

# APPENDIX A

## THE LEGAL FRAMEWORK & BRIEF LEGISLATION GUIDANCE

### LEGAL FRAMEWORK

#### Health & Safety Law

The following are the main pieces of legislation relevant to moving and handling:

1. The Health and Safety at Work etc Act 1974.
2. The Management of Health and Safety at Work Regulations 1999.
3. The Provision and Use of Work Equipment 1998 (PUWER).
4. The Lifting Operations and Lifting Equipment Regulations 1998 (LOLER).
5. The Manual Handling Operations Regulations 1992.(amended 2002) (MHOR)
6. The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR).

#### Other relevant Legislation Framework

1. The Human Rights Act 1998.
  2. United Nations Convention on the Rights of the Child 1991 (CRC)
  3. Mental Capacity Act 2007
  4. Welfare Legislation
- NHS and Community Care Act 1990 (s.47)
  - National Assistance act 1948
  - Equality Act 2010
  - Chronically Sick and Disabled Persons Act 1970 (s2)

### BRIEF LEGISLATION GUIDANCE

#### Health & Safety Law

##### 1. [Health and Safety at Work etc Act 1974](#)

#### Employers' responsibilities:

Employers have a general duty to ensure, as far as is reasonably practicable, for the health, safety and welfare at work of all employees.

Employers have specific duties to provide:

- Information, instruction, training and supervision as necessary.
- Safe systems of work – risk assessment.
- Inspection, provision and maintenance of equipment.
- A written safety policy.
- A safe working environment.

## Employees' Responsibilities

- Responsibility for people: - To take reasonable care of the health and safety of himself and others who may be affected by their acts and omissions.
- Responsibility to co-operate with the employer: - To allow the employer to comply with his health and safety duties.
- Responsibility for using equipment properly:- In accordance with the training and instructions provided.
- Responsibility for using safe systems of work: - Complying with policies, procedures and systems provided by the employer.

## 2. The Management of Health and Safety at Work Regulations 1999- L21



The duty to assess risks is an ABSOLUTE requirement and not just “reasonably practicable”.

Employers are required to:

- Identify risk.
- Carry out risk assessments of all risks to employees whilst at work.
- Make arrangements for the Health and safety of employees.
- Provide health surveillance.
- Appoint “competent” persons (ie Risk Assessors).
- Establish procedures for serious and imminent danger.
- Co-operate with other employers.
- Provide employees with relevant information, instruction, training and supervision to ensure health and safety and updating.
- Assess the capability of employees and provide training.
- Take account of new and expectant mothers and young people.

Employees are required to:

- Inform the employer (i.e. manager) of hazards.
- Follow instructions given.

## 3. Provision and use of Work Equipment Regulations 1998 – indg291



These regulations apply to all equipment that may be used at work (i.e. equipment with moveable parts e.g. wheelchairs.

Employers are required to:

- Provide suitable equipment.
- Assess the working environment is suitable for the equipment.
- Ensure that the equipment is only used for the purpose for which it is suitable.
- Ensure equipment is maintained and records kept.
- Ensure that where equipment involves specific risk, only trained personnel use it.
- Provide adequate information, instruction and training

#### 4. Lifting Operations and Lifting Equipment Regulations 1998 – [indg290](#)



These regulations apply to lifting operations and lifting equipment e.g. hoists  
Lifting equipment must be:

- Strong, stable and suitable for purpose.
- Positioned or installed to prevent the risk of injury.
- Visibly marked with any appropriate information e.g. Safe Working Load. Accessories e.g. slings must also be marked.

Employers are required to:

- Ensure equipment used for lifting people and the accessories are thoroughly examined at least six monthly or in accordance with an examination scheme based on a documented risk assessment.
- Ensure that lifting equipment is safe, installed to minimise any risks and carries information to indicate safe working limits, its purpose and use.
- Ensure that lifting operations are properly planned, supervised and performed by competent people (Care Plan).
- Ensure regular inspection of equipment is carried out by competent people and any defects reported.
- Ensure defective equipment is not used.
- Keep records of inspections/maintenance

#### **Equipment provided by the Service User**

A member of the public may purchase an item such as a hoist for their use at home. Where an employee of a Trust or Social Services Department visits the service user at home and uses the hoist, this equipment is not considered to be supplied (by the service user) for use at work. The service user has no duties under health and safety legislation to maintain the equipment or carry out a thorough examination.

The duty to provide safe equipment rests with the employer, but they have no control over the condition of the service users' hoist. In practise, where a risk assessment indicates that lifting aids are required, the employer may decide to provide a hoist for use by the employee, or should take other steps to ensure that the equipment owned by the service user is adequately maintained and is safe to use.

