

NEU Guidance for Members, Reps and Local Officers

This briefing gives information on the legal requirement for employers to carry out risk assessments and the extent to which teachers and school staff can be required to assist in the process. NEU guidance on risk assessments for school visits is available on the NEU website, <https://neu.org.uk/>.

The purpose of risk assessment

Risk assessment is an important tool in ensuring health and safety at work. It means, simply, that employers set out to identify hazards to health and safety, evaluate the risk of harm resulting from those hazards and take appropriate action to protect employees and others.

The Health and Safety at Work Act 1974 places general duties on employers to ensure, so far as is reasonably practicable, the health, safety and welfare of employees and the health and safety of others on the premises. These duties implicitly include a duty to assess risks and take necessary precautions. Employers also, however, have specific legal duties to carry out risk assessments for all aspects of workplace health and safety due to the requirements of the Management of Health and Safety at Work Regulations 1999 and other regulations such as the manual handling, COSHH and fire safety regulations.

Risk assessment is also a useful tool for safety representatives in taking up issues of health, safety and welfare. Where a potential problem has been identified, safety representatives can pose an immediate question to the employer or manager simply by asking to see the risk assessment for the activity, process or issue in question.

Legal responsibilities for risk assessment

The employer has the legal responsibility for risk assessment. In maintained schools, this means the local authority, in voluntary aided or foundation schools, the governing body, in academies which are part of a chain this is the academy trust and in stand-alone academies it is the governing body. In sixth form and FE colleges, the employer is the college corporation.

In practice, the risk assessment process will need to be delegated by the employer to individuals who manage the process and who undertake risk assessments on the employer's behalf.

The extent to which teachers should be involved in risk assessment will depend upon two things: firstly, teachers' conditions of service and professional duties and any management responsibility which they have for health and safety matters; and secondly, whether they are competent to take part in the risk assessment process on the employer's behalf.

> Conditions of service and management responsibilities

The contractual responsibilities of school staff relating to risk assessment, subject to the provisos set out in the next section, can be summarised briefly as set out below:

- Head teachers' professional duties include responsibility for managing health and safety in schools and the [School Teachers' Pay and Conditions Document \(STPCD\)](#) requires head teachers to promote the safety and wellbeing of pupils and staff (paragraph 46.6). They

have a duty to co-operate with their governing body and employer so far as is necessary to ensure compliance with health and safety requirements. As a result of this, they may be required by their employer or governing body to manage the process of risk assessment in their schools but this does not necessarily mean they must carry them out themselves.

- Deputy and assistant head teachers may be required to undertake any of the head teacher's professional duties reasonably delegated to them by the head teacher and may also therefore be required to manage the process of risk assessment. Heads of department or subject may, as a result of their managerial role, be required to do so for their area of responsibility. Again, this does not necessarily mean they must carry the risk assessments out themselves.
- Classroom teachers who are not heads of department/subject have no obligation under their conditions of service and professional duties to become involved either in managing or undertaking risk assessments. Any teacher may, however, agree if they wish to contribute to the risk assessment process. Classroom teachers do have a duty in the STPCD to promote the safety and wellbeing of pupils.
- Non-teaching staff may be required to undertake risk assessments if this is provided for under their contracts of employment.

> **Who is a competent person?**

Employers are obliged by legislation on risk assessment to ensure that those carrying out risk assessments are "competent" to do so. This is a very important matter in determining the extent to which teachers, in particular heads and deputies, should be involved in carrying out risk assessments on behalf of the employer.

The Management of Health and Safety at Work Regulations 1999 clarify that employers should, wherever possible, use competent employees in preference to external sources of advice and assistance on health and safety. However, there are some exceptions where the services of an appropriately qualified and competent external adviser will be required, for instance in relation to asbestos and fire safety.

For an individual to be deemed to be 'competent' under the Regulations, they must have 'sufficient training and experience or knowledge and other qualities' to be able to undertake the task. This does not mean that a risk assessment can be carried out only by qualified health and safety specialists. It does, however, mean that anyone who is asked to carry out a risk assessment, or who agrees to do so, is entitled to be given proper support.

