

Ensuring Occupational Health and Safety in UK healthcare – Legal framework and compliance

John Harrison



Imperial College Healthcare



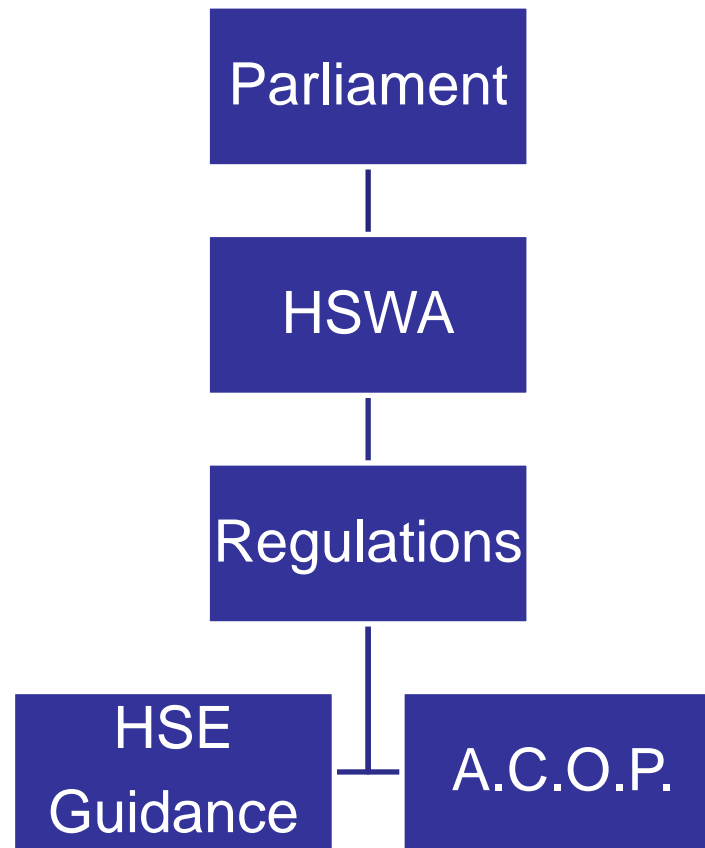
NHS Trust

Sources of English law

- Criminal (Statute) Law
- Civil (Common) Law
- Law of the European Union
- European Convention on Human Rights / Human Rights Act 1998



Framework – Law of statute



Health and Safety at Work etc. Act 1974

- 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 his employees.
- It shall be the duty of every employee while at work—
 - (a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and
 - (b) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

Health and Safety at Work etc. Act 1974

Without prejudice to the generality of an employer's duty under the preceding subsection, the matters to which that duty extends include in particular—

- (a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;
- (b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;
- (d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;
- (e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

Regulations

- Control of Substances Hazardous to Health 2002
- The Workplace (Health, Safety and Welfare) Regulations 1992
- The Working Time Regulations (1998)
- The Manual Handling Operations Regulations 1992
- The Health and Safety (Sharp Instruments in Healthcare) Regulations 2013

Guidance / A.C.O.P

Guidance

- This guidance is issued by the Health and Safety Executive.
- Following the guidance is not compulsory.
- Following the guidance will normally be doing enough to comply with the law.

A.C.O.P.






- Each ACOP is approved by the Health and Safety Executive, with the consent of the Secretary of State.
- It gives practical advice on how to comply with the law.
- The Code has a special legal status.

Legal Duty to assess Risk



How to assess the risks in your workplace

Follow the five steps in this leaflet:

-  Step 1
Identify the hazards
-  Step 2
Decide who might be harmed and how
-  Step 3
Evaluate the risks and decide on precautions
-  Step 4
Record your findings and implement them
-  Step 5
Review your assessment and update if necessary

- a **hazard** is anything that may cause harm, such as chemicals, electricity, working from ladders, an open drawer etc;
- the **risk** is the chance, high or low, that somebody could be harmed by these and other hazards, together with an indication of how serious the harm could be.

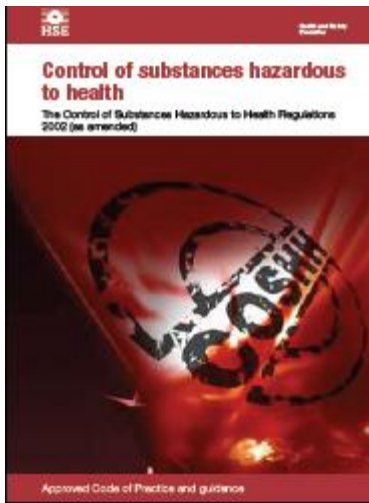
Legal Duty to control Risk

- Can I get rid of the hazard altogether?
- If not, how can I control the risks so that harm is unlikely?

