



NEBOSH National General Certificate

UNIT NGC1

MANAGEMENT OF HEALTH & SAFETY

ELEMENT 1: FOUNDATIONS IN HEALTH AND SAFETY

SAMPLE MATERIAL

(Material correct Autumn 2013)



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The Scope and Nature of Occupational Health and Safety

Key Information

- The study of health and safety involves the study of many different subjects including the sciences (chemistry, physics and biology), engineering, psychology, sociology and the law.
- There are many barriers to good standards of health and safety in a workplace: workplaces can be complex; there are often competing and conflicting demands placed upon people and organisations; and good health and safety practice often relies on the perfect behaviour of individuals, who sometimes fail to behave in this ideal way.
- Key definitions are:
 - **Health** - the absence of disease.
 - **Safety** - the absence of risk of serious personal injury.
 - **Welfare** - access to basic facilities.
 - **Environmental protection** - the prevention of damage to the air, land, water and living creatures in the wider environment.

The Multi-Disciplinary Nature of Health and Safety

Workplace health and safety practice brings together knowledge from many different disciplines. Some health and safety topics are simple to understand; others are technical and require specialist knowledge. Sometimes the practical solution to a health and safety problem is straightforward; at other times the solution is complicated and demanding and requires the correct application of technical knowledge and thinking.

In order to fully understand a health and safety issue you need to be familiar with:

- The technical background to the issue and have the relevant knowledge.
- The standards that may apply to the workplace and to the specific health and safety issue under consideration.
- The possible strengths and weaknesses of the various options that are available to solve the problem.

The study of health and safety therefore involves many different subjects including the sciences (chemistry, physics and biology), engineering, psychology, sociology and the law.

The Barriers to Good Standards of Health and Safety

There are many barriers to good standards of health and safety in a workplace:

- **Complexity** - workplaces can be complicated, involving the co-ordination of many people performing many different activities. Finding a solution to a specific health and safety problem or issue can be complex, requiring extensive background knowledge and an awareness of the possible consequences of the various courses of action that are available.
- **Conflicting demands** - there are often competing and conflicting demands placed upon people and organisations. A common conflict of interest is that between the need to supply a product or a service at an appropriate speed so as to make a profit, and the need to do so safely and without risk to people's health. Another conflict can be created by the need to comply with different types of standards at the same time, e.g. health and safety law as well as environmental protection law.
- **Behavioural issues** - good health and safety practice often relies on the perfect behaviour of individuals, and people sometimes do not behave in this ideal way. The solution to a health and safety problem usually requires a worker to carry out their job in a particular way. For example, a worker on a construction site should wear a hard hat to protect themselves from falling objects. But people are not robots; they do not behave as they are supposed to



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all the time. Workers sometimes make mistakes (they do the wrong thing thinking that it is the right thing to do). Sometimes they deliberately do the wrong thing (knowing that it is wrong, but doing it anyway). The fact that health and safety standards are affected by worker behaviour can be a significant barrier to maintaining good standards in a workplace.



Behavioural issues - a worker ignores safety rules

Definitions

The topic of health and safety makes use of key words and phrases. Some important definitions are:

Health

The absence of disease or ill-health. For example, asbestos creates a health risk because if you inhale asbestos dust you may contract lung cancer (a disease) at some stage later in life (perhaps 20 or 30 years after you inhaled the dust). Health relates not only to physical ill-health but also to psychological ill-health (e.g. exposure to extreme stress can lead to nervous breakdown).

Safety

The absence of risk of serious personal injury. For example, walking under a load suspended from a crane during a lifting operation is not safe because if the load falls, serious personal injury or death could result. Staying out of the danger area results in safety.

Welfare

Access to basic facilities such as toilet facilities, hand-wash stations, changing rooms, rest rooms and places where food can be prepared and eaten in relatively hygienic conditions, drinking water and basic first aid provision.



