Introduction

Welcome to the revision guide for the NEBOSH National General Certificate.

This is designed as a handy guide you can take anywhere with you, and contains a summarised version of the absolute key information from the course syllabus.

If you only knew the information contained in this revision guide, and were able to express this in the NEBOSH exam, you would have a good chance of passing with a high mark. However, it is important that you study your full course materials and conduct adequate revision of your own.

We wish you successful and enjoyable studies!

Phoenix Health and Safety
Content

page 3  Introduction

page 5  Element 1: Foundations in Health and Safety
Learning Outcomes
Definitions
Reasons for Managing Health and Safety

page 6  Reasons for Managing Health and Safety
Legal Framework – Influence of European Union
Types of Law

page 7  Court Structure

page 8  Powers of Inspectors
Enforcement Notices
Maximum Penalties

page 9  Criminal Law Defences
Civil Law Liabilities
Neighbour Principle
Employers Common Law Duty of Care
Tort of Negligence

page 10 Negligence Defences
Tort of Breach of Statutory Duty
Vicarious Liability

page 11 Hierarchy of Statute Law

page 12 Types of Statutory Duty

page 13 Health and Safety at Work etc. Act 1974

page 14 Management of Health and Safety at Work Regulations 1999

page 15 Management of Health and Safety at Work Regulations 1999
Managing Contractors

page 16 Managing Contractors

page 17 Construction (Design and Management) Regulations 2015
Unit NGC1: Management of Health and Safety

Element 1: Foundations in Health and Safety

Learning Outcomes

You should be able to:

• Outline the scope and nature of occupational health and safety
• Explain the moral and financial reasons for promoting good standards of health and safety in workplace
• Explain the legal framework for the regulation of health and safety including sources and types of law
• Explain the scope, duties and offences of employers, managers, employees and others under the Health and Safety at Work etc. Act 1974
• Explain the scope, duties and offences of employers, managers, employees and others under the Management of Health and Safety at Work Regulations
• Outline the legal and organisational health and safety roles and responsibilities of clients and their contractors
• Outline the principles of assessing and managing contractors

Definitions

Health – “A state of wellbeing in both a physiological and psychological sense. In occupational terms, it would include not suffering from mental fatigue, stress or noise induced deafness”

Safety – “The absence of danger or physical harm to persons, extending in the workplace to things such as equipment, materials or structures”

Welfare – “The provision of workplace facilities that maintain the basic wellbeing and comfort of the worker, such as eating, washing, and toilet facilities which enable them to fulfil their bodily functions”

Reasons for Managing Health and Safety

Moral:
• No one should be expected to risk their life or health in exchange for employment
• Society expects employers to fulfil moral obligation to workers and others affected
• Over hundred deaths a year at work, and many thousands of major injuries

Legal:
• A variety of acts and regulations are in place to regulate health and safety at work
• Breach can lead to fines and imprisonment
• Enforcement agencies can issue improvement and prohibition notices
• Injured employees can also sue for compensation under civil law
Element 1: Foundations in Health and Safety

Reasons for Managing Health and Safety

Financial:

- Employers are legally obliged to take out Employers Liability Insurance. They also may need public liability, professional indemnity, premises, vehicle and other insurances
- Employers are legally obliged to take out Employers Liability Insurance. They also may need public liability, professional indemnity, premises, vehicle and other insurances

The uninsured costs of accidents could be much more:

- Product and material damage
- Lost production time;
- Legal costs, fines and compensation
- Overtime & temporary/relocated labour
- Investigation time/administration/Supervisors/first aiders time
- Additional recruitment/training
- Loss of expertise/experience
- Loss of morale/bad publicity
- Increased insurance costs

Legal Framework – Influence of European Union

The European Union plays a leading role in setting and harmonising H&S standards. The EU sets Directives that are then implemented into member state legislation (via Regulations in UK)

Types of Law

There are two types of law – Criminal and Civil.

<table>
<thead>
<tr>
<th>Criminal Law</th>
<th>Civil Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose – Punishment</td>
<td>Purpose – Redress</td>
</tr>
<tr>
<td>Deals with offences against the state</td>
<td>Deals with disputes between individuals</td>
</tr>
<tr>
<td>Prove “beyond reasonable doubt”</td>
<td>Decided on “balance of probabilities”</td>
</tr>
<tr>
<td>No time limit</td>
<td>Time limit – usually 3 years</td>
</tr>
<tr>
<td>Onus on prosecution to prove guilt</td>
<td>Some claims can be “statute-barred”</td>
</tr>
</tbody>
</table>
Element 1: Foundations in Health and Safety

There are two sources of law – Statute and Common.

