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Directors' Duties on Health and Safety at Work - A Public Consultation by the Institute of Directors

Guidance on directors' responsibilities on health and safety at work

Directors and boards have a vital role in the achievement of high standards of workplace health and safety by their organisation. But what is that directors and boards are expected to do in overseeing their organisation's health and safety performance?

At the request of the Health and Safety Commission (HSC), the IoD is leading a steering group consisting of key stakeholders to oversee the production of new, authoritative guidance setting out what is expected of directors.

One aim of the HSC, which is responsible for workplace health and safety regulation in Great Britain, has been to ensure that all organisations with boards have an understanding of their responsibilities for health and safety performance. That means organisations in the private, public and third sectors (including the voluntary and charitable sectors).

In 2001, the HSC issued guidance for directors. However, following a re-examination of the issue last year, the Commission determined that new guidance was needed to build on the progress made since the earlier publication, to do more to get the health and safety message over at board level. Further background is given below.

It is on the new draft guidance that we are seeking your views on the following:

- for the guidance to be noticed, read and put into practice, means it must be produced in language that directors use and understand - do you think this has been achieved?
- the guidance is intended to make clear to directors how they should behave individually and collectively to ensure their organisation's high health and safety performance. The guidance sets out principles and good practice - has it got these right, bearing in mind that the guidance is concerned with leadership on health and safety, not its day-to-day management?

Contact us

Policy Team

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E Policy Team

Please note that in due course it is intended to produce a version of the guidance specifically aimed at smaller organisations.

HSC is keen for all its stakeholders to participate in this consultation.

Download the **draft guidance (PDF)**. **You will need to read this in order to be able to respond to the consultation.**

attached

We would welcome your views. The link below is to an online questionnaire which has a number of specific questions:

 **Take part in the consultation>>**

Alternatively, you can e-mail us at **IoD Policy** (policy-unit@iod.com) with your response to the IoD Policy Unit, along with any queries that you may have. Or post a submission to:

HS Consultation 2007
Policy Unit
Institute of Directors
116 Pall Mall
London
SW1Y 5ED
United Kingdom.

The closing date for your comments is Friday June 22.

Our aim is to have the new guidance published in Autumn 2007. I do hope that you will take part and help shape the new Guidance.

Michael Large

Chairman, IoD Steering Group on IoD/HSC guidance on directors' responsibilities for health and safety

Background information

Institute of Directors (IoD)

The IoD was founded in 1903 and obtained a Royal Charter in 1906. The IoD is a non-party political organisation with upwards of 52,000 members in the United Kingdom and overseas. Membership includes directors from right across the business spectrum - from media to manufacturing, e-business to the public and voluntary sectors. Members include chief executive officers of large corporations as well as entrepreneurial directors of start-up companies.

Health and Safety Executive (HSE)

The Health and Safety Commission (HSC) is responsible for health and safety regulation in Great Britain. The HSE and local government

are the enforcing authorities which work in support of the HSC. The mission is to protect people's health and safety by ensuring that risks in the changing workplace are properly controlled.

 **HSE website**

Directors' duties on health and safety

The HSC issued official guidance (Directors' responsibilities for health and safety, an A5 format booklet) in 2001. View this in the link below. The IoD played a part in its drafting, along with other bodies.

The intention is that the new guidance will replace the 2001 version.

 **HSE website - Directors' responsibilities for health and safety**

Last year the HSC determined that more needed to be done to get the health and safety message over at board level and to use that as a key part of maintaining and improving the health and safety performance of organisations. At the 9 May 2006 meeting of the HSC the Commission asked the HSE to work with "key stakeholders to produce authoritative guidance" on directors' responsibilities for health and safety. This led to the IoD being asked to take the process forward, with the HSE providing the secretariat (which has been done in co-operation with the IoD). The work involves making sure that the revised Guidance is noticed, read and put into practice. That means being produced in language that directors use and understand.