Welfare facilities - hand-wash stations

Environmental Protection

The prevention of damage to the air, land, water and living creatures in the wider environment. The word "environment" can be used simply to refer to the local area around a particular workplace or workstation, meaning the air, temperature, humidity, ventilation, light, etc. in that local area, but it can also be used in a wider context to refer to air, land, water and creatures. Environmental protection refers to the prevention of damage to this wider environment and, of course, subject to legal standards.



Possible source of environmental damage



Revision Questions

1. Why may health and safety not be seen as a priority by the management of an organisation?
2. Define:
 - (a) Health.
 - (b) Safety.
 - (c) Welfare.
 - (d) Environmental protection.

(Suggested Answers are at the end of Unit NGC1.)



The Moral and Financial Reasons for Health and Safety

Key Information

- The three main reasons why an organisation has to manage health and safety are: moral, economic and legal. In this section two of these reasons are explored.
- The moral reason relates to the moral duty that one person has to another. Many people are killed, injured or made sick by their work. This is morally unacceptable and society expects good standards of health and safety.
- The financial reason relates to the fact that accidents and ill-health cost money. When an accident occurs there will be direct and indirect costs associated with that event. Some of these losses can be insured against; many of them will be uninsured.

Organisations and individuals have to manage health and safety standards within the workplace for various reasons. These reasons can usually be grouped under three main headings: moral, financial and legal. In this section the first two reasons will be explored.

The Size of the Problem

The following statistics are compiled by the Health and Safety Executive (HSE). These figures represent averages over recent years. Up-to-date annual figures can be obtained from the Statistics section of the HSE website. (You do not need to remember the actual figures; we give them to highlight the scale of the problem.)

Every year in the UK:

- **Over 220** workers are killed at work.
- **Over 29,000** workers suffer a major injury.
- **Over 110,000** workers suffer an over-3 day injury.
- Over **30 million working days** are lost
 - 80% as a result of work-related ill health.
 - 20% as a result of workplace injury.
- **2 million** people suffer from an illness they believe was caused or made worse by their current or past work.
- **Over 2,000** people die of mesothelioma, and thousands more from other occupational cancers and lung diseases.

These figures relate to the number of accidents and cases of disease which are reported and recorded. Inevitably there will be under-reporting and under-recording, so the real figures are almost certainly higher (e.g. the Labour Force Survey estimates over 300,000 reportable injuries occur each year).



Example of a workplace injury

These statistics indicate that a huge amount of pain and suffering is experienced by people who simply go to work to earn a living. The numbers indicate the scale of the problem. What the numbers don't do is tell the individual stories. When health and safety is not managed properly people get killed and injured in gruesome ways or suffer terrible diseases that have a massive impact not only on them, but also their dependants, families, friends and colleagues. This suffering is morally unacceptable.

Employers (through management) provide the premises and equipment and put in place the working practices which employees use to produce the goods and services with which employers earn profits. To that extent employers can be said to gain from the conditions at the workplace. In return, they provide an income for employees, but also have a moral responsibility to provide safe and healthy working conditions.



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Societal Expectation

Standards of health and safety improve over time. Court cases indicate how a simple requirement such as “safe place of work” has changed over the years. What was considered a safe workplace in 1960 is very different to that which is expected 50 years on. Societal expectations change as society changes, for example:

- Well designed and reliable equipment, a comfortable workplace, organised systems of work and a high level of training are standards that people take for granted now because they are so common.
- Widespread access to knowledge now ensures that anyone interested in legal standards or best practice can find the relevant information.
- Media coverage now ensures that when poor standards of health and safety are revealed, this is broadcast to society quickly and by many different methods.

Though individuals often express an ambivalent attitude to health and safety, when a serious injury or disease is caused by work the overall response from society is not ambivalent, but one of condemnation.

The Business Case for Health and Safety

The business case for health and safety is simply that accidents and ill-health cost an employer money. When an accident occurs there will be direct and indirect costs associated with that event. Some of these losses can be insured against, but many cannot. The financial impact of accidents and ill-health can have significant effect on the profitability of an organisation and in some cases can lead to bankruptcy.