Proper support includes training in risk assessment and other guidance of the kind set out later in this document. Otherwise, the risk assessment will not have been carried out by a "competent person" and will not be recognised as a valid risk assessment. The employer will have failed to discharge the legal responsibility for risk assessment.

The following sections consider in more depth the role firstly of managers, including head teachers, deputy and assistant head teachers and heads of department/subject and secondly of classroom teachers.

The role of the manager

As noted above, employers are legally obliged to ensure that risk assessments are carried out by "competent persons". Head teachers and other managers who are requested to undertake risk assessments should therefore ensure that they obtain all the necessary support outlined later in this document in order that they are "competent persons". If they do not, the risk assessments will not be valid.

Managers may consider that it is desirable to involve other members of staff, particularly where they have specific areas of expertise. For example, the premises manager might be consulted.

Depending on who is undertaking the risk assessment, heads of department, or subjects might be involved in a consultative role only. Managers cannot, however, require classroom teachers or non-teaching staff to undertake duties which do not form part of their contractual or professional obligations.

Managers should also bear in mind that all members of staff who are required to, or who agree to take part in the risk assessment process, should also be given support and training in the principles of risk assessment, otherwise they may not necessarily be fully competent in identifying risks to which attention should be given.

The role of the classroom teacher

Classroom teachers who are not heads of department or subject cannot be required to undertake risk assessments as this is not one of the professional duties set out in the [School Teachers' Pay and Conditions Document](#). The list of professional duties set out in the Pay and Conditions Document includes the "safeguarding of the health and safety of pupils" but this does not create any responsibility for preparing formal risk assessments.

Many teachers carry out informal risk assessments every day by, for example, visually inspecting equipment before use and reporting any defects to the appropriate person. This is part of the normal work process. It reflects the duty placed on all employees under the Health and Safety at Work Act 1974 to take reasonable care for their own health and safety and the health and safety of other persons who may be affected by their actions or omissions. This duty however, is completely separate from the responsibility placed on employers to prepare formal risk assessments within the workplace.

Classroom teachers may nevertheless be prepared to contribute to risk assessments for the particular areas in which they work, provided that they have received appropriate support and training in the principles of risk assessment. Their day to day knowledge of the location and of the processes involved will be valuable. Their involvement will foster a sense of ownership of the process and, most importantly, will allow them an effective input on school health and safety matters. Science staff need to be involved in risk assessments for areas within their jurisdiction. However, employers must be sure that subject specialists are fully competent both in the risk assessment process and in the specialist subject. Even where a teacher has the specialist knowledge and is competent to undertake risk assessments on behalf of the employer, the resulting risk assessments still 'belong' to the employer who will be held liable if they are inadequate.

Teachers are advised not to become involved in risk assessments in areas where they do not routinely work, for example, the school kitchen, the boiler room or in community facilities.

The legal implications of involvement in risk assessment

Undertaking a risk assessment for a particular workplace does not mean that the person who undertakes it will be held liable for any accident which subsequently takes place in that workplace. This applies equally to those who contribute to the risk assessment process.

The principal responsibility for health and safety remains with the employer who would be likely to be held responsible for failing to institute safety measures recommended by the risk assessment or carry out adequate risk assessments. Any legal liability on the part of any individual who had contributed to a risk assessment for any injury sustained by another would depend on whether the injury directly resulted from that individual's negligence or failure to fulfil a duty of care. Normally the employer will be liable for any negligence by an employee. This is known as 'vicarious liability'.

Teachers should ensure that any risk assessment is "handed back" to the employer for adoption by the employer. This process of "handing back" will emphasise that the risk assessment is the employer's property and that any responsibility is also that of the employer.

How a risk assessment should be undertaken

Risk assessment is simply a careful examination of the hazards in a workplace and an assessment of whether particular hazards are likely to harm anyone and of the precautions that need to be taken.

The definitions of 'hazard' and 'risk' adopted by the HSE are helpful in understanding what is involved:

- hazard means anything that has the potential to cause harm, for example chemicals, electricity or working from ladders;
- risk is the likelihood, great or small, that someone will be harmed by the hazard.

