



Department
for Education

Health & safety: Advice on legal duties and powers

**For local authorities, school leaders,
school staff and governing bodies**

December 2012

Contents

| | |
|--|----|
| Summary | 3 |
| About this advice | 3 |
| Expiry/review date | 3 |
| Who is this advice for? | 3 |
| Key Points | 4 |
| What does assessing and managing risks mean? | 4 |
| Tackling myths about legal action | 5 |
| Duties as an employer | 6 |
| Duties as an employee | 6 |
| Training | 7 |
| Trips abroad | 7 |
| Reporting injuries and accidents | 7 |
| Adventure activities using licensed providers | 8 |
| School staff driving the school minibus | 8 |
| Parental consent to off-site activities | 8 |
| Local authority powers | 9 |
| Role of the educational visits coordinator (EVC) | 9 |
| Further information | 10 |

Summary

About this advice

The Government is determined to reduce burdens on schools. We want to simplify health and safety requirements and explain them better. The Government is making it easier for schools to take pupils on trips, removing paperwork and taking steps to reduce teachers' fears of legal action. Teachers should be confident that they know best how to look after pupils and keep them safe.

This document summarises the existing health and safety law relevant to schools and explains how it affects local authorities, governing bodies, headteachers and other school staff. It covers activities that take place on or off school premises, including school trips.

This advice document replaces a number of guidance documents on health, safety and security in schools, including *Health and Safety: Responsibilities and Powers* (2001) and *Health and Safety of Pupils on Educational Visits* (HASPEV 1998).

Independent schools - Please note that the amended Independent School Standards Regulations 2010, which will come into effect from 1 January 2013, will no longer require proprietors to have regard to specific guidance. However, schools may find it useful to refer to this health and safety advice. Further information on the amended regulations can be found [here](#).

In conjunction with this advice document you should read the following policy statement from the Health and Safety Executive (HSE) '*School trips and outdoor learning activities: Tackling the health and safety myths*'.

Expiry/review date

This advice will be kept under review and updated as necessary.

The advice in this document is based on the law as it stands. The Government is reviewing health and safety laws to simplify them further.

Who is this advice for?

- School employers
- Headteachers and other school staff

Although this advice is aimed at schools, Sixth Form Colleges are covered by the same health and safety legislation and may also find the advice useful to inform their approach to health and safety.

Key Points

General

Children should be able to experience a wide range of activities. Health and safety measures should help them to do this safely, not stop them.

It is important that children learn to understand and manage the risks that are a normal part of life.

Common sense should be used in assessing and managing the risks of any activity. Health and safety procedures should always be proportionate to the risks of an activity.

Staff should be given the training they need so they can keep themselves and children safe and manage risks effectively.

The Law

The main legislation covering this area is the Health and Safety at Work etc Act 1974 and regulations made under that Act.¹

The employer (the local authority, governing body or proprietor) is responsible for health and safety, though tasks may be delegated to staff.

Employees also have a duty to look after their own and others' health and safety.

It is very rare for school staff to be prosecuted under criminal law with regard to accidents involving children.

Employers, school staff and others also have a duty under the common law to take care of pupils in the same way that a prudent parent would do so.

Most claims for negligence are brought against the employer (who has public liability insurance) and not individual members of staff.

What does assessing and managing risks mean?

Health and safety law requires the employer to assess the risks to the health and safety of staff and others affected by their activities. The terms risk assessment and risk management are used to describe the process of thinking about the risks of any activity and the steps taken to counter them. Sensible management of risk does not mean that a separate written risk assessment is required for every activity.

¹ In particular, the Management of Health and Safety at Work Regulations 1999.

School employers should always take a common sense and proportionate approach, remembering that in schools risk assessment and risk management are tools to enable children to undertake activities safely, and not prevent activities from taking place. Sensible risk management cannot remove risk altogether but it should avoid needless or unhelpful paperwork.

Some activities, especially those happening away from school, can involve higher levels of risk. If these are annual or infrequent activities, a review of an existing assessment may be all that is needed. If it is a new activity, a specific assessment of significant risks must be carried out. Headteachers should ensure that the person assigned with the assessment task understands the risks and is familiar with the activity that is planned. Where a risk assessment is carried out the employer must record the significant findings of the assessment.²

However, schools need not carry out a risk assessment every time they undertake an activity that usually forms part of the school day, for example, taking pupils to a local venue which it frequently visits, such as a swimming pool, park, or place of worship. Any risks of these routine activities should already have been considered when agreeing the school's general health and safety policies and procedures. A regular check to make sure the precautions remain suitable is all that is required.