When an accident occurs there are two types of losses that the organisation may face:

- **Direct costs** - the measurable costs arising directly from the accident.
- **Indirect costs** - those which arise indirectly as a consequence of the event. Indirect costs are often difficult to quantify precisely and may be hard to identify. In certain circumstances they may be extremely high.

Topic Focus

Examples of **direct** costs:

- First aid treatment.
- Employee sick pay.
- Repairs to, or replacement of, damaged equipment and buildings.
- Lost or damaged products.
- Lost production time whilst dealing with the injury.
- Overtime to make up for lost time.
- Costs associated with the rehabilitation of the injured employee and their return to work.
- Fines from the criminal courts.
- Compensation payable to the victim, which is likely to be met by insurance cover and will therefore result in an increase in insurance premiums.

Examples of **indirect** costs:

- Loss of staff from productive duties in order to investigate the incident, prepare reports, undertake hospital visits, deal with relatives, attend court proceedings.
- Loss of staff morale (which impacts on productivity and efficiency).
- Cost of remedial action following an investigation, e.g. change of process or materials and/or the introduction of further control measures.
- Compliance with any enforcement notice served.
- Cost of recruiting and training temporary or replacement labour.
- General difficulties in recruiting and retaining staff as an indirect result of the accident.
- Loss of goodwill of customers following delays in production and fulfilling orders.
- Activation of penalty clauses for failing to meet delivery dates.
- Damage to public image and business reputation.
- Damage to industrial relations, perhaps leading to industrial action (e.g. strikes).

Points and Tips

Review the course materials with a pen and paper in hand. Take lots of notes and be sure to jot down anything you want to ask your tutor about.



From the examples given you can see that though more difficult to identify, the indirect costs associated with a workplace accident can be very large indeed.

Insured and Uninsured Costs

It is usually possible to take out insurance to cover some of the losses that might foreseeably occur to an organisation. It is compulsory to take out employers' liability insurance (under the **Employers' Liability (Compulsory Insurance) Regulations 1998 (as amended)**, made under the **Employers' Liability (Compulsory Insurance) Act 1969**), so that if an employee is killed or injured at work there is insurance in place to pay them (or their dependants) compensation. The minimum amount of cover is currently £5 million. The current certificate must be 'displayed' for the benefit of employees (though this can be made available in electronic form) and produced if required by an inspector.

Similarly, it is usual for an employer to insure their premises and stock against fire. However, it is not possible to insure against all losses. Some losses are uninsurable by their very nature. For example, you cannot take out an insurance policy to pay money should you be prosecuted and fined in the criminal law courts. Such insurance would, of course, negate the punitive and deterrent effects of the criminal legal system. Other losses are not insured because the loss is too difficult to quantify or because the insurance would be too expensive to consider. For example, organisations cannot insure themselves against loss of revenue if their business reputation is damaged through a major workplace accident. There is no law that prevents this type of insurance, it is simply impossible to obtain.

Many of the direct and indirect costs associated with workplace accidents are uninsured for these reasons. It has been estimated that uninsured losses are between eight and 36 times greater than insured losses. Examples of possible uninsured losses include:

- Loss of raw materials due to accidents.
- Sick pay for injured workers.
- Overtime to make up for lost production.
- Repair to damaged equipment.

It is worth remembering that most insurance policies come with an excess and with a limit. The excess is the amount of money that will be payable by the organisation before any payment is forthcoming from the insurer (for example, the first £5,000 of any claim). The limit is the cap above which the insurer will not pay (for example, if you have £2 million fire insurance but it costs £3 million to rebuild your premises, then the insurer will only pay the first £2 million, the remaining sum is uninsured).



More...