<table>
<thead>
<tr>
<th>Statute Law</th>
<th>Common Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Written law – Acts, Regulations etc.</td>
<td>Body of previous cash history passed down</td>
</tr>
<tr>
<td>Passed by Parliament</td>
<td>Based on &quot;judicial precedent&quot;</td>
</tr>
<tr>
<td>Examples – HSWA 1974, Management of Health &amp; Safety at Work Regulations etc.</td>
<td>Decision of higher courts are binding on lower courts</td>
</tr>
<tr>
<td>Statute law can apply to both criminal and civil law</td>
<td>Common law can apply to both criminal and civil law</td>
</tr>
</tbody>
</table>

Court Structure

The Supreme Court

Court of Appeal

High Court

Crown Court

County Courts

Magistrate Court

Tribunals
Powers of Inspectors

- Enter premises at any reasonable time
- Take police officer or authorised person
- Request premises to be left undisturbed
- Take measurements, photographs and recordings
- Dismantle or test any article/substance
- Take possession of any article/substance
- Take samples
- Seize, destroy or render harmless any article/substance which is a source of imminent danger
- Interview any persons – signed statement
- Access to reasonable facilities and assistance
- Inspect and take copies of any records
- Anything else necessary to enable them to carry out their duties

Enforcement Notices

There are two types of notice an Inspector can issue – Improvement and Prohibition.

<table>
<thead>
<tr>
<th>Improvement Notice</th>
<th>Prohibition Notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specifies improvements within given time</td>
<td>Halts activity</td>
</tr>
<tr>
<td>Served when:</td>
<td>Served when there is serious/imminent danger. Not necessary for breach of law (though usually would be one)</td>
</tr>
<tr>
<td>• Breach of H&amp;S law</td>
<td>Example – missing machine guard</td>
</tr>
<tr>
<td>• No serious/imminent danger</td>
<td>Appeals to Employment Tribunal</td>
</tr>
<tr>
<td>Example – no risk assessment</td>
<td>Notice remains in force until appeal is heard</td>
</tr>
<tr>
<td>Appeals to Employment Tribunal within 21 days</td>
<td></td>
</tr>
<tr>
<td>Notice suspended until appeal is heard</td>
<td></td>
</tr>
</tbody>
</table>

Maximum Penalties

<table>
<thead>
<tr>
<th>Magistrates Court</th>
<th>Crown Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>£20,000 per offence</td>
<td>Unlimited fine</td>
</tr>
<tr>
<td>12 months in prison</td>
<td>2 years in prison</td>
</tr>
</tbody>
</table>
Individuals must prove they took all reasonable care
Employers must prove that they took all reasonably foreseeable precautions
Due diligence must have been exercised
Accused must prove that it was not practicable or reasonably practicable (whichever the case may be) to do more

Civil Law Liabilities

Civil Law is based on the law of "Tort" (a civil wrong). There are various "Torts":
- Negligence
- Breach of Statutory Duty
- Nuisance
- Defamation etc.

Neighbour Principle

We owe a reasonable duty of care to our neighbours. A "neighbour" is anyone that could be affected by our acts or omissions. Donoghue v. Stevenson (1932) established this principle

Employers Common Law Duty of Care

Under common law (not statute), the employer has a duty to provide:
- A safe place of work
- Safe plant and equipment
- Safe systems of work
- Adequate training & supervision
- Competent fellow employees

This duty is non-delegable.

Tort of Negligence

"Failing in a duty of care" or "Failing to do something a reasonable person would do or doing something a reasonable person would not do"

To make a compensation claim for negligence, 3 tests must be proven:
- A duty of care was owed
- The duty of care was breached
- Injury or harm directly resulted from the breach
Negligence Defences

- Duty of Care NOT owed
- Duty of Care NOT breached
- Breach DID NOT directly result in harm/injury
- Denial
- Volenti non fit injuria (voluntary acceptance of risk)
- Contributory Negligence (partial defence)
- Act of God

Contributory negligence is a partial defence to claims for negligence. It applies where claimant has contributed to their injuries by their own negligence. The claimants’ award is then reduced, or can even be denied entirely if they were to blame.

Tort of Breach of Statutory Duty

This is a civil law concept, NOT Criminal – uses statute breach as a basis for compensation claim. Tests to be established:

- The defendant was in breach of the statute
- The breach caused the injury
- The claimant was of a class of persons that the statute was intended to protect
- The type of injury was one that the statute was intended to prevent

Defences:

- Statute does not allow a civil claim (“Statute Barred”)
- No breach of duty
- Injured party not covered by Statute duty
- Harm not of the type the Statute duty was designed to prevent
- No causal connection between the breach and the loss

It is allowable for claimant to pursue a claim for both negligence, and breach of statutory duty. This is known as a “double-barrelled” action. Only one can succeed (not double compensation).

