plan contains arrangements and controls which will, so far as is reasonably practicable, protect all those involved or who may potentially be affected by the project.

The principle contractor's duties are:

- To take all reasonable steps to ensure co-operation between all the contractors involved on the project
- Ensure that the health and safety rules in the safety plan are complied with, including site rules
- Take reasonable steps to control access to the site
- Provide the planning supervisor with information promptly on issues which may need including in the safety file being written for the structure (see below)
- Bring the safety rules, including site rules, to the attention of any person involved in construction (individual contractor have duties, such as under Regulation 8 of the Management of Health and safety at Work Regulations, to inform their own employees of hazards, risks etc. However, the principle contractor has a duty to provide comprehensible information to contractors on the hazards associated with the project)
- Provide consultation arrangements to ensure that those involved in the construction can raise safety issues

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and provide co-ordination forums to allow adequate co-operation between contractors to occur

- Provide a system to allow the reporting of accidents and incidents, in particular those which would fall under RIDDOR

Contractors

Of course for smaller projects the only contractor may be the principle contractor. However, in most cases several contractors will be involved, such as electricians, civil engineers, plumbers etc.

All contractors working on any job have a series of health and safety duties, such as under Section 3 of HSWA. Most of these revolve around co-operation and co-ordination – any risk assessments etc required from contractors for the safety plan must be obtained as soon as possible and fed into the overall co-ordination of the project.

The additional duties imposed by the CDM Regulations are:

- Obey the site safety rules communicated to them by the principle contractor
- Report any RIDDOR incidents or accidents to the principle contractor
- Report any factor or issue which may affect the safety of the project to the principle contractor

In addition to the normal induction requirements, such as emergency procedures etc, all those working on site must have been inducted in:

- The name of the planning supervisor
- The name of the principle contractor
- The relevant parts of the safety plan

As with all safety law requirements, the above induction must be recorded.

The health and safety plan

Regulation 15 of the CDM Regulations requires the planning supervisor to prepare a health and safety plan for the project. Typically this plan will be developed in two stages: A design and planning stage and a construction stage. The design and planning stage of the safety plan must be completed before contractors are employed and will form part of any tender document (that is it gives potential contractors, including the principle contractor, the information they will need to bid for the job – and prove their competence).

The design and planning stage of the safety plan must include:

- A description of the work to be done
- The timescale/s for the project
- Details of any risks to health and safety involved in the project, so far as they are known at this stage, including any risks identified by the designer (that is preliminary risk assessment information for the project)
- The information required for potential contractors to be able to judge their competence against (and which the planning supervisor will need to advise the client on contractor selection)
- Any other information available at the time relevant to the project and the development of the construction phase of the plan

Once competent contractors have been employed and the allocation of resources settled, the health and safety plan can be developed into the full construction phase plan. The final plan must include, at the least:

- Details of how health and safety will be managed during the project
- Contractor's risk assessments and method statements for high risk activities

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- Details of welfare arrangements
- Details of common arrangements for welfare, emergency procedures etc
- Information on how contractors have been/will be selected
- Information on material suppliers, plant and equipment suppliers and how such for common use will be selected and co-ordinated
- Details of any training required for health and safety
- The means by which worker's and their representative's views will be co-ordinated
- Monitoring and review systems, such as inspections
- Details of any safety rules required by law and those local rules to be imposed through the principle contractor

All safety plans will be 'living' documents and subject to change. However, whenever any details of the safety plan are to be changed this must be recorded in the plan. For example, if a method statement for a stage of the construction phase needs to be changed, such as because of ground conditions not known about at the design and planning stage, this modified statement must be included in the plan. It is the planning supervisor's duty to ensure this happens.

The safety plan must be kept on site at all times and must be available for inspection by any person who has reason to inspect it, such as an HSE inspector or the client's safety advisor.

The health and safety file

While the safety plan is the 'plan' for the construction phase of the project, the health and safety file is aimed at potential future operations at the site/in the structure. This safety file must include at least:

- Details of the design of the structure which have health and safety implications
- Information about risks which will need to be managed during the life of the structure, such as during cleaning, maintenance, repair, demolition
- Any health and safety risks identified during construction which were not at the design and planning stage which may affect the above

Examples of the above might be:

- The location of any hazardous materials in the structure
- Any maintenance requirements for the structure
- The location and nature of any fall protection systems for use during window cleaning etc
- Details of structural issues relevant to demolition etc

The safety file must be kept at the site and be available as a reference document throughout the life of the structure. If the ownership of the structure changes, the safety file must also change ownership. For example, if a company buys an office building it should come with its safety file.