The Health and Safety Executive has proposed a "five step approach" to risk assessment. The following sections outline how this would govern risk assessment in schools.

> Look for hazards

Hazards can be defined as "anything that can cause harm" and can include substances; processes; the layout or structure or condition of premises and machinery. In schools, they can even include pupils. Hazards can be psychosocial and behavioural as well as physical. For instance violent, aggressive and/or abusive individuals or behaviour are hazards which should be addressed via the risk assessment process.

The important matter is that a wide-ranging examination is undertaken. A risk assessment which looked only at work procedures and processes might miss a hazard associated with, for example, a slippery surface on a staircase. It is better for a person undertaking a risk assessment to think creatively and look for all factors which might create hazards and include the widest range of possible hazards rather than to overlook potential problems.

This process should include gathering information from staff and others about their exposure to hazards in the workplace – for instance in relation to work related stress, bullying or harassment. An effective method for gathering information is through a survey. The NEU has model surveys on work related stress and violence which could be used during this process – see the NEU website, www.neu.org.uk, for details.

> Decide who might be harmed and how

In schools, consideration needs to be given to whether and how staff might be harmed by a particular hazard, as well as the number of pupils and visitors who might be harmed. Consideration should be given to any individuals or groups who might be particularly vulnerable to the hazard, for instance females, lone workers or trainee members of staff.

> Evaluate the risks and decide whether existing precautions are adequate or whether more should be done

"Risk" reflects a combination of the likelihood that a particular hazard will cause harm or injury and the likely severity of that harm or injury. The risk assessment process will assess the level of risk in the particular circumstances and identify the measures to be taken.

For example, a slippery floor surface in a school is a hazard wherever it occurs. A slippery surface on a steep staircase is likely to cause injuries of a more severe nature than those caused by a slippery surface in a corridor. The risk assessment might therefore identify a greater level of risk from the staircase surface and propose significantly greater protective measures there. Where, however, the corridor was very busy and the staircase rarely used, the level of risk might nevertheless be greater in the corridor due to the likely greater frequency of injuries.

Once the risk has been evaluated, the employer should adopt a three-tier approach to instituting safety precautions.

- The first option is to seek to remove the risk altogether by removing the hazard or discontinuing the hazardous process.
- Where this is not practicable or possible, the employer should, as a second priority, seek to reduce the risk by modifying the work processes involved and thereby making the activity less hazardous; reducing the likelihood of exposure; or reducing the length of exposure.
- The third option, acceptable only where neither of the first two is feasible, is to institute appropriate protective measures such as providing protective equipment or isolating or drawing attention to the hazard.

> Act upon the findings

The risk assessment should set out recommendations for how each hazard will be removed/reduced. The risk assessment should set out how the findings will be acted upon and recommendations implemented, and by whom. The responsibility for implementing the risk assessment sits with the employer and the head teacher as the person in control of the premises.

Some risk assessments, such as those addressing asbestos or fire safety, will need to be undertaken by a suitably qualified expert. The risk assessment will include recommendations for addressing the hazards, for instance removal of asbestos containing materials, and employers should act in line with these recommendations in order to prevent staff and others being exposed to the hazards.

> Record the findings

Recording the findings of a risk assessment is a legal requirement where there are 5 or more employees, but should always be a matter of course in schools due to the presence of pupils.

> Review the assessment from time to time

The requirement to review the risk assessment applies particularly when significant changes have taken place in schools which may have introduced new hazards.

An example of a model risk assessment form which follows the five steps approach is at Appendix 1.

Support required by head teachers and teachers

In offering this advice and guidance on risk assessment, the NEU is not encouraging employers to ignore their responsibilities. The NEU will continue to press school employers to provide full advice, guidance and training on risk assessment and to recognise that they retain statutory responsibility for the risk assessment process.

Where the task of undertaking risk assessments is delegated to head teachers or other senior members of staff, the NEU believes that the following support should be provided.

> Training

As noted earlier, risk assessments must be undertaken by competent persons. Risk assessments undertaken by untrained or inadequately trained people are likely to be worthless and fail to discharge the employer's responsibility for risk assessment. They may even lead to additional hazards, whereas proper risk assessments may identify hazards previously hidden or unknown.