IoD Steering Group

Michael Large, one of the two Vice Chairmen of the IoD's own Board, was chosen to chair the steering group. Members of the Steering Group (and their nominating organisations) are:

- Michael Large (Institute of Directors) - Chairman
- Dr Peter Doyle (Confederation of British Industry)
- Eva Garland (National Council for Voluntary Organisations)
- Dr Rowland B. Hopkinson (NHS Confederation)
- Bud Hudspith (Trades Union Congress)
- Richard Jones (Institution of Occupational Safety and Health)
- Paul Lankester (Local Government Association)
- Mike Welham (Federation of Small Businesses)
- Professor Frank Wright (University of Warwick - legal input)

The Steering Group has held four meetings since October 2006. Additionally, the IoD held a seminar in October 26, just after the first meeting of the Steering Group. Many stakeholders were invited. The results of that seminar were considered by the Steering Group. The Steering Group has agreed new draft Guidance, which is now being consulted upon (up until June 22 - a week later than the date announced in the May 2007 issue of IoD News). It is currently intended that the Steering Group consider the responses to the consultation, in July, and that the HSC will consider a final draft version in September 2007. Subject to HSC approval it is planned to

publish a joint IoD and HSC document later in 2007.

This consultation is being conducted by the IoD. It is a public consultation exercise, in the sense of being aimed at any interested organisation or individual.



INSTITUTE OF DIRECTORS

leading health and safety at work

ACTIONS AND GOOD PRACTICE FOR BOARD MEMBERS

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introduction

This guidance sets out an agenda for the effective leadership of health and safety. It is designed for use by directors, governors, trustees, officers and their equivalents in the private, public and voluntary sectors, and applies to organisations of all sizes.

Protecting the health and safety of employees and other stakeholders is an essential part of risk management and must be led by the board.

The business case for championing health and safety is compelling.

Failure to include health and safety as a key business risk in board decisions can have catastrophic results. Many high-profile safety cases over the years have been rooted in failures of leadership.

Health and safety law places duties on organisations and employers, and directors can be personally liable when these duties are breached: members of the board have both collective and individual responsibility for health and safety.

The cost of poor work-related health to organisations – and to the UK – is substantial.

By following this guidance, you will help your organisation find the best ways to lead and promote health and safety, and therefore meet its legal obligations. The starting points are the following principles.

ESSENTIAL PRINCIPLES

Three principles underpin good health and safety “performance”.

- **Strong and active leadership from the top** – visible, active commitment from the board; clear “downward” communication; the integration of good health and safety management with business decisions.
- **Worker involvement** – engaging the workforce in the promotion and achievement of safe and healthy conditions; “upward” communication; providing high quality training; establishing effective communication systems and management structures.
- **Assessment and review** – identifying and managing health and safety risks; seeking (and following) the guidance of competent advisers; monitoring, reporting and reviewing performance.

Costs of poor health and safety at work

Statistics reveal the human and financial cost of failing to address health and safety.

- More than 200 people are killed at work in the UK each year.
- In 2006, 30 million working days were lost in the UK to occupational ill health and injury, imposing an annual cost to society of £30bn (more than three per cent of GDP).
- Surveys show that about two million people suffer from an illness that they believe to be caused or made worse by work.
- Many deaths can be attributed to occupational illnesses – about 6,000* cancer deaths each year, for example, are estimated to be work-related.

*This estimate is currently being updated. It includes deaths caused by asbestos-related cancers.

IN THIS GUIDANCE

The following pages set out:

- an agenda for embedding the fundamental health and safety principles;
- a checklist of key questions;
- a summary of legal liabilities;
- a list of resources and references for implementing this guidance in detail.

The agenda consists of:

Actions for boards and individual board members that relate directly to the legal duties of an organisation. *These “core” actions are intended to set a standard.*

Good practice guidelines that set out ways to give the core actions practical effect. *These guidelines provide ideas on how you might achieve the core actions.*

A website, www.hse.gov.uk/xxxxxxxxxx, provides links to all the resources mentioned. It includes an electronic version of this guidance and a version specially designed for small enterprises.

Wider health opportunities

A health and safety policy should not be seen as a regulatory burden: it offers significant opportunities.

Benefits include:

- reduced costs and reduced risks – employee absence and turnover rates are lower, accidents are fewer, the threat of legal action is less;
- improved standing among suppliers and partners;
- a better reputation for social responsibility among investors, customers and communities;
- increased productivity – employees are healthier, happier and better motivated.