When controlling risks, apply the principles below, if possible in the following order:

- try a less risky option (eg switch to using a less hazardous chemical);
- prevent access to the hazard (eg by guarding);
- organise work to reduce exposure to the hazard (eg put barriers between pedestrians and traffic);
- issue personal protective equipment (eg clothing, footwear, goggles etc); and
- provide welfare facilities (eg first aid and washing facilities for removal of contamination).

Control of Substances Hazardous to Health Regs.



1. Assess risk to health
2. Prevent or control exposures
3. Use of control measures
4. Maintenance, examination and testing of control measures
5. Monitoring workplace exposures
6. Health surveillance
7. Provision of information, instruction or training to people who are exposed
8. Arrangements for dealing with accidents, incidents and emergencies

Common Law

- A **common law** legal system is a system of law characterized by **case law**, which is law developed by judges through decisions of courts and similar tribunals
 - Compensation
 - Law of Tort (Negligence)



Common Law - Examples

Musculoskeletal Injuries

- Low back pain
 - £800,000 award in 2000
 - Nurse lifting patient
 - No minimal handling policy / lifting aids
- Upper limb
 - “RSI” awards – 1999 onwards

Mental ill health

- Walker v Northumberland County Council 1995
- Young v Post Office 2002
- HSE “standards” for employers
 - 85% can cope with demands
 - 65% not subject to bullying or harassment

European Union

Types of legislation

Pregnancy

Risk assessment if female worker is pregnant, has given birth in the last 6 months, is breast-feeding

Action 1 - Temporarily suspend from working conditions and from any work; or if that is not possible

Action 2 - Offer her suitable alternative work (at the same level of pay) if available, or suspend from work if not feasible;

Action 3 - Suspend her from work on paid leave for as long as is necessary, to protect her health and safety, and that of

Working Time Regulations

- Max. 48 hours per week over 17 week period
- One day off per week
- At least 28 days annual leave (Including statutory leave)
- Workers on sick leave must accrue annual leave
- Must be allowed to return to work
- Protection of night workers (Health and safety rest periods)

Needlestick Injuries

Controlling risk of exposure:

- (a) The design and use of appropriate work processes, systems and engineering controls and the provision and use of suitable work equipment and materials, eg providing safer sharps devices
- (b) The control of exposure at source, eg having a clinical waste policy which ensures safe collection, storage, transport and final disposal of waste.
- (c) Where adequate control of exposure cannot be achieved by other means, provision of suitable personal protective equipment (PPE) in addition to the measures required by (a) and (b) above.

European Convention on Human Rights / Human Rights Act 1998

Human Rights Convention

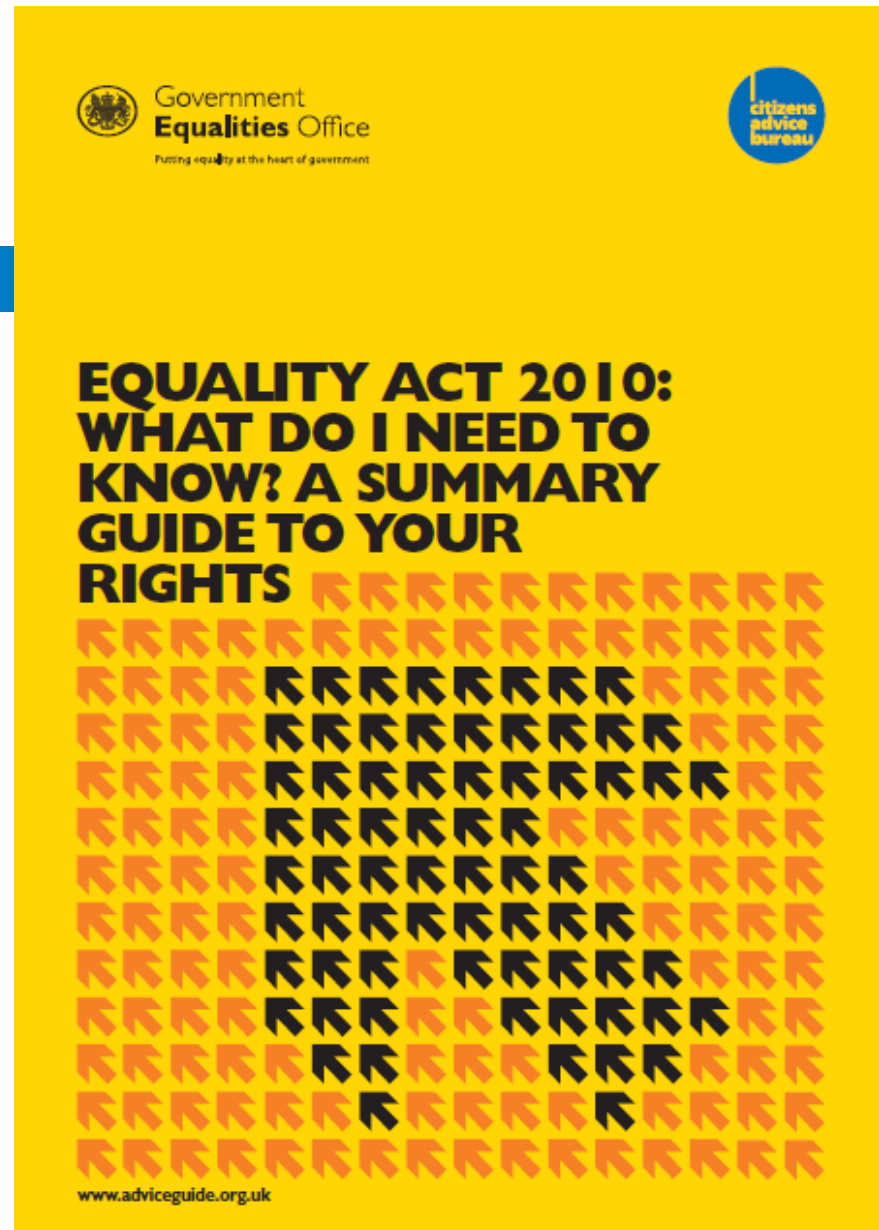
- Treaty of
 - European
 - Human Rights
- Article 5 Right to liberty and security of person
- Article 6 Entitlement to a fair and public hearing within a reasonable time frame by an independent and impartial tribunal established by law. (A fair trial)
- Article 8 Right to respect for private and family life
- Article 9 Freedom of thought, conscience and religion
- Article 10 Freedom of expression



