

Absolute & Qualified Duties: 'Practicable', Reasonably Practicable'

Absolute duties

You will not find a duty in the HASWA 1974, or its associated legislation, phrased such that it is the absolute duty of X to do Y. What you will find, however, are certain duties which are not qualified by phrases such as so far as is practicable and so far as is reasonably practicable. Such duties are considered absolute and must be carried out.

The duty itself is usually expressed by the term shall. For example, regulation 3 of The Management of Health and Safety at Work Regulations 1999 requires that:

Every employer shall make a suitable and sufficient assessment of:

- a) The risks to the health and safety of his employees to which they are exposed whilst they are at work; and
- b) The risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking, for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions.

This is an example of an absolute duty. Other examples include:

- Section 2(3) of the HSW Act, relating to the provision of health and safety policies
- Sections 2(4), 2(6) and 2(7) of the HSW Act, relating to:
 - Recognition and consultation with safety representatives
 - Establishment of safety committees

The ones relating to safety representatives link to the requirements contained in The Safety Representatives and Safety Committees Regulations and only apply when an independent trade union is recognised by the employer for negotiating purposes. In some cases the word must is used in place of shall.

With an absolute duty the requirement must be complied with, even if that means that the activity can no longer be carried out.

Qualified duties

If absolute duties (often known as strict liability) is the top of the hierarchy of duties, then qualified duties (where the word shall is qualified by a phrase) follow a similar hierarchical structure. Although there are numerous examples of qualified duties, the two that candidates are required to know and understand are:

- So far as is practicable
- So far as is reasonably practicable

These are discussed separately below. Together with absolute duties they form the