<http://www.hse.gov.uk/statistics/index.htm>

<http://www.hse.gov.uk/business/index.htm>



Revision Questions

3. In three words sum up the reasons why an organisation should manage health and safety.
4. Give examples of how societal expectations can result in higher standards of health and safety
5. Give three direct costs and three indirect costs that might arise from a workplace accident.

(Suggested Answers are at the end of Unit NGC1.)



The Legal Framework for Regulating Health and Safety



Key Information

- Two types of law create a framework for the regulation of health and safety: criminal law and civil law.
- Criminal law is concerned with the punishment of companies or individuals who have broken statute health and safety law.
- Civil law is concerned with the compensation of people who have been injured in work-related accidents through no fault of their own.
- Two sources of law are used in the criminal and civil systems: statute law and common law.
- Statute law is made by parliament in the form of Acts and Regulations.
- Common law is made by judges through the precedents that they set by their decision making.
- The law courts used for criminal and civil cases are different and there is a clear hierarchy to the court system, with the Supreme Court sitting as the highest court in the land.
- The enforcement of statute health and safety law is carried out by several authorities such as the Health and Safety Executive (HSE).
- HSE inspectors have many powers under the **Health and Safety at Work, etc. Act 1974 (HSWA)** to investigate and examine workplaces. They can also issue Enforcement Notices or prosecute in the criminal courts.
- The two types of Enforcement Notice are the Improvement Notice and the Prohibition Notice. Certain conditions have to be met before an inspector can issue either notice. The employer can appeal against these notices to an Employment Tribunal.
- Successful prosecution of a company or an individual under **HSWA** can lead to fines up to £20,000 and/or imprisonment up to 6 months at Magistrates Court, or unlimited fines and/or 2 years imprisonment at Crown Court.
- The civil legal system is concerned with claims for compensation using two routes; Negligence and Breach of Statutory Duty.
- For negligence to be proved three tests have to be met: a duty of care had to be owed by the defendant to the claimant; that duty must have been breached; a loss must have occurred as a direct result.
- An important principle in the civil legal system is vicarious liability which means that the employer can be held liable for the negligent acts of his employees.
- There are various defences against a claim of negligence, one of which is the principle of contributory negligence; that the claimant was partly to blame for their own injury and so should not be awarded full compensation.
- There are five proofs of breach of statutory duty and various defences are available.



Criminal and Civil Law

Two main types of law create a framework for the regulation of health and safety; criminal and civil law. Before examining each type in detail it is worth outlining some general principles and characteristics of this framework.



Topic Focus

The table below summarises the two types of law and shows some of the significant differences between the two.

Criminal law	Civil law
Action is brought by the state.	Action is brought by the individual.
The intention is punishment.	The intention is compensation.
Legal proceedings are normally started within 6 months of the offence coming to light.	Legal proceedings have to start within 3 years of the date of injury.
Insurance is not available to pay the fine.	Insurance is available to pay the compensation.
Statute law is used as the source of law.	Common and statute law is used as the source of law.
The burden of proof normally required is "guilt beyond reasonable doubt".	The burden of proof required is "on balance of probabilities".

A simple workplace accident can trigger both types of legal action. For example, imagine a scenario where an employee is run over by a forklift truck and suffers multiple broken bones.

The **criminal law** implications might be:

- This accident might be investigated by a Health and Safety Executive (HSE) inspector. The HSE are an enforcing authority acting on behalf of the state.
- They might decide to prosecute the company involved, for a breach of **HSWA** (i.e. for a breach of statute law).
- Any prosecution would be done on behalf of the state and the court papers would reflect this (the case would be recorded as Regina (the Crown) - versus - the organisation).

- If the organisation were found guilty of an offence they would be fined. The fine cannot be reclaimed from an insurance company and it is not an allowable business expense (i.e. it cannot be written off against tax). This is the punishment for breaking the law.