Legal responsibilities of employers

Health and safety law includes that organisations must:

- provide a written health and safety policy (if they employ five or more people);
- assess risks to employees, customers, partners and any other people who could be affected by their activities;
- have effective procedures to monitor and “give effect to” preventive and protective measures;
- be competently advised – which may mean employing a health and safety adviser;
- consult with employees about their risks at work and current preventive and protective measures.

Failure to comply with these requirements can have serious consequences – for both organisations and individuals. Sanctions include fines, imprisonment and disqualification.

planning the direction for health and safety policy



The chair or CEO should set the direction for effective health and safety management.

Health and safety policy needs to be much more than a document – it should be an integral part of your organisation’s culture, of its values and performance standards.

All board members should be seen to be taking a lead in communicating health and safety duties and benefits throughout the organisation.

Executive directors must develop policies to avoid health and safety problems and must respond quickly where difficulties arise or new risks are introduced; non-executives must make sure that health and safety is properly addressed.

CORE ACTIONS

A written policy is a legal requirement for organisations with five or more employees. The policy should set out the board’s own role and that of individual board members in leading the health and safety of its organisation.

It should require the board to:

- “own” and understand the key issues involved;
- decide how best to communicate, promote and champion health and safety.

The health and safety policy is a “living” document and it should evolve over time. Reviews and revisions will be triggered by events such as:

- the introduction of new working practices and new machinery;
- major organisational changes such as restructuring or a significant acquisition;
- changes to health and safety regulations and guidance.

GOOD PRACTICE

- Health and safety should appear regularly on the agenda for board meetings.
- The CEO can give the clearest visibility of leadership, but some boards find it useful to nominate one of their number as the “champion” of health and safety.
- The presence on the board of a health and safety director can be a strong signal that the issue is being taken seriously and that its **strategic importance** is understood. It can also help ensure a consistent approach.
- A non-executive director can act as a scrutineer – making sure the processes to support boards facing significant health and safety risks are robust.

Corporate governance

For large organisations, health and safety is a corporate governance issue. The board should integrate the health and safety governance process into the main corporate governance structures, including board sub-committees, such as risk, remuneration and audit.

In some cases, it may be right to create an additional sub-committee for health and safety (and/or risk/corporate responsibility).

The Turnbull guidance in the Combined Code on Corporate Governance requires listed companies to have robust systems of internal control, covering not just “narrow” financial risks but also risks relating to the environment, business reputation and health and safety.

Case study

The board of an NHS Trust used guidance on corporate governance and health and safety, and the experience of its members, to develop a new policy. It decided to bring all elements of health and safety, together with clinical risk, into one directorate – to take a “whole systems” approach to managing corporate risk.

The new approach includes:

- making health and safety a key item on the agenda at weekly meetings of executive directors, and in quarterly reports to the Trust board;
- raising expectations to meet National Audit Office key performance indicators;
- new systems to report and learn from “serious untoward incidents” and manage violent incidents better.

delivering health and safety

Delivery depends on an effective management system to ensure, as far as reasonably practical, the health and safety of employees, customers and other stakeholders.

Organisations should aim to introduce management systems and practices that are relevant and cost effective to protect people.

CORE ACTIONS

To take responsibility and “ownership” of health and safety, members of the board must ensure that:

- ✓ health and safety arrangements are adequately resourced;
- ✓ they consult competent health and safety advisers;
- ✓ health and safety is a factor when deciding senior management appointments;
- ✓ appropriate risk assessments are carried out;
- ✓ employees or their representatives are involved in decisions that affect their health and safety.

The board should consider the health and safety implications of introducing new

processes, new working practices or new personnel, dedicating adequate resources to the task and seeking advice where necessary.

Boardroom decisions must be made in the context of the organisation’s health and safety policy; it is important to “design-in” health and safety when implementing change.

