



Health and Safety Overview

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In considering the legal framework for learning outside the classroom, the first thing to understand is the distinction between law, guidance and an employer requirement. The law is made up of the common law as interpreted by the courts, a relatively small number of Acts (primary legislation) and regulations (secondary legislation enabled by the Acts).

Guidance interprets and expands on the law as it applies to, in this case, young people. Guidance can be typically prepared and published by a Government department, the Health and Safety Executive, a local authority, a union, or any other body with the requisite expertise. It recommends ways in which schools and others can be helped to comply with the law. Some national guidance is 'statutory' and is, as the name suggests, required or authorised by the statute. The statute will say to what extent the guidance needs to be taken into account. If you do not follow it, you could be deemed to be breaking the law on which it is based.

Other national guidance is good practice guidance. Whilst setting out legal requirements, it also recommends ways in which the law can be complied with. Technically, non-statutory guidance has no legal status but it has much authority and courts and others have had recourse to it.

However, schools and others must follow their employer's guidance, which will be based on the employer's interpretation of their liability within the law. Local guidance will almost invariably adopt or adapt national guidance. It is possible for local rules, as expressed in local guidance, to differ from national guidance. For example, they could be stricter than recommended. They could expect best practice rather than good practice. In general, if you follow your employer's requirements, you should have nothing to worry about.

Key documents

LAW	Health and Safety at Work etc. Act 1974 and the associated Management of Health and Safety at Work Regulations 1999
LAW	Education Act 2002, Education and Inspections Act 2006
LAW	Children Act 2004
LAW	Disability Discrimination Act 2005
LAW	Safeguarding Vulnerable Groups Act 2006
LAW	Compensation Act 2006
STATUTORY GUIDANCE	Statutory Guidance on the Roles and Responsibilities of the Director for Children's Services and the Lead Member for CS DfES 2005
GOOD PRACTICE GUIDANCE	Health & Safety: Responsibilities and Powers DfES 2001
GOOD PRACTICE GUIDANCE	Health and Safety of Pupils on Educational Visits (HASPEV) DfES 1998
GOOD PRACTICE GUIDANCE	Standards for LEAs in Overseeing Educational Visits DfES 2002
GOOD PRACTICE GUIDANCE	Standards for Adventure DfES 2002
GOOD PRACTICE GUIDANCE	Handbook for Group Leaders DfES 2002
GOOD PRACTICE GUIDANCE	'Out and About' guidance, the Manifesto for Learning Outside the Classroom partnership 2008



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Other relevant documents are: *Special Educational Needs and Disability Act 2001*; *Management of Health and Safety at Work Regulations 1999* (the Risk Assessment Regulations); *Five Steps to Risk Assessment (HSE)*.

So, what does the law require?

Firstly, teachers, and indeed anyone in charge of young people have a common law duty to take such care of the young people in their charge as a reasonably prudent parent or carer would take in similar circumstances. Next, there is the Health and Safety at Work Act 1974, and the Management of Health and Safety at Work Regulations 1999 which impose duties in relation to the health and safety not only of employees but others affected by the undertaking. Most of the duties are imposed on employers: for example, the requirement to undertake risk assessments, identify hazards, introduce measures to control the risks and tell employees about these measures. Employees are required to take reasonable care of their own and others' health and safety, cooperate with their employers over safety matters, carry out activities in accordance with training instructions and inform the employer of risks. In schools, the employer usually delegates the associated tasks to the headteacher who can delegate them further.

Who is responsible for the health and safety of young people?

The statutory responsibility for ensuring the health and safety of young people so far as is reasonably practicable lies with the employer. Governing bodies in all schools have responsibilities relating to school premises.

Who is the employer?

The employer is:

- the local authority – in community schools, special schools, voluntary controlled schools, maintained nursery schools and pupil referral units
- the governing body or Trust – in academies, foundation schools, foundation special schools and voluntary aided schools
- for independent schools, usually the governing body or proprietor
- for statutory youth groups, the local authority.

The increasing use by local authorities of commissioned services will usually be on the basis that those commissioned will be required to follow local authority guidance as if they were the employer.

The employer must ensure, as far as is reasonably practicable, that young people are not exposed to risks to their health and safety in school and during off-site visits. The employer must have a health and safety policy and arrangements to implement it. Key elements of a policy are listed in [Health and Safety: Responsibilities and Powers](#) (DfES 2001). The employer must assess the significant risks of all activities, introduce measures to manage those risks and tell their employees about the measures.

The employer, whether the local authority or governing body, has the power to ensure that its health and safety policy is carried out. It must provide health and safety guidance to the school and ensure that staff members who are delegated tasks such as risk assessment and risk management are competent to carry them out. If risk assessment shows training is needed the employer must make sure this takes place. The employer cannot fulfil its statutory duty unless it monitors how well its schools/staff are complying with its policy.



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Governing bodies

In all schools, the governing body controls the schools premises (subject, in some cases to the direction of the LA). Even if they do not employ school staff, governing bodies, to the extent that they control school premises, must take all reasonable measures to ensure that the premises and equipment on the premises are safe and do not put the health of young people at risk while they are on the premises. This is especially applicable to learning outside the classroom in the school grounds.

The governing body (and headteacher) of a community, voluntary controlled, community special and maintained nursery school must comply with any directions given by the local authority concerning the health and safety of persons in school, or on school activities elsewhere.

Employees

Employees in any kind of school must:

- take reasonable care for the health and safety of young people while at work
- cooperate with their employer and the governing body so far as is necessary to enable compliance with the above duties
- carry out activities in accordance with training and instructions
- inform the employer of any serious risk.

External organisations that provide learning outside the classroom activities also have health and safety responsibilities. The Quality Badge includes criteria for assessing the arrangements in place for meeting these responsibilities.

Child Protection

A new individual vetting scheme managed by the Independent Safeguarding Authority (ISA) will be introduced in October 2009. It will be then illegal to use someone in a regulated activity for young people who is not registered with, and therefore has not been checked by, the ISA. Until then, anyone who works regularly with children or young people without supervision is expected to obtain a Criminal Records Bureau (CRB) certificate. The draft proposals indicate that almost any adult working in proximity to or with children will have to be vetted. This could include more provider staff than currently and might apply to more parents/carers and volunteers. However, once a person is 'monitored' as part of the registered scheme, the CRB will automatically check that person's police record for additional information. That will allow for much simpler online checks than do the current procedures. You can find out more about the [ISA](#) here.