The employer is liable for the negligent acts of his employees. The Employees’ must be acting in the “course of their employment”. The employer may still be liable even if the employee had been specifically forbidden from doing something.

Vicarious Liability

The employer is liable for the negligent acts of his employees. The Employees’ must be acting in the “course of their employment”. The employer may still be liable even if the employee had been specifically forbidden from doing something.
Element 1: Foundations in Health and Safety

Hierarchy of Statute Law

Acts of Parliament:

- Passed by House of Parliament and House of Lords
- Known as "Primary legislation"
- Example - Health and Safety at Work etc. Act 1974
- Lay down general duties to be followed
- The Act makes provisions for Regulations and ACOPs to be made underneath the Act that provide the detail

Regulations:

- Known as “delegated legislation”
- Made under HSWA by the Secretary of State, often to implement EU Directives
- Consultation with HSE and other interested parties before implementation
- Breaches can lead to prosecution in the courts, and fines and/or enforcement notices
- Contain much more detail than the Act, normally on specific hazards/activities
- Example – Control of Substances Hazardous to Health Regulations

Approved Codes of Practice (ACOPs):

- Approved by HSE with consent of Secretary of State
- Provide an interpretation of how Employer may comply with the law
- Failure to comply is not an offence, but can be used as evidence that the law was breached
- Employers must either meet the standard in the ACOP or show that they have complied to equal or better standard
- Many regulations have an associated ACOP e.g. Provision and Use of Work Equipment Regulations

Guidance:

- No legal standing
- Issued by HSE with intention of giving best practice advice
- Generally more practical than advice contained in ACOPs
- May be referred to in court as argument of what may have been done to prevent injury/ill-health
- Example – HSG65 is HSE guidance on health and safety management systems
Element 1: Foundations in Health and Safety

Types of Statutory Duty

Absolute duties:
- Highest level of duty
- Wording - "Must" or "Shall"
- Cost not taken into account
- Example – risk assessment under MHSWR

Practicable duties:
- Lower level of duty than absolute
- Practicality
- Technically feasible
- Cost not a factor
- Example: Machinery Guarding under PUWER

Reasonably Practicable duties:
- Lowest level of duty
- Risk v. Cost
- Cost = Money, Time, Trouble, Effort etc.
- If cost far outweighs risk, duty is discharged
- If risk is high (serious injury or death) then cost is irrelevant
- Example – HSWA Section 2
## Health and Safety at Work etc. Act 1974

<table>
<thead>
<tr>
<th>Section</th>
<th>Detail</th>
</tr>
</thead>
<tbody>
<tr>
<td>2(1)</td>
<td>Every employer must ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.</td>
</tr>
</tbody>
</table>
| 2(2)   | a.) Safe plant and systems of work  
        b.) Safe use, handling, storage and transport of articles and substances  
        c.) Adequate information, instruction, training and supervision  
        d.) Safe place of work, including safe access and egress  
        e.) Safe work environment with adequate welfare facilities |
| 2(3)   | Employers with 5 or more employees must:  
        • Prepare a written health & safety policy  
        • Set down the organisation and arrangements for putting the policy into effect  
        • Revise and update the policy as necessary  
        • Bring the policy and arrangements to the notice of all employees |
| 3      | Every employer and self-employed person must conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in their employment who may be affected, are not exposed to risks to their health & safety. |
| 4      | Those in control of non-domestic premises must ensure, so far as is reasonably practicable, that the premises, the means of access and egress, and any plant or substances, are safe and without risks to health.  
        Applies to landlords etc.  
        Common areas of residential premises are non-domestic. |
| 6      | Designers, manufacturers, importers and installers of any article/substance for use at work must ensure that:  
        • They are safe and without risk to health when being used, handled, stored or transported  
        • Necessary research, tests and examinations have been carried out  
        • Adequate information is provided to ensure safe use, dismantling and disposal (e.g. operating manuals)  
        Revised information should be given if a serious risk becomes known |
| 7      | Employees Duties:  
        • To take reasonable care of themselves and others who may be affected by their acts or omissions at work  
        • To co-operate with their employer to enable him to comply with the law |
| 8      | Duty on Every Person:  
        • No person may misuse or interfere with anything provided in the interest of health, safety or welfare  
        • Not limited to employees |
| 9      | No cost to employees  
        • Employees cannot be charged for anything done, or provided, to comply with Health & Safety law  
        • For example, PPE or training |
| 15     | Gives HSE power to make regulations under the Act |
| 16     | Gives HSE power to make ACOPs under the Act |
| 20     | Powers of Inspectors |
| 36     | Where an offence has been committed due to the fault of another person, that other person may also be prosecuted |
| 37     | Where an offence is committed by a body corporate and is attributable to any neglect, consent or connivance of a director or other senior officer, then that person may also be prosecuted |
### Risk Assessments:
- Employers and self-employed persons must carry out a risk assessment, covering both workers and others who may be affected by their work or business.
- Employers who employ five or more employees should record the significant findings of the risk assessment.
- Assessment should be “suitable and sufficient”.
- Action taken to manage hazards is proportionate to the risk.