Construction site planning and security

Construction sites have their own risks and also those associated with the environment they are in. IN addition, sites are attractive to several groups of people from children and vandals to thieves looking for tools etc. Below are some areas which require consideration – while aimed at construction sites, the principles are the same for any site:

Site planning should take account of:

- Presence of hazardous materials, such as contaminated land, asbestos etc

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- Any unusual ground conditions, such as the presence of springs, mine shafts etc
- Overhead power lines and underground services
- Any public access to the site, such as rights of way
- Any public access near or on the boundary of the site
- Nearby schools and other facilities, such as sports centres etc

All construction sites must be kept secure. During working hours all access points to the site must be controlled (it is preferable to have as few access points as possible and all should be supervised). If the site is left unattended at any time gates etc must be closed and the site must be securely fenced – typical is 2 metre high fencing. Even with such fencing:

- All mobile ladders should be locked securely away
- All fixed ladders should have their lower rungs boarded to prevent access
- All plant should be immobilised and any keys secured
- Building and other materials should be stacked securely and safely
- Hazardous substances should be secured in locked facilities or cages etc
- Perimeter fencing should be checked regularly and any defects repaired
- All appropriate warning and site boundary signs should be in place

17. Consulting employees on health and safety

The two main items of law are:

- **The Safety Representatives and Safety Committees Regulations 1977**
- **The Health and Safety (Consultation with Employees) Regulations 1996**

By law, employers must consult all of their employees on health and safety matters. Some workers, who are self-employed, for example for tax purposes, are classed as employed under health and safety law. These notes summarise the law, which applies to employers and employees onshore in the UK.

What does consultation on health and safety involve? Consultation involves employers not only giving information to employees but also listening to and taking account of what employees say before they make any decisions.

If a decision involving work equipment, processes or organisation could affect the health and safety of employees, the employer must allow time to give the employees or their representatives information about what is proposed. The employer must also give the employees or their representatives the chance to express their views. Then the employer must take account of these views before they reach a decision.

What should consultation be about? Consultation with employees must be carried out on matters to do with their health and safety at work, including:

- Any change which may substantially affect their health and safety at work, for example in procedures, equipment or ways of working
- The employer's arrangements for getting competent people to help him or her satisfy health and safety laws
- The information that employees must be given on the likely risks and dangers arising from their work, measures to reduce or get rid of these risks and what they should do if they have to deal with a risk or danger
- The planning of health and safety training
- The health and safety consequences of introducing new technology

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How should consultation take place

The Safety Representatives and Safety Committees Regulations (SRSCR) 1977

If an employer recognises a trade union and that trade union has appointed, or is about to appoint, safety representatives under the SRSCR 1977, then the employer must consult those safety representatives on matters affecting the group or groups of employees they represent. Members of these groups of employees may include people who are not members of that trade union.

The Health and Safety (Consultation with Employees) Regulations (HSCER) 1996

Any employees, not in groups covered by trade union safety representatives, must be consulted by their employers under the HSCER 1996. The employer can choose to consult them directly or through elected representatives.

If the employer consults employees directly, he or she can choose whichever method suits everyone best. If the employer decides to consult his or her employees through an elected representative, then employees have to elect one or more people to represent them.

Could employees suffer as a result of taking part in consultation? No, the law protects employees against being dismissed or other action taken against them because they have taken part in health and safety consultation (whether as an individual or a representative). This includes taking part in electing a health and safety representative or being a candidate.

What help and training will representatives receive? The employer must make sure that elected representatives receive the training they need to carry out their roles, give them the necessary time off with pay and pay any reasonable costs to do with that training. The TUC or the trade union concerned will offer trade union safety representatives training. All representatives must be given time off with pay to take part in any training they need.

All representatives must be given reasonable time off with pay and appropriate help and facilities so they can carry out their role. Candidates for election are also entitled to reasonable time off with pay to carry out their roles.

What information should be available? Employees or their representatives must be given enough information to allow them to take a full and effective part in the consultation. If the employer decides, he or she can consult both the employees and their representatives about a particular issue.

Employers do not have to provide information that they are not aware of or if it, or:

- If it would be against the interests of national security or against the law
- It is about someone who has not given his or her permission for it to be given out
- It would - other than for reasons of its effect on health and safety - harm the business
- If the employer has got the information in connection with legal proceedings.

If there is a disagreement between employers and employees or their representatives about the consultation arrangements, an agreement should first be attempted through the normal procedures in the organisation. The Advisory, Conciliation and Arbitration Service (ACAS) can become involved if necessary.

Any employee can apply to an Industrial Tribunal if they feel they have been penalised for taking part in consultation. Representatives who have not received the time off and pay they need to carry out their roles or be trained can also apply.

What is the difference between the roles of trade union safety representatives and elected representatives of employee safety (representatives elected by groups of employees not covered by trade union safety

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representatives)? Under the SRSCR 1977 the roles of trade union safety representatives are:

- To investigate possible dangers at work, the causes of accidents there and general complaints by employees on health and safety and welfare issues and to take these matters up with the employer
- To carry out inspections of the workplace particularly following accidents, diseases or other events
- To represent employees in discussions with health and safety inspectors and to receive information from those inspectors
- To go to meetings of safety committees.

Note: The employer must set up a safety committee if two or more trade union safety representatives ask for one.

The separate HSCER 1996 give elected representatives of employee safety the following roles:

- To take up with employers concerns about possible risks and dangerous events in the workplace that may affect the employees they represent
- To take up with employers general matters affecting the health and safety of the employees they represent
- To represent the employees who elected them in consultations with health and safety inspectors

Employers may choose to give elected representatives extra roles as well.

Health and safety under-pinning knowledge notes
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