

SEGMENT TWO – Health & Safety Law

This segment will provide information on Health & Safety Law as it is likely to apply to you and your employer. Health & Safety Legislation has been with us for many years and appears to be complicated and confusing. This segment will provide some background information as to why we have H&S Law in the UK and will identify the main laws that you have to be aware of.

AIMS OF THE SEGMENT

The main aim of this segment is to help you to understand the scope of health & safety law and be able to:

- Outline the legal responsibilities under the Health & Safety at Work. Act 1974 of employers, employees and the self-employed;
- Give examples of specific safety issues covered by regulations including risk assessments, competent persons, and employee consultation;
- Describe how the law is enforced, the enforcement agencies and the powers and actions available to their officers;
- State the possible consequences of non-compliance.



Looking after the health & safety and the welfare of your employees (assuming you are a manager, director or business owner) is not just commercial good sense, it is the Law. And, it's not just one Law that you need to comply with as there are many Acts of Parliament and Regulations that apply to health & safety.

If you are an employee then things are much easier. You still have a legal responsibility for your own health & safety and that of those around you, but your responsibility is mostly to work within the systems and procedures set up by your employer.

The self-employed have responsibilities too, as they are both the employer and the employed. Even though self-employed persons do not have the same resources as large companies when it comes to complying with health & safety legislation, the Law does not always make allowances for this.

Within this segment I will look (briefly) at the main items of health & safety legislation, the Health & Safety at Work Act 1974 (HSW or HASAWA) and the Management of Health & Safety at Work regulations (MHSW).

You will be glad to know that I will not look in too much detail at these two key pieces of legislation, nor at any of the other regulations. However, at the end of the segment I will list the main items of health & safety legislation that apply to the onshore sectors of the seafood industry.

RESPONSIBILITIES UNDER VARIOUS HEALTH & SAFETY LEGISLATION

THE EMPLOYER

Registration

The business must be registered with the appropriate authority such as the local Council if the business is trading as a shop or is office-based. If the business is factory-based then it must be registered with the Health & Safety Executive.

Duty of Care

All employers have a duty to ensure, so far as is reasonably practicable, the health, safety and welfare of their employees. They also have a duty to protect non-employees from risks arising out of their work activities.

H&S Management System

Employers must take and give effect to adequate arrangements for the effective planning, organisation, control, monitoring and review of protective and preventive measures. They must record these arrangements (where five or more are employed).

Health & Safety Policy

If five or more persons are employed written policy statement must be prepared covering the employer's organisation and arrangements in force for ensuring health and safety. It must be brought to the attention of all employees.

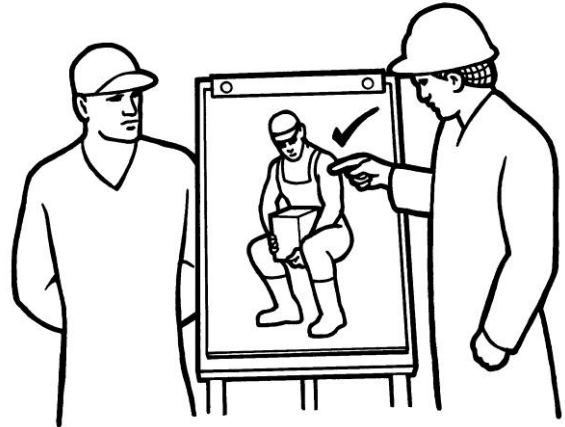
Competent Person(s)

Their role is to assist the employer to comply with their H&S responsibilities. Competent persons may be employees or qualified consultants.

Training and Information

The business must provide all employees with appropriate training, instruction and information to ensure that they are aware of the hazards to which they may be exposed as part of their employment and are aware of the procedures to follow to minimise the risk of accident, injury or ill health.

My advice is to keep good records of all training delivered to staff, particularly health & safety training.



