



4. THE LEGISLATION

4.1 Health and Safety at Work Act 1974 (HSWA)

Section 2(1) HSWA States:

"It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare of all his employees."

Section 3(1) HSWA States:

"It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected are not thereby exposed to risks to their health and safety."

If someone drives on behalf of the company as part of that business, whether or not the company owns the vehicle, the activity will, according to health and safety legislation, come within the company's undertaking.

4.2 The Management of Health and Safety at Work Regulations 1999 (MHSWR)

Regulation 3 (MHSWR) sets out the requirement upon an employer to carry out:

"...a suitable and sufficient assessment of the risks to health and safety..." of his employees and persons not in his employment.

Regulation 5 (MHSWR) sets out the requirement to manage the risk:

"...for the effective planning, organisation, control, monitoring and review of the preventative and protective measures."

And...

"Where the employer employs five or more employees, he shall record the arrangements."

An employer can appoint someone outside their business to assess a risk, but the duty to assess will always remain with them.

The Approved Code of Practice to the MHSWR makes it clear that the assessment of risk is based on the frequency of a hazard occurring and the consequence should the hazard materialise. This means that even if the frequency is low, if the outcome, should it occur, is catastrophic, control measures would be required.

4.3 The Safety Representatives and Safety Committees Regulations 1977, the Health and Safety Consultation with Employees' Regulations 1996

Employers must consult either their employees directly, their representatives or their trade union safety representative in good time regarding matters related to their health and safety at work.

4.4 The Provision and Use of Work Equipment Regulations 1998

These regulations apply to such equipment provided for use or used by an employee at work and may also apply to equipment used by a self-employed person working on behalf of the company.

a) Suitability

"Every employer shall ensure that work equipment is so constructed or adapted as to be suitable for the purpose for which it is used or provided."

"In selecting work equipment, every employer shall have regard to the working conditions and to the risks to the health and safety of persons which exist in the premises or undertaking in which the work equipment is to be used and any additional risk posed by the use of that work equipment."

"Every employer shall ensure that work equipment is used only for operations for which, and under conditions for which, it is suitable."

b) Maintenance

"Every employer shall ensure that work equipment is maintained in an efficient state, in efficient working order and in good repair."

c) Information and Instructions

"Every employer shall ensure that any of his employees who supervises or manages, and all persons who use, work equipment, have available to them adequate health and safety information and, where appropriate, written instructions pertaining to the use of the equipment."

d) Training

"Every employer shall ensure that all persons who use and any employee who supervises or manages the use of work equipment have received adequate training for purposes of health and safety, including training in the methods which may be adopted when using the equipment, any risks which may entail and the precautions to be taken."

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