

NEBOSH National Diploma Unit A - Managing Health and Safety

Introduction

This Supplement contains updates to your study material for Unit A of the NEBOSH National Diploma. Please read it carefully.

Element A8: Principles of Health and Safety Law

Structure and Function of the Courts and Related Institutions

ROLE OF EMPLOYMENT TRIBUNALS IN MATTERS OF HEALTH AND SAFETY

General Procedure

The first paragraph under this subheading has been amended to read as follows:

“The law relating to procedure in employment tribunals is contained in the **Employment Rights (Dispute Resolution) Act 1998**. The detailed procedural rules are contained within Schedule 1 of the **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013**.”

Element A9: Criminal Law

The Health and Safety at Work, etc. Act 1974 and the Management of Health and Safety at Work Regulations 1999

REQUIREMENTS AND APPLICATION OF SECTIONS 2-4 AND 6-9 OF THE HEALTH AND SAFETY AT WORK, ETC. ACT 1974

Duties to Persons Other Than Employees (Section 3)

In the first paragraph under this subheading, the first sentence has been amended to read:

“A duty is placed on employers and the self-employed to make adequate safeguards to protect third parties.”

After the quotation from the Act which follows that paragraph, the following new paragraph has been inserted:

“Note that the **Deregulation Act 2015** makes amendments to Section 3 of the **Health and Safety at Work, etc. Act 1974** to limit the scope of this duty to self-employed persons who conduct an ‘undertaking of a prescribed description’, i.e. one specifically prescribed by regulations made by the Secretary of State.”

Enforcement of Health and Safety Law

In the **KEY INFORMATION** box at the beginning of this main section, the second bullet point has been amended to read:

- “A company convicted under the **HSWA** or associated regulations may be fined an unlimited amount in a Magistrates’ Court or Crown Court.

In addition, individuals may be imprisoned for up to six months (Magistrates’ Court) or two years (Crown Court).”

DIVISION OF RESPONSIBILITIES BETWEEN ENFORCING AUTHORITIES

Activities Enforced by the HSE

In the fourth bullet point under this subheading, “Regulation 21 of the **Construction (Design and Management) Regulations 2007**” has been updated to read “Regulation 6 of the **Construction (Design and Management) Regulations 2015**”.

OFFENCES AND MAXIMUM PENALTIES UNDER THE LAW

Maximum Penalties

In the **TOPIC FOCUS** box in this subsection, the text under the heading **Summary Conviction** now reads:

“On summary conviction at a Magistrates’ Court, the maximum penalties are for most offences:

- A fine.
- Up to six months’ imprisonment*.
- Both.

** Technically **HSWA** allows for prison sentences of up to 12 months for each offence, but the current maximum prison sentence that can be imposed by a Magistrates’ Court is six months. This will increase to 12 months on commencement of s154(1) of the **Criminal Justice Act 2003**.”*

OPTIONS FOR ENFORCEMENT ACTION

Appeals (Section 24)

The first paragraph under this subheading has been amended to read:

“The appeals procedure is contained in outline within Section 24 of **HSWA** and also (in considerably more detail) in Schedule 1 to the **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013**.”

PRINCIPLES OF ENFORCEMENT BY SAFETY CASE, REGISTRATION AND LICENSING

In the **TOPIC FOCUS** box in this subsection, under the subheading **Example: Major Accident Hazards**,

“**Control of Major Accident Hazards Regulations 1999 (as amended)**” has been updated to “**Control of Major Accident Hazards Regulations 2015**”.

Summary

Health and Safety at Work, etc. Act 1974

Duties to Persons Other Than Employees (Section 3)

The first sentence under this subheading now reads:

“A duty is placed on employers and the self-employed to make adequate safeguards to protect third parties.”

Element A10: Civil Law

Breach of Statutory Duty, Defences and Damage

MAIN DEFENCES TO CLAIMS OF BREACH OF STATUTORY DUTY

At the end of this subsection, the following new text has been added:

“Social Action, Responsibility and Heroism Act 2015

A particular area of concern regarding the possibility of an action being brought for negligence and breach of statutory duty is where an individual takes heroic action to protect the safety of others. Persons who step in to help in dangerous circumstances could be subject to legal action if something goes wrong. This may discourage people from doing simple good deeds for fear of litigation.

The purpose of the **Social Action, Responsibility and Heroism Act 2015** (in force in England and Wales) is to protect persons who may be deterred from participating in socially useful activities due to worries about risk or liability. It aims to restore balance in a perceived ‘claims culture’ and provide reassurance to people that courts will take full account of the context of their actions if someone is sued after acting in a socially beneficial way.

The Act can be used as a defence against negligence and breach of statutory duty (where relevant) when ‘the person was acting for the benefit of society or any of its members’ and they have ‘demonstrated a predominantly responsible approach towards protecting the safety or other interests of others’ or if ‘the person was acting heroically by intervening in an emergency to assist an individual in danger’.”