Tackling myths about legal action

We know that some schools and teachers worry about being prosecuted if an accident occurs. The HSE policy statement *School trips and outdoor learning activities: Tackling the health and safety myths* explains that the HSE's main interest is in real risks arising from serious breaches of the law, such as a trip leader taking pupils canoeing but not ensuring they were all wearing buoyancy equipment. The [HSE case study](#) on the tragic events at Glenridding Beck, where a ten year old boy drowned in 2002, highlights some of the issues.

The statement makes clear that the HSE wants to encourage all schools and local authorities to remove wasteful bureaucracy – so that they focus only on real risks and not on paperwork. It also explains what the HSE takes into account when deciding whether to prosecute following an accident. This might include the severity of the injury, how far good practice was followed, the seriousness of the breach of the law and whether it is in the public interest to prosecute. More details can be found in the [HSE's Enforcement Policy Statement](#). Criminal cases relating to accidents in schools are very rare.

² Note that this does not apply if the employer employs fewer than five employees.

Sometimes civil proceedings in negligence can be taken against an employer or an individual member of staff. However, legal action for negligence against schools is only likely to be successful if:

- the school has not taken care of a child in a way that a prudent parent would have done;
- as a result, the child has been injured; and
- the injury was a foreseeable consequence.

Duties as an employer

Under the Health and Safety at Work etc. Act 1974, the employer in a school must take reasonable steps to ensure that staff and pupils are not exposed to risks to their health and safety. This applies to activities on or off school premises.

Regulations made under the Health and Safety at Work etc. Act 1974 set out in more detail what actions employers are required to take. For example, the Management of Health and Safety at Work Regulations 1999 require employers to:

- assess the risks to staff and others affected by school activities in order to identify the health and safety measures that are necessary and, in certain circumstances, keep a record of the significant findings of that assessment;
- introduce measures to manage those risks (risk management);
- tell their employees about the risks and measures to be taken to manage the risks; and
- ensure that adequate training is given to employees on health and safety matters.

Schools must set out health and safety arrangements in a written health and safety policy. The HSE's website contains useful information and a [simple two-page template that any employer can use to create a health and safety policy](#).

Although employers retain responsibility for health and safety, they can delegate tasks to headteachers or other school staff. What a school employer will need to consider in its policy will vary depending on the size of the school and the risks associated with the school's activities. For example, the policy for a small infant school may be very brief, whereas that for a large secondary school with a range of laboratories and workshops may be more detailed. Annex A contains information on what *may* need to be included in health and safety policies for schools. This list should not be treated as a requirement.

Duties as an employee

The law requires employees to:

- take reasonable care of their own health and safety and that of others who may be affected by what they do at work;
- co-operate with their employers on health and safety matters;
- do their work in accordance with training and instructions; and
- inform the employer of any work situation representing a serious and immediate danger, so that remedial action can be taken.

In addition, teachers and other staff in schools have a common law duty to act as any prudent parent would do when in charge of pupils.

Employees should follow any health and safety procedures put in place by their employer. However, if they feel that the procedure is inappropriate (e.g., it is too bureaucratic) they should discuss this with their employer and request that it is reviewed. Usually the headteacher will work with the employer to ensure that the procedures at the school are proportionate, effective and appropriate.

Training

Employers must ensure that staff are given the health and safety training they need for their job. This certainly doesn't mean that all employees have to attend a training course. It may simply mean providing them with basic instructions or information about health and safety in the school. Staff who do work which involves a greater element of risk, such as using woodworking machines, will need more training. There is more information available on the [HSE website](#).

Trips abroad

Schools need to consider their duties under health and safety law when planning trips abroad. [HSE's frequently asked questions on school trips](#) provides further guidance.

Any injury to or death of a member of staff or a child outside Great Britain may be subject to the law of the land in which the injury/death occurred.

A school could still be liable under civil law for injuries to children that happen abroad as a result of negligence on the part of the school or its staff.

Reporting injuries and accidents

Certain work-related injuries to a member of staff or a child must, by law, be recorded and reported. The employer is responsible for this, but staff may be asked to prepare the report. Guidance for schools on what, how, where and when to report is explained in the [HSE education information sheet: Incident reporting in schools](#).

Employers must report:

- deaths;
- major injuries;
- over-7-day injuries – where an employee is away from work or unable to perform their normal work duties for more than 7 consecutive days;
- where there is an accident connected to the work activity which causes injury to pupils, members of the public or other people not at work and they are taken from the scene of an accident to hospital; and
- specified dangerous occurrences – where something happens that does not result in an injury, but could have done.

The requirements are found in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR).

Adventure activities using licensed providers

When planning an activity that will involve caving, climbing, trekking, skiing or water sports, schools must currently check that the provider holds a licence as required by the Adventure Activities Licensing Regulations 2004. These regulations apply to adventure activities that take place in England, Scotland and Wales but these arrangements may be subject to change in the future.

