

Environment, Health and Safety Committee Note On Individual Legal Responsibilities for Health & Safety at Work

This Note aims to provide background information on the individual legal responsibilities of RSC members for health and safety at work. It also reminds members of their professional, ethical and contractual obligations in relation to health and safety. Readers are urged to obtain more detailed information and/or expert advice if this is required.

This Note is one of a series of Notes that give information and guidance to RSC members on health and safety issues.

NB: For purposes of brevity “he” is used in this document to mean “he” or “she”, and “his” to mean “his” or “hers”.

1. Background

Chemists need to understand the general principles of health and safety law and how it applies to them. The law places specific duties on organisations and individuals with regard to their health and safety and that of others who may be affected by work activities. The purpose of this paper is to provide chemists with basic information about such duties. It does not give specific, practical examples.

A person's actions or inactions, whether as an employer, manager or employee, may give rise to criminal or civil proceedings in relation to health and safety issues. Such proceedings may be taken against their employer or in certain circumstances against them as individuals.

Statute law is made by Parliament. In the case of health and safety law, duties are placed on, *inter alia*, both employers and employees. If there is a breach of statute a range of remedies is available to Inspectors of the Enforcing Authority, including the serving of enforcement notices and the bringing of prosecutions before a Criminal Court. In a prosecution, if the case is proven a penalty can be imposed by the Court as a punishment for the wrong that has been done.

Common law is the English traditional law the principles and rules of which are contained in decisions of English and Welsh courts as reported in the law reports. As far as health and safety is concerned, an employer owes a common law duty of care to his employees. If an employer is negligent in this duty and an employee suffers injury or ill-health as a result, the employee can sue the employer in a Civil Court for damages. If the case is proven the employee is entitled to compensation for the harm which has been done to him.

There are certain differences in the Common Law in Scotland and these are not dealt with in this Paper. In Northern Ireland the approach to both Statute and Common Law is similar to the English approach but again the differences are not covered in this Note.

It should be noted that if any work done or service provided in relation to health and safety has an impact overseas then the laws of the individual country concerned apply.

This Note was produced by a Working Party of the Environment, Health and Safety Committee [EHSC] of the Royal Society of Chemistry.

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2. Duties under statute law

There are three types of duty under health and safety legislation:

- absolute duties;
- duties which are qualified by the term "practicable"; and
- duties which are qualified by the term "reasonably practicable".

Absolute duties must be complied with. Practicable duties must be complied with if technically possible, regardless of cost. Reasonably practicable duties take into account the risks and the costs of eliminating them.

The Health and Safety at Work etc Act 1974 (HSWA 1974) contains provisions for securing the health, safety and welfare of persons at work, for protecting others and for controlling the keeping and use of dangerous substances. It contains provisions for the control of certain emissions into the atmosphere. It defines general duties for the self-employed, for persons in control of premises, and for designers, manufacturers, importers and suppliers of articles or substances for use at work. Most duties under HSWA 1974 are qualified by the term "reasonably practicable". Other health and safety legislation includes certain absolute and practicable duties.

Under HSWA 1974 all employers must ensure so far as is reasonably practicable the health, safety and welfare at work of their employees. In particular they should so far as is reasonably practicable:

- a) provide and maintain plant and systems of work that are safe and without risk to health;
- b) make arrangements to ensure that the use, handling, storage and transport of articles and substances are safe and without risk to health;
- c) provide such information, instruction, training and supervision as is necessary to ensure the health and safety of their employees;
- d) provide and maintain a safe place of employment and safe means of access and egress that are without risk to their employees; and
- e) provide and maintain a safe working environment without risk to their employees with adequate facilities and arrangements for their welfare.

Employers with five or more employees must prepare a written statement of their general policy, organisation and arrangements for health and safety at work. They must keep it up to date by revision and bring it to the attention of their employees. Employers and the self-employed must ensure so far as is reasonably practicable the safety of persons not in their employment (for example, students, and members of the public, visiting contractors) who may be affected by their activities at work.