GOOD PRACTICE

- ✓ Having a procurement standard for goods, equipment and services can help prevent the introduction of expensive health and safety hazards.
- ✓ The health and safety arrangements of partners, key suppliers and contractors, should be assessed: their performance could adversely affect yours.
- ✓ Setting up a separate risk management or health and safety committee as a subset of the board, chaired by a senior executive, can make sure the key issues continue to be addressed.
- ✓ By being seen on the “shop floor”, by following all safety measures themselves and by addressing any breaches immediately, board members can reinforce health and safety policy; their leadership is more effective if visible.
- ✓ Providing health and safety training to some or all of the board can promote understanding and knowledge of the key issues in your organisation.
- ✓ Supporting worker involvement in health and safety, above your legal duty to consult worker representatives, can prove your commitment; a “partnership for prevention” is the best form of participation.

Case study

The chief operating officer (COO) at a support services company sees health and safety as an integral part of his role: for him, it’s not an add-on; it defines good business and strong leadership. The board agreed he should sit on an executive committee, made up of the finance, commercial and business development heads and the managing directors of each business stream to help get the health and safety message across.

From board level, the COO:

- acts as a role model for taking “ownership” of and personal responsibility for health and safety;
- regularly visits sites and checks safety management systems;
- receives feedback from the workforce and the union on health and safety;
- carries out quarterly and annual reviews of health and safety, and measures performance against company-wide standards.

monitoring

health and safety

Monitoring and reporting are vital parts of a health and safety culture. Management systems must allow the board to receive both specific (e.g. incident-led) and routine reports on the performance of health and safety policy.

Much day-to-day health and safety information need only be reported at the time of a formal review (see action 4), but only a strong system of monitoring can ensure that the formal review can proceed as planned – and that events in the interim are brought to the board's attention.

CORE ACTIONS

The board should ensure that:

- appropriate weight is given to both active and reactive information gathering (specific incidents and accident rates need to be reported as well as preventive measures);
- periodic audits of the effectiveness of management structures and risk controls for health and safety are carried out;
- the impact of changes such as the introduction of new procedures, work processes or products, or any major health and safety failure, is reported as soon as possible to the board;
- there are procedures to implement new regulations.

GOOD PRACTICE

- Effective monitoring of absenteeism and workplace health can alert the board to underlying problems that – left unchecked – could seriously damage performance or result in accidents and long-term sickness.
- The collection of workplace health and safety data can allow the board to benchmark the organisation's performance against others in its sector.
- Appraisals of senior managers can include an assessment of their contribution to health and safety performance.
- Boards can receive regular reports on the health and safety performance and actions of contractors.

Case study

The board of a fire and rescue service has brought in director level leadership on health and safety and ensured its policy is jointly signed by the chief fire officer and the chair of the fire authority. In detail, the board's leadership includes:

- placing significant emphasis on improving accident and injury reporting, investigation and monitoring procedures – as well as on implementing health and safety management audits;
- engaging staff on health and safety through site/station visits by directors;
- increased involvement with insurance brokers, which provides access to strategic risk management expertise, allowing better control systems to be developed;
- providing regular health and safety performance data to the board;
- early investigation of work-related absence;
- sharing best practice with other fire services.

reviewing

health and safety

A formal boardroom review of health and safety performance is essential. It allows the board to establish whether the fundamental health and safety principles – strong and active leadership, worker involvement and appropriate advice – have been embedded in the organisation. It tells you whether your system is effective in managing risk and protecting people.

CORE ACTIONS

The board should review health and safety performance at least once a year.

The review process should:

- ✔ examine whether the health and safety policy reflects the organisation's current priorities;
- ✔ examine whether risk management and other health and safety structures have been effectively reported to the board;
- ✔ report health and safety shortcomings, and the effect of all board or management team decisions made;
- ✔ decide actions to address any weaknesses and a system to monitor their implementation.

GOOD PRACTICE

- ✔ Performance on health and safety and wellbeing is increasingly being recorded in organisations' annual reports to investors and stakeholders.
- ✔ Board members can make extra "shop floor" visits to gather information for the formal review.
- ✔ Good health and safety performance can be celebrated at central and local level.

Case study

An external audit of health and safety at a large retail company identified a need to develop a unified approach across all divisions. It also recommended more direction from the board to develop an effective strategy. The board accepted the findings and decided to benchmark its performance against that of its peers.

