

**RRC
Sample
Study Text**



NEBOSH

National General Certificate in
Occupational Health and Safety

Unit NG1: Management of Health and Safety

Morals and Money

IN THIS SECTION...

- The three main reasons why an organisation has to manage health and safety are: moral, financial and legal. In this first section we look at two of these; the moral and financial reasons.
- 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 harm 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.

Introduction to Key Terms

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 a worker inhales asbestos dust they may contract lung cancer at some stage later in life (perhaps 20 or 30 years after they inhaled the dust). Health relates not only to physical health but also to psychological health (e.g. exposure to extreme stress can lead to acute mental collapse or '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.

The Moral Reason for Managing Health and Safety

In a typical year in Great Britain (based on figures from the British regulator, the Health and Safety Executive (HSE)):

- More than 130 workers are killed in work-related accidents.
- More than half a million working people sustain an injury at work.
- Around 1.8 million people suffer from a work-related illness.
- More than 2,000 people die due to past exposure to asbestos.
- Over 35 million working days are lost due to work-related illness and workplace injury.
- The estimated cost of injuries and ill health from current working conditions is more than £20 billion.

(You do not need to remember the actual figures; we give them to highlight the scale of the problem. Up-to-date figures can be obtained from the HSE website (www.hse.gov.uk/statistics.)



Fishing is a high-risk sector

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 (the HSE estimates that over half of the non-fatal injuries that should be reported are not reported).

These statistics indicate that a huge amount of pain and suffering is experienced by people in the course of simply going 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) control the premises, equipment and working practices used by workers to produce the goods and services that the employer requires. Employers, therefore have a **moral** responsibility to provide safe and healthy working conditions.

In simple terms, the moral reason can be summarised as, 'it's the right thing to do'. It is right and proper that workers go to work to earn a living and return home in the same state, not suffering from ill health or serious physical injury. People expect this as a fundamental right. Workers expect it. Society expects it. Over time, this societal expectation has been translated into legal standards. In this way, the moral argument drives legislation.

The Financial Reason for Managing Health and Safety

Personal injury accidents, worker ill health, and property damage cost an employer money. When an accident or ill-health occurs, there will be direct and indirect costs associated with that event. Some of these losses can be insured against, but many cannot. Accidents and ill health can significantly affect the financial resources of an organisation and, in some cases, can put an organisation out of business. This is the **financial** argument for managing health and safety. It is sometimes referred to as the business case because it focuses on money.

When an accident occurs, the organisation will face both direct and indirect costs:

- **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.

Examples of direct costs:

- First-aid treatment.
- Worker sick pay.
- Repairs to, or replacement of, damaged equipment and buildings.
- Lost or damaged product.
- Lost production time while dealing with the injury.

Examples of indirect costs:

- Reduction in staff morale (which impacts on productivity and efficiency).
- 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).

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) 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.



Fire can be insured against

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, an organisation cannot take out an insurance policy to pay out if they were prosecuted and fined in the criminal law courts, as it would no longer act as an effective deterrent. Other losses are not insured against 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. The HSE have estimated that uninsured losses are between 8 and 36 times greater than insured losses. They provide a rough average figure of 10 times. This is sometimes referred to as the 'uninsured loss iceberg' because the greater losses are below the waterline and cannot be seen (but are quite capable of sinking the ship).

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Examples of possible insured and uninsured losses include:

Insured Costs	Uninsured Costs
Damage to plant, buildings and equipment.	Production delays or down time.
Compensation paid to workers.	Loss of raw materials due to accidents.
Medical costs.	Accident investigation time.
Legal costs associated with a claim for compensation.	Criminal fines and legal costs.
	Sick pay for injured workers.
	Overtime to make up for lost production.
	Hiring and training new employees.
	Loss of business reputation.

It is worth remembering that, even if a loss is covered by insurance, 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 (e.g. it might be the first £5,000 of any claim). The limit is the cap above which the insurer will not pay (for example, if a business has £2 million building and contents fire insurance but it costs £3 million to rebuild and restock the premises, then the insurer will only pay the first £2 million; the remaining sum is uninsured).