Risk Assessments

Suitable, appropriate and sufficient Risk Assessments must be carried out by the business to evaluate the risks posed by all identifiable hazards in the workplace. Appropriate actions must be taken in response to these Risk Assessments. Apart from being a legal responsibility, Risk Assessments are one of the most effective means of managing health & safety in the workplace.

See Segment Four for more information, including tackling risks at source.

Welfare Provisions for Employees

Welfare provisions should be appropriate for the working conditions within the business. These provisions will include:

- Toilets – clean and working;
- Drinking water – mains or bottled;
- Working areas should be kept clean (appropriate to the work being carried out);
- Temperature within comfortable limits;
- Lighting should be adequate;
- Space and ventilation;
- A rest area – depending on employee circumstances this will include a changing room, somewhere to eat and will need to serve the needs of smokers and non smokers;

Insurance

Employers must have employer's liability insurance. The only exception to this is if ALL your employees are family members or close relatives.

EMPLOYEES

Reasonable care

All employees have a legal responsibility to take reasonable care of the health & safety of themselves and any other person who may be affected by their actions or lack of actions. This means employees must do what they need to do to ensure health & safety AND must not do anything that can have a negative effect on health & safety.

Co-operation

Employees must cooperate as far as is necessary to allow the employer to meet their statutory duties under health & safety legislation.

SELF-EMPLOYED

Self employed persons have responsibilities to themselves and others under health & safety law.

They have the same responsibilities as employers to carry out Risk Assessments and to ensure that measures are implemented to provide a safe and healthy working environment for themselves and any others who may be affected by their work.

Self employed persons also have a responsibility to report accidents and injuries in the same way that an employer would.

Where a self employed person shares offices or work premises with another business then they must cooperate with that business in health & safety matters.

Where a self employed person is working as a 'guest' in a host's premises then the self employed person must cooperate and comply with the hosts health & safety procedures where appropriate.

There are more responsibilities for employers, and for the self-employed. Consult www.rospace.com for more information on this.

THE LAW IN A LITTLE MORE DETAIL

The Health & Safety At Work Act 1974. (HSW)

This is the main item of health & safety legislation in force in the UK. Apart from being a wide reaching law on it's own, HASAWA also gives life to a raft of regulations that control health & safety in more specific circumstances.

HASAWA has a number of sections that deal with specific issues. Some of the most important ones for both employers and employees are;

Note – most of the rest of this segment is very dry. If you are not an employer then you may wish to skim over it.

Section 2 – General Duties of Employers and Employees

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 their employees

This means that the employer will provide.....

- ☉ a safe way of working and safe equipment to work with;
- ☉ safe means of handling and using articles and substance;
- ☉ information, instructions and training;
- ☉ a safe working environment and welfare arrangements;
- ☉ a Safety Policy – clearly brought to the attentions of employees;
- ☉ Safety Representatives and possibly a Safety Committee.

Section 3 – Duties to Others

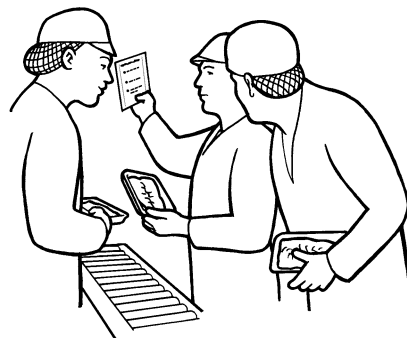
In short, the employer (including self employed persons) must manage their business activities to ensure the safety of others who are not their employees. This includes providing any necessary information that might affect their health & safety.

Section 6 – Duties of Manufacturers

If your business designs, imports, makes or supplies something then it must make sure that they are safe to use.

Section 7 – Duties of Employees

This is the section that says employees must cooperate with employers over health & safety. This section also requires employees to do what is necessary to ensure their health & safety and the health & safety of others.



Another important section is:

Section 9 – Duty Not to Charge

This section states that employers cannot charge their employees for anything done or provided to comply with specific legal obligations. This includes personal protective equipment, health & safety training etc.