The intention of the criminal legal system is to punish those who break the law. (It is important that justice is seen to be done; the punishment has a deterrent effect on the organisation involved and on other organisations who might also be breaking the law.) However, it does not necessarily help the injured employee. If the injured employee in this scenario wants financial compensation for an injury that was not their fault, then they will have to turn to the civil legal system.

The **civil law** implications might be:

- The injured employee sues their employer for compensation.
- To do this they instruct a solicitor to act on their behalf. The letter of claim to the employer has to be sent within **three years** of the date of the accident.
- If the case goes to court then the court papers will reflect that the employee is suing their employer; their name - versus - their employers name will appear in the case records.
- In the court the employee's legal team can use **common law** and perhaps **statute law** to support their case.
- The employee will need to show that their employer was liable for their accident **on balance of probabilities**.
- If the employee wins then the court decides how much **compensation** should be paid. This compensation is paid from the employer's **insurance** policy.

There are, of course, many complications and technicalities that are not reflected in the scenario above. For example, most claims for compensation are settled out of court between the injured party (the claimant) and the insurance company of the organisation, so no court case actually happens. Many occupational diseases take more than three years for symptoms to appear and therefore the three year rule cannot be applied from the date of exposure to the harm, it has to be applied to the date when the person first become aware that they have the disease (i.e. three years from diagnosis to start the claim process). Sometimes individuals are prosecuted in the criminal courts for offences under **HSWA** and where this occurs there is the possibility of a fine and/or imprisonment being handed down as punishment.

However, the above scenario and general characteristics are useful as a general frame on which more detailed information will be hung later in this element.



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Sources of Law

There are two sources of law that are relevant to the criminal and civil legal systems outlined above; statute law and common law. Put simply, statute law is made by parliament and exists in the form of Acts, Regulations and Orders. Common law is made by judges through the decisions that they make and the precedents that they set. It is, in effect, the law of the land as established by custom and practice.

Statute Law

- **Acts**

The most important piece of statute law relating to the health and safety in workplace is, of course, **HSWA**. This is the primary piece of statute law for the course. Other Acts also impact on health and safety (such as the **Corporate Manslaughter and Corporate Homicide Act 2007**).

- **Regulations**

HSWA is an enabling act, meaning that it allows for the creation of health and safety regulations such as The **Management of Health and Safety at Work Regulations 1999 (MHSWR)**. These regulations are referred to as delegated (or secondary) legislation. There are dozens of sets of regulations made under **HSWA**.

- **Approved Codes of Practice**

Approved codes of practice (ACoPs) often accompany regulations (e.g. there is an ACoP for **MHSWR**). ACoPs explain how to achieve the legal standard outlined in the regulation and give a clear indication of what is expected. ACoPs do not have the full legal status of Acts or Regulations. Instead they have special or semi-legal status. Failure to comply with an ACoP can be used as evidence of failure to achieve legal standards. If an ACoP has not been complied with then it must be shown that alternative methods were used that achieve at least the same standard as the ACoP.

- **Guidance**

Official guidance also often accompanies regulations (e.g. there is guidance on the **Manual Handling Operations Regulations 1992**). Guidance has no legal status but is useful in interpreting legal standards. Guidance often sets out best practice.

- **Relevance of Statute Law**

Both **HSWA** and **MHSWR** are frequently used in bringing prosecutions in the criminal courts.

The **HSWA** is never used in bringing a claim for compensation in the civil court. The reason for this is that one section of **HSWA** specifically prevents its use in the civil courts (i.e. it is "statute barred").

The **MHSWR** are sometimes used in bringing a claim for compensation in the civil courts, because they do not contain a similar exclusion.

Common Law

Common law is not recorded in the form of Acts and Regulations. Instead it is made up of decided cases. A court case requires a judge (or several judges) to make a decision and perhaps state the reasons for their decision. These reasons may then establish a precedent that will influence the decision-making of judges in the future. Common law is therefore recorded in the form of past court cases and the reasoning stated in those cases. Common law relies heavily on the principle of judicial precedence; the idea that judges in courts have to take note of and follow the precedents set in courts higher in the court hierarchy, therefore the Supreme Court (was House of Lords) sets binding precedents for all other courts.