Persons in control of premises (i.e. landlords) also have duties towards others who are not their employees but who use the premises as a place of work. These duties require the person in control to ensure that the premises (including entrances and exits) and plant or substances provided for use are safe and without risks to health so far as is reasonably practicable.

Employees must take reasonable care both for their own health and safety and for that of other persons who may be affected by their acts or omissions at work. They must co-operate with their employer so far as is necessary to enable him to comply with the requirements of the Act.

Designers, manufacturers, importers and suppliers of articles or substances for use at work must ensure that, so far as is reasonably practicable, they are safe when used. They must test articles for safety in use or arrange for such testing to be carried out. They must also supply information about the safe use of the article. Anyone who installs or erects any article for use at work must ensure that, so far as is reasonably practicable, it does not constitute a risk to health and is safe for use.

The HSWA 1974 is an enabling Act. It allows for both the repeal and consolidation of relevant statutory provisions, and for new Regulations to be made to establish up-to-date standards at all workplaces. New Regulations extend the general duties of both employers and employees made under the Act to more specific requirements in particular circumstances. A wide range of new Regulations have been made under HSWA 1974. These concern the management of health and safety at work, the reporting of accidents, diseases and dangerous occurrences, first aid, safety signs, the notification and control of various hazardous activities, the control of substances hazardous to health, the classification, labelling and packaging of dangerous substances, personal protective equipment, etc.

One of the most important of these new sets of Regulations are the Management of Health and Safety at Work Regulations 1999 which, in effect, make good health and safety management a legal requirement. As with the HSWA 1974, these Regulations impose duties on both employers and employees.

The main duty on the employer under these Regulations is to assess risks to health and safety arising from or in connection with his work or undertaking, as they affect both his employees whilst at work and others. In order that good health and safety standards are achieved the employer must make appropriate arrangements. These must cover the effective planning, organisation, control, monitoring and review of preventative and protective measures which he has introduced for health and safety purposes. The employer must also appoint one or more competent persons to assist him to discharge his legal obligations. If appropriate the employer may decide to appoint himself as the competent person. It is preferred that the competent person is in the employer's employment rather than a consultant or other 'external' person.

The duties of employees under these Regulations are to use machinery, equipment, dangerous substances, transport equipment and safety devices in accordance with their training and the instructions which they have been given. Employees must inform their employer and other employees of any dangers or shortcomings in the protection arrangements.

The HSWA 1974 and other relevant statutory provisions are administered and enforced by the HSE or Local Authorities depending on the work activity undertaken. Any contravention of legal requirements could result in:

- the issue of an Improvement or Prohibition Notice requiring the defect to be remedied, or
- a prosecution being taken against an employer or, in some circumstances, against an individual employee.

Where an offence is committed by a body corporate, that body can be prosecuted. If the offence was committed with the consent or connivance of, or is attributable to neglect on the part of any Director, Manager, Secretary or similar officer of a body corporate, or any person purporting to act in any such capacity, the persons concerned can also be prosecuted as individuals. In such cases both the body corporate and the individuals can be punished accordingly. This particular requirement of the HSWA 1974 relates to the most senior level of management who are in effect part of the "directing mind" of an organisation and, therefore, control it. The requirement does not relate to someone described as a "manager" but who does not exercise overall control of the organisation. The role of "managers" in this latter sense is described below.

If an individual is killed at work, the body corporate can also be prosecuted under the Corporate Manslaughter and Corporate Homicide Act 2007 if it can be shown that the death was caused by management failure and that the conduct of the organisation fell below what could be reasonably expected. In other words, if there was a gross breach of the duty of care to the deceased by the organisation.

3. Penalties under statute law

Criminal proceedings for offences under the HSWA 1974 are usually instituted by an Inspector or with the consent of the Director of Public Prosecutions. Prosecution of offences under the HSWA 1974 can be heard either before magistrates or by a judge and jury. Both the prosecutor and the accused can elect the form of trial. Magistrates can also refer a prosecution to a Crown Court if they feel that they have inadequate powers to deal with it themselves.