There are 47 sections in the Act, but we won't look at any more.

The Management of Health & Safety at Work Regulations 1999 (MHSW Regulations)

These are perhaps the most important of all the various health & safety regulations and they provide the framework for businesses to manage health & safety in the workplace.

There are many regulations that make up the full **MHSW Regulations**, but I will only be looking at a few of them. If you need to know about these regulations in more detail then a quick search on the internet for the Health & Safety Executive will give you all the information you need.

Regulation 3 – Risk Assessments



This is the regulation that requires businesses to carry out appropriate Risk Assessments. Other regulations require Risk Assessments to be carried out in particular circumstances, but this Regulation broadens out the requirements to cover any circumstances where the health & safety of anyone may be at risk.

Regulation 4 – Prevention (is better than cure?)

This regulation says that it is better to avoid putting people at risk. If this cannot be avoided then make changes to working conditions to reduce the risks. As a **last resort** use Personal Protective Equipment to reduce the risk to individuals.

Regulation 14 – Employee Duties

Under this regulation employees **MUST** follow their training and instructions and **MUST** inform their employer of any imminent danger and any short comings of their safety arrangements. So, if you see something that you feel may cause a health & safety problem you must tell your employer or manager.



Regulation 16 – Risk Assessment for New or Expectant Mothers

This places special responsibilities on employers to carry out Risk Assessments and consider any special requirements of expectant and new mothers. Regulation 18 requires employees to inform their employer if they are pregnant so that the employer can carry out their duties.

Regulation 19 – Protection of Young Persons

Owing to their lack of maturity, experience and awareness of risks, employers have to take particular notice of the health & safety needs of young persons and children.

There are more regulations in the MHSW Regulations but these five are probably the main ones that you need to know about.

There are two other areas of legislation that both employers and employees should know about. These areas are Competent Persons and Employee Consultation.

EMPLOYEE CONSULTATION AND SAFETY REPRESENTATIVES

Two separate regulations are in force covering these two areas.

Health & Safety (Consultation with Employees) Regulations 1996

This regulation requires employers to consult with employees on all health & safety matters. Employers can decide whether to consult employees directly or via appointed safety representatives.

Safety Representatives and Safety Committees Regulations 1977

This regulation permits recognised trade unions to appoint safety representatives.

The 1977 regulations therefore place more responsibilities on employers where there is a recognised trades union.

ENFORCEMENT OF HEALTH & SAFETY LEGISLATION

Depending on the type of business you are, either the Health and Safety Executive or your Local Authority would be responsible for enforcement.

Local Authority	HSE
<ul style="list-style-type: none"> • Shops and other retail businesses; • Fish mongers; • Fish and Chip Shops; • Cafes and restaurants. 	<ul style="list-style-type: none"> • Small and large fish processing and seafood manufacturing businesses;
<p>H&S aboard fishing vessels is managed by the Marine Coastguard Agency (MCA)</p>	

Your main enforcement body is most likely to be your Local Authority. Usually it will be your Environmental Health Officer that will oversee health & safety as well as food hygiene and food safety.

Whoever enforces health & safety for your type of business, they have wide reaching powers of inspection and enforcement – these powers are specified on the **warrant card** issued to each inspector.

They include the right to:

- enter at a reasonable time your business to carry out their duties;
- take a Police Constable, any experts and equipment they may need with them;
- investigate, photograph, dismantle or impound any dangerous article;
- question individuals and take copies of documents;
- any other power necessary for the inspector to carry out their functions!

Inspectors can issue **Improvement Notices** when a statutory requirement is not being met and which will require a business to make changes to improve health & safety.

Inspectors can also issue Prohibition Notices requiring activities to stop until problems are fixed.

Prohibition Notices take effect immediately while Improvement Notices have a target date for being acted upon.

What happens if things go wrong and the law is broken?

Well the law usually only asks that everyone does what is reasonably practicable and in many instances that can be considered enough. But, if there is a breach of the legislation and matters come to court what are the possible results?

