

MANAGEMENT OF H&S AT WORK REGS 1999

These regulations supplement the HSW Act 1974 where the provisions are not sufficiently prescriptive to comply with the requirements of the EC 'Framework' Directive.

RISK ASSESSMENT (Regulation 3): Employers shall suitably and sufficiently assess (and review/re-assess as necessary) the risks to H&S of -

- their employees whilst at work
- others affected by the conduct of the undertaking
- for the purpose of identifying measures necessary to comply with relevant legislation including fire precautions.

Where five or more are employed, the employer shall record the significant findings of the assessment and any group of employees identified as being especially at risk.

YOUNG PERSONS Employers shall-

- not employ a young person unless they have made or reviewed their risk assessment
- where already employing a young person, review their risk assessment forthwith
- in reviewing the assessment take particular account of inexperience, layout of workplace and workstation, nature, degree and duration of exposure to physical, biological and chemical agents, range and use of work equipment, organisation of processes and activities, health and safety training provided, risks from agents, processes and work listed in the Annex to the Young Persons Directive (94/33/EC)
- Identification of hazards (i.e. something with a potential to cause harm)
- evaluation of the risk (i.e. the likelihood that harm will occur, and its severity).

Risk assessment should be a management-led exercise, reflecting what employers should reasonably be expected to know about their workplace hazards, drawing on information from suppliers, guidance from enforcing authorities or contained in regulations. Risk assessment should take account of the views of employees and their representatives as well as involving management. Employers should also ensure that those involved take all reasonable care in carrying out the assessment. Risk assessment should embrace the following:

- the actual work activities of all groups, including office workers, disabled, night cleaners, visitors, contractors, security personnel, persons working alone (on and off-site), young or inexperienced workers
- non-routine operations, namely maintenance, changeover, loading and unloading, action in emergency
- a look at existing control measures, ensuring they work properly are adequately maintained
- joint development with other employers where facilities are shared (e.g. contractors, other occupants)
- an initial broad-based assessment, leading on to detailed risk assessment where needed
- risks to the public
- fire risks.

It may be necessary to look at activities in groups such as machinery, transport, substances, electrical etc. or to divide the work on a geographical basis. Alternatively an operation by operation approach may be needed, dealing with materials in production, dispatch, offices etc. Where risk assessment is required under other legislation (e.g. COSHH) it need not be repeated, and a risk assessment can consist of an overall assessment linked to separate risk assessment. Model assessments may be developed for similar workplaces and/or activities, but their use must be appropriate and the risk assessment tailored to actual work situations.

A 'record' of risk assessment should include:

- a statement of significant hazards and risks
- reference to existing control measures
- the population affected, and any groups especially at risk.

Sufficient detail of the risk assessment itself (in addition to the significant findings) may also be necessary to demonstrate that a 'suitable and sufficient' risk assessment was conducted. The record should be linked as necessary to other records (e.g. examinations, procedures) and the information may be stored electronically if readily retrievable. A record is unnecessary if a risk assessment can be easily explained and repeated at any time (e.g. a simple task with no significant risk) but the duty to assess remains. Risk assessment should be reviewed at regular intervals. The

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time between reviews will depend upon the nature of the risks, the degree of change in the work and the occurrence of any adverse events.

PRINCIPLES OF PREVENTION (Regulation 4) - The preventive and protective measures must be implemented in line with the following principles:

- avoid the risk altogether
- evaluate the risks which cannot be avoided
- combat the risk at source
- adapt the work to the individual, having regard to the design of workplaces, the choice of work equipment and production methods, in order to alleviate monotonous work, and work at a predetermined work rate, and to reduce their effect on health
- adapt to technical progress
- replace the dangerous by the non-dangerous or the less dangerous.
- develop a coherent prevention policy covering technology, organisation of work, working conditions, social relationships and related factors.
- give priority to where the greatest benefit can be achieved (e.g. treat risks affecting the whole workplace before individual measures)
- educate the workforce to understand what they need to do. The objective in risk assessment can thus be seen as the creation of an active health and safety culture affecting the organisation as a whole, with the avoidance, prevention and reduction of risks at work being an accepted part of the approach and attitude expected of good management.