School staff driving the school minibus

School staff can drive the school minibus without any special licence, as long as their employer agrees and as long as the following conditions are met.

- The staff member obtained their car driving licence before January 1997; OR
- The staff member obtained their car driving licence later, but has held it for at least two years, AND
 - is not being paid to drive the minibus (because exemption depends on no consideration being received by the driver); AND
 - the minibus weighs no more than 3.5 tonnes and is not used for hire or reward.

Parental consent to off-site activities

Written consent from parents is not required for pupils to take part in the majority of off-site activities organised by a school (with the exception of nursery age children) as most of these activities take place during school hours and are a normal part of a child's education at school. However, parents should be told where their child will be at all times and of any extra safety measures required.

Written consent is usually only requested for activities that need a higher level of risk management or those that take place outside school hours. The Department has prepared a “one-off” consent form which schools can ask parents to sign when a child enrolls at the school. This will cover a child’s participation in any of these types of activities throughout their time at the school. These include adventure activities, off-site sporting fixtures outside the school day, residential visits and all off-site activities for nursery schools which take place at any time (including during school holidays or at the weekend). The form is available on the [DfE website](#).

Parents must be told in advance of each activity and must be given the opportunity to withdraw their child from any particular school trip or activity covered by the form.

Local authority powers

Where the local authority is the employer (community, voluntary controlled, community special schools and maintained nursery schools), it may give a direction concerning the health and safety of persons (including pupils) on the school's premises or taking part in any school activities elsewhere. Under section 29(5) of the Education Act 2002, governing bodies of such schools must comply with any such direction from the local authority.

Role of the educational visits coordinator (EVC)

There is no legal requirement to have an EVC. The EVC typically liaises with the local authority’s outdoor education adviser and helps colleagues in schools to manage risks.

More specific advice can be found from the Outdoor Education Advisers’ Panel (OEAP) which is made up of expert practitioners from local authorities and is one of several organisations that offer training. The [OEAP’s website](#) also provides schools with details of local authority outdoor education advisers.

Further information

The Management of Health and Safety Regulations 1999:

www.legislation.gov.uk/uksi/1999/3242/contents/made

The Adventure Activities Licensing Regulations 2004:

www.legislation.gov.uk/uksi/2004/1309/contents/made

Information about reporting injuries: www.hse.gov.uk/riddor/index.htm

Information on transport legislation affecting schools: www.dft.gov.uk and

www.dft.gov.uk/dvla/

Health and Safety Executive, information on a range of health and safety issues:

www.hse.gov.uk

Outdoor Education Advisers' Panel, information on 'school trips' (not just outdoor activities): www.oeap.info

Advice on science safety: www.cleapss.org.uk

Association for Science Education, for advice on science safety: www.ase.org.uk

Association for PE, for advice on safety in PE and school sports: www.afpe.org.uk

Council for Learning Outside the Classroom, information on 'school trips' including accreditation: <http://lotcqualitybadge.org.uk/>

ANNEX A: Key elements of a health and safety policy

The HSE's website contains a [simple two-page template](#) that any employer can use to create a health and safety policy. The issues that school employers decide to include in the health and safety policy will depend on the size of the school and the nature of the risks associated with the school's activities. The template on the HSE website includes the following which should be included in any health and safety policy:

- A general statement of policy;
- Who is responsible to do what (delegation of tasks); and
- Arrangements to establish, monitor and review measures needed to meet satisfactory health and safety standards.

In addition, schools may wish to include any of the following in their health and safety policy and associated risk assessment:

- Training of staff in health and safety, including risk assessment
- Consultation arrangements with employees
- Recording and reporting accidents to staff, pupils and visitors – including those reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)
- Policy and procedures for off-site visits, including residential visits and any school-led adventure activities
- Dealing with health and safety emergencies – procedures and contacts
- First aid and supporting medical needs
- Occupational health services and managing work-related stress
- Workplace safety for teachers, pupils and visitors
- School security
- Violence to staff (may cross-refer to behaviour policy)
- Manual handling
- Slips and trips
- On-site vehicle movements
- [Management of asbestos](#)
- Control of hazardous substances
- Work at height
- Selecting and managing contractors
- Maintenance (and, where necessary examination and testing) of plant and equipment such as electrical equipment, local exhaust ventilation, pressure systems, gas appliances, lifting equipment and glazing safety
- Fire safety, including testing of alarms and evacuation procedures



Department
for Education

© Crown copyright 2012

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at www.education.gov.uk/contactus

This document is also available from our website at www.education.gov.uk