The result was a radical revision of the company's approach to health and safety:

- the group HR director created a vision for health and safety reflecting the company's values, supported by a plan that set targets over three years;
- training on health and safety responsibilities was introduced for all board directors;
- the health and safety committee was "reinvigorated" to take a more strategic and action-oriented role, and an online reporting system was developed;
- employee engagement activities ensured the "message" was heard throughout the business.

Auditing and reporting

Larger public and private-sector organisations need to have formal procedures for auditing and reporting health and safety performance. The board should ensure that any audit is perceived as a positive management and boardroom tool. It should have unrestricted access to both external and internal auditors, keeping their cost-effectiveness, independence and objectivity under review.

Various codes and guides (many of them sector-specific) are available to help organisations report health and safety performance and risk management as part of good governance.

health and safety leadership checklist

Note: Questions such as “Do you have a health and safety policy?” are taken as read. This list is designed to check your status as a *leader* on health and safety.

- Where do you go to for health and safety advice?
- Do you provide and record health and safety training and induction?
- How do you consult workers and communicate health and safety to everyone?
- Have you identified all health and safety hazards and applied the findings to all those at risk?
- Do you audit or assess health and safety compliance, both internally and for third parties?
- How do you maintain and improve health and safety in your organisation?
- What were the health and safety implications of changes made in your organisation over the past year? Were risks identified; and were they managed?
- What information does the board receive regularly about health and safety – e.g. performance data and reports on injuries and work-related ill health?
- How do you visibly demonstrate the board’s commitment to health and safety?
- How many times in the past year has health and safety been discussed by the board?

legal liability of individual board members for health and safety failures

If a health and safety offence is committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other similar officer of the organisation, then that person (as well as the organisation) can be prosecuted under section 37 of the Health and Safety at Work etc Act 1974.

Those found guilty are liable for fines and, in some cases, imprisonment. In addition, the Company Directors Disqualification Act 1986, section 2(1), empowers the court to disqualify an individual convicted of an offence in connection with the management of a company. This includes health and safety offences. This power is exercised at the discretion of the court; it requires no additional investigation or evidence.

key resources

HEALTH AND SAFETY PUBLICATIONS

A guide to measuring health and safety performance

Health and Safety Executive

Questioning performance: the director's essential guide to health, safety and the environment

Institution of Occupational Safety and Health

WEBSITES

Directors responsibilities – the supporting information website

www.hse.gov.uk/xxxxxxxxxx [to be added]

European Agency for Safety and Health at Work

<http://agency.osha.eu.int>

Health and Safety Executive

www.hse.gov.uk

Health and safety in small businesses

www.hse.gov.uk/smallbusinesses

Institution of Occupational Safety and Health (IOSH)

www.iosh.co.uk

TUC (Trades Union Congress) – health

www.tuc.org.uk

Links to all these publications and websites, and others, are at:

www.hse.gov.uk/xxxxxxxxxx [to be added]

“ Health and safety is a fundamental part of business. Boards need someone with the passion and energy to ensure it stays at the core of the organisation. ”

“ Think seriously about not only the governance issues, but also the business benefits in taking direct control of and interest in health and safety. ”

“ If your workforce can't get safety right then the little things that people do to make an organisation successful are probably not getting done as well. ”

ABOUT THIS GUIDANCE

This guidance, issued jointly by the Health and Safety Commission and the Institute of Directors, is addressed to directors (and their equivalents) of corporate bodies and organisations in the public and voluntary sectors. Such organisations are required to comply with health and safety law. Although reference is made to existing legal obligations, following the guidance is not in itself obligatory. However, if you do follow it you will normally be doing enough to help your organisation meet its legal obligations.

The Corporate Manslaughter Bill provides that an organisation is guilty of a gross breach of duty or care owed to the deceased if it can be shown that it failed to comply with the relevant health and safety legislation and guidance. This guidance may be considered “relevant”, depending upon the circumstances of the particular case.

The guidance comprises:

- an introduction to health and safety at board level
- a four-point agenda, comprising actions and best practice
- a checklist of key questions for the board
- a summary of legal liabilities
- a list of key resources