

1. INTRODUCTION

The Department for Education (DfE) has published a document summarising the **existing health and safety law relevant to schools** and explaining how it affects local authorities, governing bodies, head teachers and other school staff. It covers activities that take place on or off school premises, including school trips. It has also produced a **Consent Form for school trips and other off-site activities** which *'will cover a child's participation in any of the types of activities where consent is required, throughout their time at the school'*.

Simultaneously, the Health and Safety Executive (HSE) has published a 3-page web document **'School trips and outdoor learning activities: tackling the health and safety myths'** to provide a clear picture of the HSE's perspective on the central issues to managers and staff in local authorities and schools.

This Summary **reproduces in full** the DfE document on health and safety law and includes information about accessing this, the Consent Form and the HSE document.

2. DFE SUMMARY OF HEALTH AND SAFETY LAW

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.
- Commonsense 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 Act 1974* and regulations made under that Act.

- 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 often refers to risk assessment and risk management. These are the terms used to describe the process of thinking about the risks of any activity and taking steps to counter them. A written assessment is not required for every activity. Teachers should assume they only need to carry out a written risk assessment in exceptional circumstances. Where a risk assessment is carried out the employer must record the significant findings of the assessment.

Some activities, especially those happening away from school such as mountaineering, canoeing and sailing, involve higher levels of risk. In these cases an assessment of significant risks should be carried out. Head teachers should ensure that the person assessing the risks understands the risks and is familiar with the activity that is planned. However, a risk assessment is certainly not needed every time a school takes pupils to a local venue such as a swimming pool, parks or museums.

School employers should always take a commonsense and proportionate approach, remembering that in schools the purpose of risk assessment and management is to help children to undertake activities safely, not to prevent activities from taking place. They cannot remove risk altogether and they should not require needless or unhelpful paperwork.

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 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 [see <http://www.hse.gov.uk/aala/index.htm>].

The Statement makes clear that 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 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 at: <http://www.hse.gov.uk/enforce/enforcepolicy.htm>.

Criminal cases relating to accidents in schools are very rare.

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 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 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;
- 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 [see <http://www.hse.gov.uk/simple-health-safety/write.htm>]

Although employers retain responsibility for the health and safety of pupils, they can delegate tasks to head teachers 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 [see *the complete DfE document*] 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;
- 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 head teacher 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 at <http://www.hse.gov.uk/simple-health-safety/provide.htm>

Trips abroad

- Schools in England, Wales and Scotland will need to comply with their duties under health and safety law when planning trips abroad.
- 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

Serious 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. What, how, where and when to report is explained on the HSE website at <http://www.hse.gov.uk/riddor/index.htm>. Employers must report:

- deaths;
- major injuries;
- over-3-day injuries – where an employee is away from work or unable to perform their normal work duties for more than 3 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;
- 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 watersports 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 used not 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 at <http://www.education.gov.uk/schools/adminandfinance/healthandsafety>

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 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 offers training. The OEAP's website (<http://www.oeap.info>) also provides schools with details of local authority outdoor education advisers.

3. POWER TO BAR ABUSIVE PARENTS

Sometimes aggressive or abusive behaviour from a parent can present a risk to staff and children. School premises are private property and parents will generally have permission from the school to be on school premises. However, in cases of abuse or threats to staff, pupils or other parents, schools may ban parents from entering the school.

It is also an offence under section 547 of the *Education Act 1997* for any person (including a parent) to cause a nuisance or disturbance on school premises. The police may be called to assist the school in removing a parent but local authorities and governing bodies may also authorise a person to remove a person if they have reasonable cause to believe that the person is causing a nuisance or a disturbance.

Schools should have a written policy setting out the behaviour expected of parents on the premises and the procedures that will happen when the school wishes to restrict a parent's access to school premises. A parent who has been banned from entering school premises is trespassing if he or she does so without permission.

The complete DfE Health and Safety summary document, the Consent Form, and a link to the HSE 'School trips and outdoor learning activities' document can all be accessed at: <http://www.education.gov.uk/schools/adminandfinance/healthandsafety> > clicking on the link to 'Departmental advice on health and safety for schools'