Head teachers, teachers and non-teaching staff therefore require quality training and guidance

from their employer on the principles of risk assessment and on how to assess risks in a systematic way. Without this, they will not know where or how to begin to assess risks in their school. Employers should, of course, pay for this training and any supply cover required as a result.

> **Standard risk assessment forms**

Standard risk assessment forms, together with advice and examples of how to complete them, will be invaluable to anyone who is unsure of how to organise and present a risk assessment. They should be supplied by employers and should make the risk assessment process more manageable for schools. They should be as simple as possible to complete.

> **“Model” or “Generic” Risk Assessments**

Most schools contain certain standard equipment and make use of it in much the same way. "Model" or "generic" risk assessments should be provided for work patterns, processes and equipment which are common to all schools in order to avoid duplication of work between schools. They also provide a quality standard and ensure a consistent approach.

Examples of areas where generic risk assessments may prove useful could include office accommodation, CDT rooms, gymnasias and science laboratories. Generic risk assessments are published by some employers and can also be found, in relation to science processes in CLEAPSS and in Hazards publications and guidance.

Where generic risk assessments are provided, it may be that very little adaptation to the school's individual circumstances is needed. The need for such adaptation must, however, always be considered by those carrying out the risk assessment.

> **Monitoring and funding**

Schools need reassurance that the way in which they have undertaken risk assessments is adequate. This can only be achieved if employers monitor the whole process and are able to provide assistance when problems arise. Employers also need to ensure that risk assessments are reviewed on a regular basis, and when changes in the workplace are introduced. Safety representatives have the right to copies of risk assessments undertaken in their schools and can play an important role in the monitoring process.

Funding should be provided to ensure that supply cover is available for teachers undergoing training in risk assessments. It is, of course, essential that risk assessments take place while the building is in use so that actual practice is observed.

The role of the NEU school safety representative

The NEU safety representative's role in representing members is to seek to ensure that risk assessments have been properly carried out by the employer and that recommended control measures have been implemented. They have an important role to play in terms of ensuring that risk assessments are carried out, or revised, when teachers return to work after periods of ill health, when adjustments may need to be made to the way in which they work.

Safety representatives should not allow their NEU role to become confused with the role which properly belongs to management. In particular, they should not be asked or agree to carry out risk assessments merely due to their health and safety knowledge. They should also refuse to take responsibility for training staff in undertaking risk assessments, since such a dual responsibility could lead to a conflict of interests.

Safety representatives are entitled to receive copies of risk assessments. They should be provided with copies of risk assessment forms and should always examine them carefully. In examining risk assessments, safety reps should particularly refer to their own inspection reports in

order to ensure that points raised in their reports are also dealt with in the risk assessment. They should, however, bear in mind that merely because a risk assessment addresses their own points, it does not mean that it has necessarily assessed all significant risks in the school.

Safety representatives in foundation, voluntary aided or independent schools and in academies and sixth form colleges will need to be especially vigilant since their schools may not have access to local authority advice and support.

Where problems arise in relation to the risk assessment process, health and safety representatives or members should seek further advice from the [NEU Adviceline](#).

Action points for safety representatives

Make sure that:

- your school has undertaken risk assessments in line with the guidance set out in this guidance; and
- you receive copies of all risk assessments and examine them carefully, in particular to check that all known hazards have been identified and that any recommendations have been acted upon.

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Name of School.....

Area/issue covered by this risk assessment.....

Identify hazards	Who might be harmed? (e.g. pupils, teachers, support staff, visitors)	How? (what type of injury/ill health (physical and/or psychosocial) might be caused and what could be the impact of the hazard)	List what preventative measures are already in place (if any).	What else needs to be done, when and by who?	When will this assessment be reviewed?

Name of Assessor.....

Date when risk assessment undertaken.....

Received by.....(Head Teacher)
on.....(date)

Copied to Chair of Governors.....
on.....(date)

Signature of Chair of Governors.....

Copied to employer representative.....on.....(date)

Copied to recognised trade union safety reps and reps.....on.....(date).