### Principles of Prevention:
- Avoiding risks
- Evaluating the risks which cannot be avoided
- Combating the risks at source
- Adapting the work to the individual
- Adapting to technical progress
- Replacing the dangerous by the non-dangerous or the less dangerous
- Developing a coherent overall prevention
- Giving collective protective measures priority over individual protective measures
- Giving appropriate instructions to employees.

### Health and Safety Arrangements - Employers shall make appropriate arrangements for the effective planning, organisation, control, monitoring and review of protective and preventive measures.

### Health surveillance

### Appointment of competent health and safety assistance

### Procedures for serious and imminent danger (emergency procedures)

### Procedures for contact with emergency services

### Information for employees:
- Risks identified by risk assessment and precautions taken
- Evacuation procedures
- Risks from shared premises

### Co-operation and Co-ordination between Employers/Occupiers sharing same workplace

### Persons working in host employers’ undertaking (contractors)

### Capabilities and Training

### Employees Duties:
- Use equipment and substances in accordance with training and instruction
- Report hazards, near misses or other health and safety shortcomings

### Temporary workers
Management of Health and Safety at Work Regulations 1999

<table>
<thead>
<tr>
<th>Reg.</th>
<th>Detail</th>
</tr>
</thead>
</table>
| 16 & 17 | New and Expectant Mothers:  
  - Employer must identify risks and notify employees of any health and safety issues which may present danger  
  - Amendments to working conditions and/or hours may be required |
| 18 | Notification by New or Expectant Mothers – in writing |
| 19 | Young Persons – Employer must undertake risk assessment before young person starts work |

Managing Contractors

Planning:

- Define the job to be carried out
- Identify the hazards involved in the job
- Assess the risks from the hazards

Choosing a Contractor:

- Experience in this kind of job
- Reputation, including references
- Health & Safety Policy
- Risk Assessments and Method Statements
- Health & Safety Performance e.g. accident performance and enforcement action
- Membership of trade/professional bodies
- Procedures for subcontractor selection
- Training/competence of staff
- Access to competent health & safety advice
- Arrangements for supervision and consultation
- Accident/incident reporting procedures
- Insurance – Employers and Public Liability
Managing Contractors

Contractors Working on Site:

- Contact person should be appointed for communication
- Contractors should sign in and out so that it is always known who is on site
- Contractors should be told about health & safety rules – smoking, emergency procedures, restricted areas, PPE etc.
- Regular consultation/communication with contractors
- Employees might need information on job, duration, hazards etc.
- Procedures for entry into restricted areas, permits to work, material delivery, waste disposal and emergencies should be considered

Monitoring:

- Checks should be carried out to see that contractors are doing the work in the way agreed
- Contractors are responsible for supervising their own work and for ensuring that they work safely
- The amount of checking should be based on the level of risk involved
- It should be decided and agreed at the beginning of the job
- Contractors should be encouraged to report accidents and incidents

Reviewing the Work:

- Learn about the job and the contractor when the work is done
- What needs to be done differently next time?
- Any surprises or lessons learned should be recorded and used for next time
- The record can be used when reviewing the list of preferred contractors
Construction (Design and Management) Regulations 2015

Key points:

- Regulations apply to all construction work
- Notification triggers appointment of additional duty holders and duties in Part 3 of the Regulations
  - Principal Designer (PD)
  - Principal contractor (PC)
  - Contractor
  - Notification to HSE (F10 Form)
  - Pre-Construction Information
  - Construction phase plan
  - Health and safety file
- Most duties remain on clients, designers & contractors regardless of notification.

Notification:

- A project is notifiable if the construction work on a construction site is scheduled to—
  a.) last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project; or
  b.) exceed 500 person days

Thank you.

"Thanks for reading and using this brief example of our upcoming revision guides, that will soon be available for all IOSH and NEBOSH Courses. Keep checking our website www.phoenixhsc.co.uk and social media pages for further updates and special offers on health and safety training courses and products."