HEALTH & SAFETY ARRANGEMENTS (Regulation 5): Employers shall make arrangements for the effective planning, organisation, control, monitoring and review of protective and preventive measures. Where five or more are employed the arrangements shall be recorded. The ACoP defines the terms as follows:

planning: adopting a systematic approach, identifying priorities and setting objectives to eliminate or minimise risks.

organisation: involving employees and their representatives in carrying out risk assessments, deciding on and implementing preventive measures, establishing effective communication, and securing competence by providing adequate information, instruction and training.

control: ensuring that: H&S responsibilities are understood; activities are well co-ordinated; time and resources are available to discharge responsibilities; performance standards are met and adequate and appropriate supervision is provided.

monitoring & review: constant development of policies, approaches and techniques. This involves: having a plan and making adequate routine inspections to check that preventive and protective measures are in place and effective; adequately investigating the immediate and underlying causes of incidents and accidents to ensure that remedial action is taken, and that lessons are learnt. A list of competent persons required under regulation .7 should be included in the 'arrangements' record.

HEALTH SURVEILLANCE (Regulation 6): Employers shall provide employees with health surveillance appropriate to the risk identified by risk assessment. Health surveillance is considered relevant where:

- there is an identifiable disease or condition related to the work
- techniques exist to detect the disease or condition
- there is reasonable likelihood that it may occur
- surveillance is likely to further protect employees.

Employees and their representatives should be given an explanation of and opportunity to comment on the health surveillance and should have access to an appropriately qualified practitioner for advice on surveillance. Health records must be kept for health surveillance. Surveillance serves also to check the effectiveness of control measures and risk assessment, and to identify persons at increased risk.

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HEALTH & SAFETY ASSISTANCE (Regulation 7) - Employers shall appoint one or more competent persons to assist in undertaking the measures necessary to comply with relevant legislation (including fire precautions) and shall:

- make arrangements for ensuring adequate co-operation between appointees
- ensure appointees have available adequate time and means to fulfil their functions
- ensure appointees not in their employment (e.g. consultants, contractors) are informed of factors known or suspected by the employer to be a risk to H&S, and have access to any information provided to employees
- ensure appointees are given information about any temporary workers.

A competent person is defined as a person with sufficient training, experience, knowledge or other qualities to assist in undertaking the duty (in law, a person may be an individual or an organisation). If the employer already employs a competent person they shall be appointed to assist, in preference to a non-employee. The appointment shall be recorded in the H&S arrangements. In simple situations, competence need only be an understanding of relevant current best practice, awareness of the limitations of one's own experience and knowledge, ability to supplement existing experience and knowledge (e.g. outside help).

SERIOUS AND IMMINENT DANGER (Regulation 8): Employers shall-

- establish procedures to be followed in the event of an emergency
- nominate competent person to evacuate persons in danger
- ensure no-one has access to areas restricted on grounds of H&S unless they have received adequate instruction.

The procedures should allow for persons at risk to be informed of the hazards and necessary precautions. Shall enable those persons, in the absence of instructions, to stop work and evacuate if exposed to serious, imminent and avoidable danger and shall prevent resumption of work whilst such danger persists.

CONTACTS WITH EXTERNAL SERVICES (Regulation 9) - Employers shall arrange contacts with external services for first-aid, emergency medical care and rescue work. This may not only mean making sure that employees know the necessary telephone numbers and, where there is any significant risk are able to contact the help they need. In hazardous or complex workplaces, employers should designate staff to routinely contact the emergency services to give them sufficient knowledge of the risks, and to help them plan.

INFORMATION FOR EMPLOYEES (Regulation 10) - Employers shall inform employees of –

- risks identified by the risk assessment
- the preventive and protective measures
- the emergency procedures and fire-fighting measures
- the identity of competent persons for evacuation and those nominated to implement fire-fighting measures
- risks notified by others.

CHILDREN - Employers shall, before employing a child (any young person under school leaving age), provide a parent of the child with comprehensible and relevant information on –

- the risks to the child identified by the risk assessment
- the preventative and protective measures; and
- the risks notified to them in accordance with Regulation 1

CO-OPERATION AND CO-ORDINATION (Regulation 11&12) - Where two or more employers share a workplace, each shall:

- co-operate with other employers in H&S matters (including fire precautions)
- take reasonable steps to co-ordinate their respective measures (including fire precautions)
- inform the others of risks to their employees from his activities (e.g. risk to neighbours)
- inform the others of risks to their employees from working in his undertaking, the control measures taken (including fire precautions), and the identity of competent persons for evacuation (e.g. risk to contractors)

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- issue H&S instructions to the employees of others working in his undertaking (e.g. contractors' employees) and the identity of competent persons for evacuation.