#### 5. The Manual Handling Operation Regulations 1992- [L23](#)



Manual Handling Operations Regulations are aimed at eliminating or reducing the risk of injuries and ill health which may be attributable to work related manual handling tasks. This will be achieved under the employer's duties by ensuring so far as reasonably practicable that:

- Hazardous manual handling operations are **avoided** so far as is reasonably practicable.

- Hazardous manual handling operations that cannot be avoided are **assessed**.
- The main causes of musculoskeletal injuries and work related ill health is identified through the assessment process and risks **reduced** by implementing effective control measures.
- Suitable manual handling training and information is provided to reduce the risk of injury to employees and any other personnel who are involved in manual handling operation.

## 6. The Reporting of Injuries Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)



Employers' responsibilities:

- Reporting specified types of accidents and injuries to appropriate outside agencies.
- Keeping an accident book for recording purposes.
- Investigating the cause of an accident.

Employee's Responsibilities

- Report accidents to employer as soon as possible.
- Record in accident book

### Other relevant Legislation Framework

#### 1. Human Rights Act 1998

This Act applies to everyone, i.e. carer and service user.

The relevant articles for manual handling are:

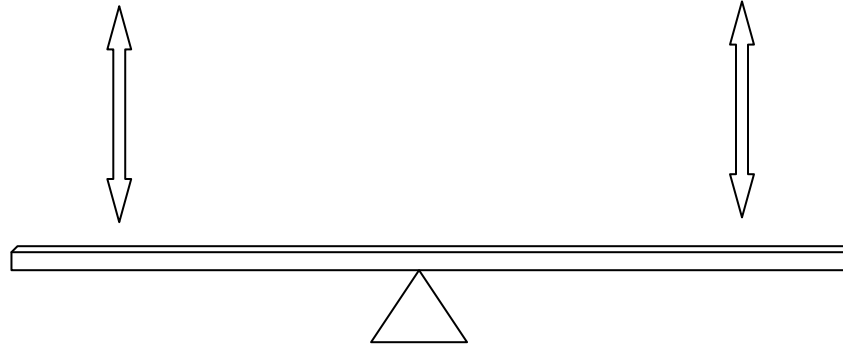
- Article 3 – the right not to be subjected to inhuman or degrading treatment
- Article 8 – the right to respect home, private and family life

i.e. Decisions based on assessed need and the reasonable practicality of avoiding or reducing risk must also be compliant with the Human Rights Act

This is called **Balanced Decision Making** i.e. the need to balance safety and human rights

Employee safety  
wishes

People's needs, rights and  
wishes



## 2. **United Nations Convention on the Rights of the Child 1991 (CRC)**

The Convention on the Rights of the Child (CRC) sets out the fundamental human rights to which all children are entitled. It has four key principles – all of which are relevant to moving and handling issues. They refer to discrimination, the child's best interests, the development and survival of the child and the views of the child.

## 3. **Mental Capacity Act 2007**

Providing care or treatment to people who lack capacity. The MCA provides legal protection from liability for carrying out certain actions in connection with the care and treatment of people who lack capacity provided that:

- You have observed the principals of the MCA.
- You have carried out an assessment of capacity and reasonably believe that the person lacks capacity in relation to the matter in question.
- You reasonably believe the action you have taken is in the best interests of the person.

Some decisions that you make could result in major life changes or have significant consequences for the person concerned and these will need particularly careful consideration. For example, a change of residence, perhaps into a care home or nursing home; or major decisions about healthcare and medical treatment.

Providing you have complied with the MCA in assessing a person's capacity and have acted in the persons best interests, you will be able to carry out many aspects of a person's personal care without their consent and attract protection in doing so.

Actions concerning a person's care that may attract protection from liability may include:

- Help with the washing, dressing or attending of personal hygiene.
- Help with eating and drinking.
- Helping people to walk and assistance with transport.
- Help with arranging household services such as power supplies such as power supplies, housework, repairs or maintenance.
- Acts performed in relation to domiciliary care or other services.
- Acts performed in relation to other community care services (such as day care, residential accommodation or nursing care).
- Acts associated with change of residence.
- Acts associated with the person's safety.
- Acts associated with adult protection procedures.

For Acts that might be disputed it will be in your interests to keep a full record of the steps taken and the factors considered in doing so.

In emergencies, it will often be in the person's best interests for you to provide urgent care without delay.

(Reference: [Making decisions – A guide for people who work in health and social care](#))

#### **4. Welfare Legislation**

- [NHS and Community Care Act 1990 \(s.47\)](#)
- [National Assistance Act 1948](#)
- [Equality Act 2010](#)
- [Chronically Sick and Disabled Persons Act 1970 \(s2\)](#)