MORE...

The HSE website gives up-to-date statistics on health and safety at work in Great Britain at:

www.hse.gov.uk/statistics

It provides helpful guidance on the business case for health and safety at:

<https://www.hse.gov.uk/leadership/benefits.htm>

STUDY QUESTIONS

1. Define:
 - (a) Health.
 - (b) Safety.
 - (c) Welfare.
 2. Identify the three reasons why an organisation should manage health and safety.
 3. Give three insured costs and three uninsured costs that might arise from a workplace accident.
- (Suggested Answers are at the end.)

The Force of Law – Punishment and Compensation

IN THIS SECTION...

- 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 or made ill in work-related incidents 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 unlimited fines and/or imprisonment of up to six months at Magistrates' Court, or unlimited fines and/or two years' imprisonment at Crown Court.
- The **Corporate Manslaughter and Corporate Homicide Act 2007** allows organisations that have caused death through gross negligence to be prosecuted and fined for their offence.
- The civil legal system is concerned with claims for compensation brought using the Tort of Negligence.
- 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; and
 - a foreseeable 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 their 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.



Criminal and Civil Law

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

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The table 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 (claimant).
The intention is punishment.	The intention is compensation.
There is usually no time limit within which legal proceedings have to start.	Legal proceedings have to start within three 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 main source of law.	Common law is used as the main source of law.
The burden of proof is normally on the prosecution to prove 'guilt beyond reasonable doubt'.*	The burden of proof is on the claimant to prove their case 'on balance of probabilities'.

* The burden and standard of proof required for some health and safety offences under HSWA is different as will be outlined later in this section.

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

The **criminal law** implications might be:

- This accident is investigated by a Health and Safety Executive (HSE) inspector. The HSE is an enforcing authority acting **on behalf of the state**.
- The HSE 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 or Rex (the Crown) versus The Organisation).
- If the organisation were found guilty of an offence, it 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 and 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 worker. If the injured worker 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 worker 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 worker is suing their employer; Their Name versus The Organisation will appear in the case records.
- In court, the worker's legal team can use **common law** to support their case.

- The worker will need to show that their employer was liable for their accident **on balance of probabilities**.
- If the worker 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 becomes aware that they have the disease (i.e. three years from diagnosis to start the claim process). Sometimes, individuals rather than organisations 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.

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 health and safety in the 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 the **Control of Substances Hazardous to Health Regulations 2002**). ACoPs explain how to achieve the legal standard outlined in the regulations that they accompany 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 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. Failure to show an alternative that is at least as good as the ACoP means that the accused is guilty of the offence.

- **Guidance**

Official guidance often accompanies regulations, (e.g. there is guidance on the **Manual Handling Operations Regulations 1992**). Guidance has no special legal status but is useful in interpreting legal standards. Guidance sets out best practice and is often published by the HSE in the form of guidance notes.

- **Relevance of Statute Law**

The **HSWA** and regulations made under the Act are frequently used in bringing prosecutions in the criminal courts.

However, the **HSWA** and regulations made under the Act are not normally used in bringing a claim for compensation in the civil court (the reason why, and the exception to this rule, will be outlined later).

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 on the principle of **judicial precedent**; the idea that judges in courts have to take note of and follow the precedents set in courts higher in the court hierarchy. The Supreme Court is the highest appeal court for most cases in the United Kingdom (UK) and therefore sets binding precedents for all other courts (a role historically carried out by the House of Lords).

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

The common law duties of an employer were identified in general terms in the decided case of *Wilsons and Clyde Coal Co. Ltd v. English (1938)*. The judgment 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 later used as a basis for some of the statutory duties in HSWA.

- **Relevance of Common Law**

Common law is routinely 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.