The maximum fine which can be imposed in a Magistrates Court for each offence under Sections 2 to 6 of HSWA 1974 is £20,000. This maximum also applies to cases where there is a failure to comply with an improvement notice, prohibition notice or a Court Remedy Order (see below). For all other offences the maximum fine is £5,000. Magistrates also have the power to imprison individuals for up to six months for the breach of an improvement notice, prohibition notice or a Court Remedy Order (see below).

At the Crown Court fines for offences under the HSWA 1974 are unlimited. The Crown Court also has the power to imprison individuals for up to two years for the breach of an improvement notice, prohibition notice or a Court Remedy Order.

Where an organisation or individual is convicted of an offence under HSWA 1974 the Court may impose a punishment. Alternatively, or in addition, it may issue a Court Remedy Order requiring the body or person concerned to correct any matters needed to achieve compliance with the requirements of HSWA 1974.

In his defence the accused must prove that it was not practicable, or not reasonably practicable, to do more than he did to satisfy the duty or requirement imposed upon him.

Proceedings for an offence under the Corporate Manslaughter and Corporate Homicide Act 2007 can only be heard in the Crown Court by a judge and jury. The penalty on conviction is an unlimited fine. In addition, if the organisation has taken no action or inadequate remedial action after the original contravention then the Court can issue a Court Remedy Order requiring the organisation to correct any matters needed to achieve compliance with the legal requirements.

As a matter of general principle it is illegal to offer insurance against criminal liability. Thus, you cannot insure against the payment of a fine or compensation for imprisonment. However, it is possible to insure against court costs and the legal expenses involved in the conduct of criminal proceedings.

4. Duties under common law

The main duties of employers in common law are:

- a) to provide and maintain a safe place of work;
- b) to provide and maintain safe plant and equipment;
- c) to provide and maintain safe systems of work; and
- d) to provide employees with colleagues (co-employees) who are competent to carry out their duties safely.

The employer must take reasonable care for his employees and anyone else who may be affected by his activities. He must comply with the statutory duties imposed upon him by health and safety legislation. He must identify all foreseeable risks and take whatever commercially viable action is necessary to eliminate or reduce them. The employer must also consult his employees on health and safety matters and inform them about developments.

The employer's duty of care to his employees is to act as a reasonable and prudent employer. He must keep reasonably abreast of developing knowledge and should not be too slow in its application. He must assess the risk of injury and the potential consequences, and he must balance against this the probable effectiveness of the precautions which can be taken and their cost. If he is found to have fallen below the standard to be expected of a reasonable and prudent employer he is negligent. Conversely, if an employer has taken all reasonably practical measures, which were appropriate at the time in question, he should not be held to be negligent. This applies even if an employee has been harmed during the course of his employment. Nevertheless, it must be emphasised that the employer's duty of care is a very onerous one.

The employee must obey all reasonable instructions, must act safely, must not put others in danger by acts or neglect, and must co-operate with the employer in any health and safety matter.

If an employer fails in his duty of care towards any of his employees and they suffer injury or an occupational disease they are entitled to sue him for damages in compensation. In order to ensure that sufficient funds are available for such compensation, the Employers Liability (Compulsory Insurance) Act 1969 requires nearly all employers to take out an insurance policy to cover their legal liability to their employees. There are a few exceptions to this rule (e.g. local authorities and nationalised industries). If an employee brings an action against his employer, founded in negligence, he must prove:

- that his employer owed him a duty of care;
- that his employer broke that duty; and
- as a direct result, this negligence caused the employee's injury or occupational disease

The burden of proof lies with the employee.

If a person suffers damage partly because of his own fault and partly because of the fault of others, then the damages recoverable are reduced. The extent of the reduction depends on what the court thinks just and equitable, having regard for the claimant's share in the responsibility for the damage.

5. The role of the manager

A person described as a 'manager' is simply someone employed to instruct others at work. In effect a 'manager' is anyone, up to and including a member of senior management, who is responsible for other staff.

Being a 'manager' embraces three roles:

- as an agent of the employer;
- as a responsible person able to assess and control risks; and
- as an employee.