It does not matter whether a shared occupancy is temporary or permanent; a self-employed contractor carrying out work on an employer's premises would be regarded as sharing the workplace. Regulation 11 does not apply to multi-occupancy situations where units are considered separate workplaces, each under the control of an individual tenant employer. However, HASAWA Section 4 and the Workplace Regulations may apply, and will require some degree of cooperation and exchange of information, particularly in respect of the common parts of multi-occupancy buildings and sites. In situations where there is no controlling employer, an H&S co-ordinator should be appointed by the employers present on the site. The duty to inform the employees of others of working in the undertaking extends also to temporary workers (regulation 15)

CAPABILITIES AND TRAINING (Regulation 13) - Employers shall take account of employee capability (training, knowledge and experience) as regards H&S when entrusting tasks. Employees shall be provided with training -

- on being recruited
- on being exposed to new or increased risks because of transfer, or change of responsibility, the introduction of new equipment, or changes in existing equipment, the introduction of new technology, the introduction of a new or changed system of work.

Training shall be repeated as necessary, adapted to take account of new or changed risks, take place during working hours.

EMPLOYEES' DUTIES (Regulation 14) - Employees shall -

- only use any machinery, equipment, substance, transport, means of production or device in accordance with the instruction and training provided by the employer
- inform the employer, or his nominee, of any work situation representing a serious and imminent danger (regulation 8), and any shortcomings in the employer's H&S arrangements insofar as it affects themselves and has not been previously reported.

TEMPORARY WORKERS (Regulation 15) - Employers shall, before employment commences, ensure that persons on fixed-term contracts of employment or supplied by an employment agency are informed of any special qualifications or skills required of that employee to work safely and any health surveillance to be provided to that employee by law. Employers shall ensure that employment agencies supplying employees to work in the undertaking are informed of any special qualifications or skills required of those employees to work safely and any features of the work likely to affect their H&S (the employment agency has the duty of informing those employees).

NEW OR EXPECTANT MOTHERS (Regulation 16-18): Employers shall ensure that their risk assessment takes account of any risk to the health and safety of -

- a new or expectant mother
- of her baby from any processes or working conditions, or physical or biological agents. Where the risk cannot be avoided in any other way the employer may, where reasonable, alter her working conditions or hours of work. If this would not remove the risk, or be reasonable, the employer may suspend her from work for as long as necessary to avoid the risk. Employers are only obliged to consider such changes once they have been notified by the employee in writing that she is pregnant, has given birth within the previous six months or is breastfeeding. Where a new or expectant mother works at night and has a medical certificate which states that she should not work certain hours for health and safety reasons the employer shall suspend her for as long as necessary to avoid any health and safety risk. Employers may, with reasonable notice, request a medical certificate confirming pregnancy.

YOUNG PERSONS (Regulation 19) - Employers shall ensure that young persons which they employ are protected from risks to their H&S which are a consequence of lack of experience, or absence of awareness of existing or potential risks or because they have not yet fully matured.

Prohibitions

Having regard to the risk assessment (and the exceptions) no employer shall employ a young person for work:

- which is beyond his physical or psychological capacity

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- which involves harmful exposure to agents which are toxic, carcinogenic, cause heritable genetic damage or harm to the unborn child or which in any other way chronically affect human health.
- which involves harmful exposure to radiation.
- which involves the risk of accidents which it may reasonably be assumed cannot be recognised or avoided by young persons owing to their insufficient attention to safety or lack of experience or training.
- in which there is a risk to health from extreme cold or heat, noise; or vibration

The exceptions to these prohibitions are for young persons who are over compulsory school age and the work is necessary for their training; and where they will be supervised by a competent person; and where any risk will be reduced to the lowest level that is reasonably practicable.

SELF-EMPLOYED PERSONS - The duties on employers and employees extend to the self-employed as follows –

- to assess risks to himself and others and take measures.
- to co-operate and co-ordinate with others and to take steps to protect the employees of others.
- to provide information to any temporary workers employed in their undertaking, and to any employment business supplying them.

LIABILITY (Regulation 21 - 22) - It is no defence to give as the reason for contravening a H&S obligation, the act or default of an employee or competent person. Civil liability claims may be made by employees and employers for damages for breaches of the regulations (i.e. not members of public or contractors).