Criminal Law

The Enforcing Authorities

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

The HSE enforces health and safety law in a wide range of workplaces. These include factories, mines, quarries, construction sites, off-shore oil and gas facilities, chemical plants and agriculture. These might be described as the medium- and high-risk workplaces. The HSE does not, however, enforce in all workplaces and it does not generally enforce fire safety legislation.

The HSE has a number of roles:

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

MORE...

The HSE website is an excellent source of information on legal standards and best practice:

www.hse.gov.uk

Local Authorities (LAs) enforce health and safety law in many 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 LA Environmental Health Officers (EHOs) who have the same powers under HSWA as HSE inspectors.

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 statute law.

While the general policy is to promote compliance through co-operation and discussion, inspectors do have the power to issue enforcement notices and, if necessary, prosecute offenders.

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Under Section 20* of HSWA inspectors have the following powers:

- To enter premises, at any reasonable time.
- To take along a police officer if they believe they are going to be obstructed.
- To take along technical assistance or equipment if necessary.
- To carry out any necessary examinations and investigations.
- To direct that premises (in whole or in part) or items within the premises are left undisturbed.
- To take photographs, drawings and measurements.
- To take samples of articles or substances and of the atmosphere.
- To dismantle and/or test any item or substance which they think is dangerous.
- To take possession of articles and substances for examination or test, or as evidence in proceedings.
- To take statements from any person who might be able to help in their investigation. Interviewees must answer any questions and sign a statement of their answers (although these are not admissible as evidence in any subsequent proceedings against that person).
- To inspect and copy any document or record considered relevant.
- To receive access to reasonable facilities and assistance in conducting their investigation.
- Any other power necessary to fulfil the duty of their enforcement authority.

Section 25 of HSWA adds an additional power:

- To seize and render harmless (by destruction if necessary) any article or substance that gives rise to imminent danger of serious personal injury.

*** It is not necessary for you to remember section numbers in the exam – they are given for reference purposes only.**

Enforcement Notices

There are two types of enforcement notice issued by inspectors: **improvement notices** and **prohibition notices**.

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Improvement Notices

- An improvement notice is issued where the inspector thinks that health and safety law is being **breached** or a breach has occurred and is likely to be repeated.
- It will only be issued if the inspector does **not** think there is a risk of serious personal injury.
- The improvement notice will state that an improvement must be made to achieve minimum legal standards and will impose a **timescale** that the inspector thinks is appropriate.
- The timescale for the improvement cannot be fewer than **21 days**.
- The inspector may state the specific action needed to achieve legal compliance and make reference to any relevant ACoP or guidance.
- The improvement notice is served on the person in charge of the workplace or activity that is in breach; this is normally the employer.
- Any appeal against the notice must be made within **21 days**.

So, for example, an inspector investigating a call centre where 30 staff work with Display Screen Equipment (DSE) for 9-hour shifts would expect to see DSE workstation assessments being conducted as required by the **Health and Safety (Display Screen Equipment) Regulations 1992**. They would also expect to see free eye tests being offered to users. If these assessments and eye tests were not being provided then the inspector would be entitled to issue an improvement notice, requiring the employer to carry out the assessments and offer the free eye tests within a specified timescale (e.g. two months) because:

- The relevant regulations are being breached.
- It is not a trivial matter in a call centre.
- No-one is at risk of imminent serious personal injury.

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Prohibition Notices

- A prohibition notice is issued where the inspector thinks that there is an imminent risk of **serious personal injury**.
- The prohibition notice will state that the activity must **stop** until such time as it has been remedied.
- No timescale is specified.
- The inspector does not need to see a breach of health and safety law.
- The prohibition notice is served on the person in control of the activity; this is often the employer.
- Any appeal against the notice must be made within **21 days**.

So, for example, an inspector investigating an engineering factory where a large guard covering a dangerous moving part of machinery is missing might issue a prohibition notice. Any person coming into contact with that moving part might be pulled into the machinery and suffer a very serious injury or even be killed. The machine must immediately be taken out of use and cannot be re-used until it has been made safe (e.g. by fitting the relevant guards).