To a certain extent that depends on which court deals with the case.

For criminal offences it is either the Magistrates Court or the Crown Court which deals with the case. Usually the case will start in the Magistrates Court and if it is serious enough then it will move on to the Crown Court.

Magistrates Court	Crown Court
Fines of up to £5,000 for breaches of regulations.	Fines are unlimited and can be levied for EACH offence.
Fines of up to £20,000 for breaches of some parts of HASAWA.	Prison sentences of up to two years for each offence.
Some offences can carry an unlimited fine.	Jury trials are held here.
Prison sentences of up to six months for breaches of enforcement notices.	

Apart from breaches of health & safety legislation for which individuals and employers may be prosecuted by the Crown, there are other ways in which you or your employer could end up in court over a health & safety issue.

Common, or civil law, is largely based on responsibilities that have been established over time, and this included health & safety responsibilities. Over many years there have been cases brought to court where one individual (or organisation) has sued another, often over health & safety.

In each case, two things have to have happened for the case to succeed.

Firstly, there needs to have been some form of loss incurred by the person bringing

the case. Secondly, the person being sued needs to have been negligent in some fashion. By negligent, the law means doing something wrong or not doing the right thing.

Should these doings or not doings cause someone to suffer a loss or injury then there may be a case to answer in court.

The starting point for a civil case is the **County Court**, which is able to hear cases for compensation of up to £50,000.

If the claim for compensation is higher than this then the High Court will look at the case.

SUMMARY

In this segment we have looked briefly at the two main pieces of health & safety legislation in the UK – HASAWA 1974 and MHSAW Regulations 1999.

I have outlined the main responsibilities of employers, employees and the self employed under health & safety legislation and introduced the concept of civil breaches and criminal breaches of these responsibilities.

We have briefly considered the role of the Health & Safety Executive and Local Authorities in appointing health & safety inspectors. These have a range of powers for entry and inspection which can lead to the issuing of an improvement notice or a prohibition notice.

REMEMBER THIS

Environmental Health Officers can enter business premises at any reasonable time to carry out their duties.

Employers have a responsibility to anyone who may be affected by their activities – employees, the public, and themselves.

An EHO can serve an improvement notice whenever a statutory requirement is not being met.

LEGISLATION TECHNICAL NOTES

In addition to the Health & Safety at Work Act 1974 (HASAWA) and the Management of Health & Safety at Work Regulations, the following legislation is likely to apply to all businesses operating in the onshore sectors of the seafood industry.

As regulations are from time to time revised, updated or occasionally redrafted, we have omitted the actual dates from the following list. In each instance we do refer to the most recent version of the appropriate regulation.

Workplace (Health, Safety and Welfare) Regulations:

These cover a wide range of basic health, safety and welfare issues such as ventilation, heating, lighting, workstations, seating and welfare facilities.

Health & Safety (Display Screen Equipment) Regulations:

These set out requirements for work with Visual Display Units (VDUs).

Personal Protective Equipment at Work Regulations:

These regulations require employers to provide appropriate protective clothing and equipment for their employees.

Provision and Use of Work Equipment Regulations:

These require that equipment provided for use at work, including machinery, is safe.

The Manual Handling Operations Regulations:

Cover the moving of objects by hand or bodily force.

The Health & Safety (First Aid) Regulations:

Cover requirements for first aid, including the workplace requirement for whether trained first-aiders (or an appointed person) are needed, what should be included in a first-aid box and if a first-aid room is required. Most workplaces will need an appointed person, and many will also need one or more first aiders.

Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR):

The regulations require employers (and self employed) to notify and report certain occupational injuries, diseases and dangerous events. For example injuries requiring 7 consecutive days off work must be reported to the HSE.

Work at Height Regulations (WAHR):

Employers and those in control of any work at height activity must make sure work is properly planned, supervised and carried out by competent people. This includes using the right type of equipment for working at height.