- **The Employer's Common Law Duties**

The common law duties of an employer were identified in general terms in the decided case of **Wilson and Clyde Coal Co. Ltd v. English (1938)**. The judgement established the common law duty of all employers to provide:

- A safe place of work with safe access to and from it.
- Safe plant and equipment.
- A safe system for doing the work.
- Safe and competent workers.
- Appropriate supervision, information, instruction and training.

These common law duties were used as a basis for some of the statutory duties in **HSWA**.

- **Relevance of Common Law**

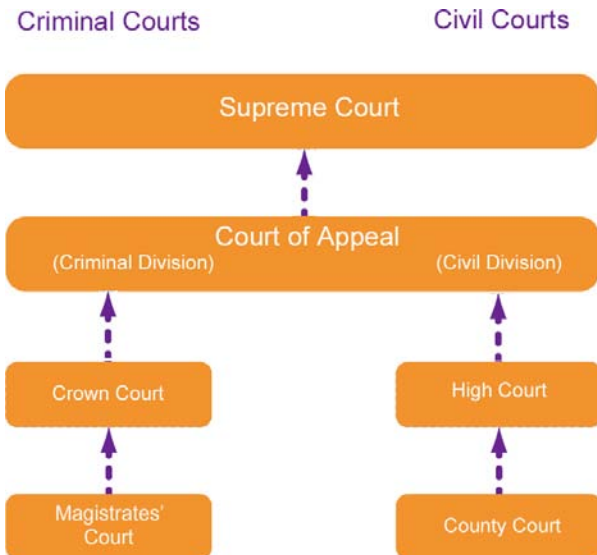
Common law is frequently used in the civil courts when bringing a claim for compensation. However, it is not used when bringing prosecutions against employers for health and safety failings. In very rare cases a prosecution may be brought against an individual on the basis of manslaughter by gross negligence. This is a common law offence.



Court Structure

England, Wales and Northern Ireland

The structure of the law courts reflects the fact that there are two separate types of law (criminal and civil). The general structure of the courts is outlined in the following diagram:



Criminal and Civil Courts in England, Wales and Northern Ireland

All criminal cases go to the Magistrates Court in the first instance. More serious cases will then be sent up (indicted) to Crown Court. An appeal might then be made to the Court of Appeal (Criminal Division) or the High Court in some instances). Final appeal might then be allowed to the Supreme Court.

Civil cases will either go to the County Court or High Court depending on the amount of compensation being claimed. Typically claims of less than £50,000 are settled in the County Court and more than £50,000 in the High Court. Any first appeal will go to the Court of Appeal (Civil Division)). Final appeal might then be allowed to the Supreme Court.

Again there are various technicalities and details, some of which will be discussed later in this element, but this general outline is useful as a starting point.

Apart from the obvious separation of the criminal and civil systems, two points should be noted:

- There is a clear hierarchy, with lower courts and higher courts. The higher a court is in the structure, the more influence the court has over courts lower down. For example judges in the Court of Appeal get to set precedents that other judges in lower courts have to follow.

The Supreme Court is the court of final appeal in almost all instances and can set precedents for all other courts. It straddles both systems.

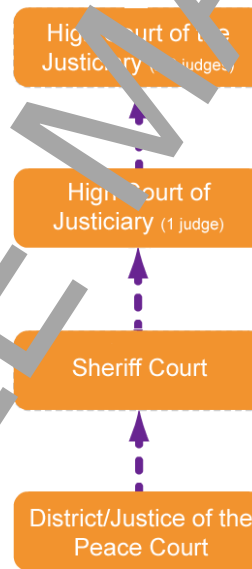


Hints and Tips

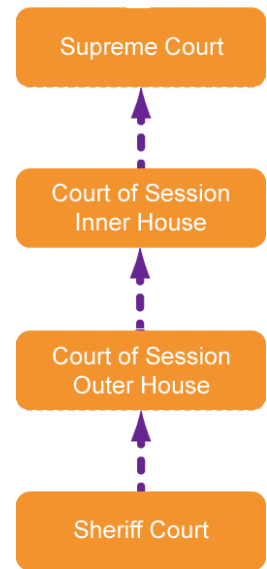
The court structure in Scotland is different to that found in other parts of the UK. Knowledge of both systems is not required, but knowledge of one system is. You are free to choose whichever system seems most appropriate to your needs.