As an agent of the employer the 'manager' effectively controls employees and the work being done. Any breach of statutory law due to a management failure may cause the enforcing authority to bring a prosecution against the employer and, possibly, the manager as an employee. As a responsible person the 'manager' must exercise initiative and judgement especially when abnormal circumstances occur. Breaches of statutory law may result in prosecution of either the employer or manager or both, depending on how the manager's judgement accorded with the employer's declared or established practice. In the worst case, where the employer can show he has exercised all due diligence the manager alone may be prosecuted.

As an employee the manager has the same responsibilities as any other employee under the HSWA 1974 and subsidiary Regulations.

When the employer appoints persons to managerial positions they should be educated and trained in the relevant management systems in order to ensure the health and safety of persons in their charge. Responsibilities and duties increase with each level of management. Therefore each promotion should be accompanied by appropriate training to ensure that the manager is able to discharge his health and safety duties effectively.

Members of the Board of Directors have both collective and individual responsibility for health and safety. Directors, like other managers, should have appropriate training to enable them to be effective in discharging their duties. Directors need to demonstrate strong and effective leadership in matters relating to health and safety.

The relevant duties and responsibilities of employees and of each successive level of line management should be set out in detail in the employer's health and safety policy. In addition, a manager's job description should outline his specific health and safety duties and he should be given a copy of it.

In common law the manager acts on behalf of the employer. Therefore, the employer is vicariously liable for the acts and omissions of his manager. Employers are also vicariously liable for injury caused to co-employees and the general public by their employees. Any action alleging negligence must be taken against the employer. If a manager is involved he must be able positively to demonstrate:

- the effectiveness of his supervision;
- the reasonableness of his actions;
- his consideration of foreseeable events and behaviour;
- his evaluation of the effectiveness of risk controls; and
- his part in the relevant decision making process.

6. Competent persons

Employers must have competent assistance to help them meet the provisions of health and safety legislation. This may be achieved by appointing their own employees to provide the necessary expertise, or by using an appropriate outside organisation, or by a combination of both. However, as indicated earlier, it is preferred that a competent person should be in the employer's employment rather than a consultant or other external person. The role, legal duties and responsibilities of employers, directors, managers and employees as competent persons remain as defined in previous paragraphs.

Before consultants or other experts are used their competence must be established by the employer. Once they are engaged, the employer must ensure that he or an appointed manager co-ordinates their activities. The role of health and safety assistants, whether in-house or external, is to help the employer discharge his statutory duties. They do not absolve the employer from responsibilities under the Health and Safety at Work etc Act and other relevant statutory provisions.

Employers must ensure that those appointed are competent to carry out their assigned tasks, and that they are given adequate information, instruction, training and support. Employers must ensure that appointed persons have the necessary knowledge and understanding of the work involved, and of the principles of risk assessment and control strategies. Appointed persons must have the capacity to apply this knowledge and understanding to the task required by the employer and they must keep their knowledge up to date.

Competence does not necessarily depend on the possession of particular skills or qualifications. The basic essentials are:

- an understanding of relevant current best practice;
- awareness of the limitations of one's own experience and knowledge; and
- the willingness and ability to supplement existing experience and knowledge.

The provision of effective health and safety measures in complex or highly technical situations will call for the more specific knowledge and skills of qualified specialists. Membership of a professional body or similar organisation at an appropriate level, or possession of an appropriate qualification, may be a guide for employers.

If the competent person fails to provide the necessary services the responsibility for complying with legal requirements still lies with the employer who should have ensured at the outset that the person was competent.

7. Professional Behaviour

In addition to their legal duties, chemists have professional, ethical and contractual obligations in relation to health and safety. The RSC requires Members to adhere strictly to its "Code of Conduct" and to carry out their duties accordingly. Members are required to use their skills to advance and safeguard the welfare of humanity, particularly in the field of health and safety. They should be aware of the general principles of the law relating to health and safety. They also have a duty to identify the hazards and assess the risks of scientific and technological processes within the sphere of their professional activities.

8. Sources of further information

Health and Safety at Work etc. Act 1974, (1974 c37), HMSO, 1974.

Corporate Manslaughter and Corporate Homicide Act 2007, (2007 c19), 2007.

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