Equality Act

It is unlawful to unfairly discriminate against people with protected characteristics.

- race
- sex
- sexual orientation (whether being lesbian, gay, bisexual or heterosexual)
- disability (or because of something connected with their disability)
- religion or belief
- being a transsexual person (transsexuality is where someone has changed, is changing or has proposed changing their sex – called 'gender reassignment' in law)
- having just had a baby or being pregnant
- being married or in a civil partnership (this applies only at work or if someone is being trained for work), and
- age (this applies only at work or if someone is being trained for work).



Imperial College Healthcare



NHS Trust

Equality Act

It is unlawful to unfairly discriminate against people with protected characteristics.

Disability

- Medical condition
- Substantial effect on daily
 - Mobility
 - Continence
 - Cognitive function / decision making
 - Self care
- Has existed or is likely to exist for more than 12 months
- Duty to make **reasonable adjustments**

Example

You suffer from depression, so it's very hard for you to make decisions or even to get up in the morning. You're forgetful

Example

Your employer brings in a new shift pattern which means that everyone has to work fewer days, but longer days. You have a disability that means

Example

Because of your disability, you might need to take more leave from work than people you work with. Your employer must not treat you unfavourably because you are off work, as long as it knows that you have a disability. However, your employer may be able to justify anything it does, and if its action can be justified then, it won't be against the law.

Sickness Absence

- Employment law
 - Law of contract
 - Statute (Employment Rights Act 1996)
- Anti-discrimination law
- National Institute for Health and Clinical Excellence 2009 (PH19)



Sickness absence

- Attendance Management Policy
 - 3 episodes in 3 months
 - 28 days continuous absence
 - Rolling 12 month period
- 3-stage review
 - Identify possible support
 - Stage 3 may lead to dismissal



Right to Dismiss

- Law of contract; law of unfair dismissal
- Employment Rights Act – minimum periods of notice

Fair reasons for dismissal

- Capability or qualifications
- Misconduct
- Redundancy
- Employment will contravene a statute
- Some other substantial reason

Unfair reasons for dismissal

- Pregnancy or childbirth
- Paternity, maternity or adoption leave
- Time to look after dependents
- Complaints about health and safety
- Making a protected disclosure (“Whistle-blowing”)



III-Health dismissal

- Employer has a duty to act “reasonably” –
 - Obtain medical evidence
 - Interview employee in person
- Medical Reports
 - OH advice (considering health and relationship to work) is preferred to advice from other specialists especially where the safety of the public is involved.



Conclusion

- Variety of sources of UK health and safety legislation
 - Role of Parliament and Judges
 - Role of Europe
- OH practice also involves employment law and antidiscrimination legislation
- Concept of reasonableness is used to balance needs of individual with those of employers and the public.