Scotland

Criminal Courts



Civil Courts



Criminal and Civil Courts in Scotland

The diagram above shows a simplified structure for the Scottish courts. Criminal cases go to the Justice of the Peace, Sheriff or High Court depending on the severity of the offence. Appeals are then made to the next court up in the structure (except in the High Court where appeals are heard internally). Similarly civil claims go to the Sheriff Court or Court of Session (depending on value) and appeals are heard by the next court up in the structure. Again, there is clear separation between civil and criminal courts and a clear hierarchy.

The Influence of the European Union

The European Union was created by the Treaty of Rome in 1957. One of the intentions of its creation was the easy exchange of goods and services between member states. To that end, there has been a significant drive to harmonise health and safety standards across Europe.



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This harmonisation is achieved by the introduction of:

- **European Regulations** – statutory instruments that impose legal standards onto member states and take precedence over internal law.
- **European Directives** – statutory instruments that require member states to achieve a certain legal standard through their own internal legislation within a timescale.

A lot of health and safety legislation introduced in the UK (since 1992) has been driven by European Directives. For example the **MHSWR**, were first introduced to comply with such a directive.



UK law is influenced by European Directives

Criminal Law

The Enforcing Authorities

There are several enforcing authorities who have a role in enforcing health and safety law in the UK. First amongst these is the Health and Safety Executive (HSE) and their equivalent body in Northern Ireland the Health and Safety Executive for Northern Ireland (HSENI).

The HSE enforce health and safety law in a wide range of workplaces. These include factories, mines, quarries, construction sites, nuclear installations, offshore oil and gas facilities, chemical plants and agriculture. These might be described as the medium and high risk workplaces. The HSE do not, however, enforce in all workplaces and they do not generally enforce fire safety or environmental protection legislation.

The HSE have a number of roles:

- Enforcement of **HSWA** and associated law.
- Reviewing existing legislation and making recommendations for changes.
- Providing information and guidance.
- Conducting research.

The HSE website is an excellent source of information on legal standards and best practice (www.hse.gov.uk).

Local authorities enforce health and safety law in workplaces not covered by the HSE, such as hotels, restaurants, offices and depots. These might be described as lower risk workplaces. Enforcement is carried out by Environmental Health Officers (EHOs) who have the same powers under **HSWA** as HSE inspectors.

Fire and Rescue authorities are the main enforcing agents for general fire precautions under the **Regulatory Reform (Fire Safety) Order 2005**. They have a number of enforcement options available to them, including issuing an alteration notice, enforcement notice, prohibition notice and prosecution. Fire Safety Inspectors have powers similar to those of HSE inspectors.

The Environment Agency enforces environmental protection law in England. In Scotland the corresponding organisation is the Scottish Environment Protection Agency and in Wales it is Natural Resources Wales.

In some countries insurance companies fulfil a major role in enforcing safety. In the UK, their legal role is limited to inspecting certain items of equipment. However, the inspections and audits they undertake of their clients' premises supplement those of the authorities, and in some cases are the only inspections which occur on a regular basis. They can exert considerable influence in raising standards, as they can refuse to provide insurance cover unless their standards are met.

Powers of Inspectors under HSWA

Inspectors appointed under **HSWA** have wide ranging powers to enter and inspect premises to ensure that activities are being carried out in accordance with the law.



Health and safety inspector