



**PLAY SCOTLAND
PLAY AND RISK DEBATE UPDATE
MARCH 2011**

Scottish Government Managing Outdoor Learning Safely

Play Scotland was pleased to participate in this time bound Scottish Government initiative which has resulted in advice on simplified Safety Management guidance and procedures for Local Authorities being sent to Ministers in March.

The National Network for Outdoor Learning

In 2008 an advisory group (OLSAG) was set up to look at learning beyond the classroom and make recommendations which informed the Curriculum for Excellence through Outdoor Learning.

A small implementation group still exists and one of its key tasks was to establish an Outdoor Learning Network, ideally bringing together an outdoor learning representative from each Local Authority and representatives from other partner organisations eg Play Scotland, Forestry Commission, SNH, Real World Learning, Grounds for Learning, Children in Scotland, John Muir Award, Duke of Edinburgh Award, YouthLink Scotland, National Parent Forum. There were 16 Local Authority representatives at this inaugural event in February.

Play Scotland will be posting a newsletter about the Outdoor Learning Network in the Spring.

Common Sense, common safety: HSE review of the Health and safety at work act (HASAWA) and the implementation of Risk Benefit Assessment (RBA)

Over the past 10 years the Play Safety Forum has been working in the field of managing risk in play and in 2002 published *Managing Risk in Play: a position paper* which has been very influential in the field of play and beyond. This has been followed by *Managing Risk in Play: Implementation Guide* introducing the concept of risk benefit assessment. Both of these had the backing of the major players in play, including the HSE. The second publication also suggested the need to review the application of the HASAWA to the field of play.

In his review of safety in these fields, Lord Young picked this up and recommended that the case for reviewing the Act ought to be considered and the role of RBA extended from play into the field of leisure more generally. Following this the HSE were asked to make recommendations on both of these by the end of March this year. They have now started this process and consulted with us on this on both subjects. We have responded to this quite strongly with the reasons why we believe a review would be beneficial.

At our last meeting we felt that many organisations in related fields to ours might have an interest in this subject and might find it useful to have sight of our reasoning, possibly helping to inform their own attitudes. We also felt there may be scope for some joint action, where our concerns are shared by those in other sectors. Consequently Robin Sutcliffe, Chair of the Play Safety Forum wrote to the HSe outlining why we felt a review was needed. The Play Safety Forum is now in the process of consulting with a wider range of stakeholders before meeting again with the HSe on 25 March 2011.

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2 February 2011

Dear Alison,

Play Safety Forum Consultation 27th January 2011

I would like to thank you and Richard for finding the time for visiting the Play Safety Forum last week and talking to us about reviewing the HASAWA and the possible application of Risk Benefit Assessment (RBA) in line with the Lord Young paper. It was a wonderful opportunity for us to express our views to you for which we are most grateful.

I have to say that not surprisingly during the meeting there were a number of issues that did give us some cause for concern and I thought that it might be useful if I outlined them to you now to give you time to consider them before the next meeting, perhaps outlining in the options what you think might be open to us. I will set them out in order:

1. The first, and perhaps the most important, was your statement that RBA does not replace the need for risk assessment, which is required by the MHSWR. Our understanding is that there are many ways of doing risk assessments, which you did acknowledge at the meeting and that RBA can be seen as a variant on the conventional approach as in your 'Five steps...'. The whole point of Managing Risk in Play Provision: Implementation Guide (MRPP:IG), was that risk assessment should be replaced by RBA and this was what we understood you had endorsed.
2. If a benefit assessment had to be done first, followed by conventional risk assessment, it would negate the whole thrust of the MRPP:IG. We believe that the core issue here is that risks and benefits can and should be traded off against each other.
3. You mentioned several times in the meeting that the EC Directive controls what can be done. Our understanding of the Directive is that it refers only to workers in the workplace and was never intended to have jurisdiction over the field of leisure.
4. You expressed concern that if play came out of the HASAWA there would be no scope for criminal prosecution. In truth I think that we would see that as a positive benefit as this fear is one of the ways in which officers are inhibited from creating the places that they believe are needed for children. In any case, if play and leisure were taken out from the scope of the HASAWA, we suspect that in a hypothetical case that is so serious that the possibility of criminal prosecution would have been raised, the Corporate Manslaughter Act 2007 may provide an avenue, but one that would not generate the same misplaced anxiety as the HASAWA.
5. Finally we are concerned that if RBA is not accepted as a sufficient and acceptable form of risk assessment, then there will need to be a withdrawal and reversal of policy in England, Wales, Scotland and Northern Ireland, where it has now been universally adopted by Government and the devolved powers. To complicate matters further it is embodied within all Playwork Training.

I thought that it might also be useful if I laid out more clearly exactly why the PSF believe that a review of the application of the Act to the Play and Leisure sectors is so badly needed, but before giving these reasons it is vital to stress that whatever else is done the central philosophy embedded in the HASAWA (reasonable practicability) as applied to the workplace should be sacrosanct. It has proved to be an excellent piece of legislation, both theoretically and practically. No one wants to see it in any way diminished.

1 The principal reason for wishing to have a review of the Act as applied to the leisure and play sector is that there is a widespread and significant anecdotal evidence that it is one of the principle barriers to providers offering children the opportunity to experience and learn how to manage risk.

2 In addition it discourages providers from experimenting with play provision outside the box of what is generally held to be "safe". Or in other words, the threat of criminal prosecution inhibits professionals in play from taking the risks that children need them to take.

3 Members of the Play Safety Forum in a recent discussion voiced significant disquiet about the Act and its operation, with a clear majority favouring taking play out of the remit of the Act. These people are recognised as being the most expert group within the sector.

4 The act was designed for health and safety in the workplace, where it has been very effective. However, we believe it was never intended to be used in situations where the existence of certain types of risk is necessary and beneficial as an inherent part of the activity.

5 Until 1974 there was only protection under civil law through the duty of care and occupiers liability and there is no evidence that the numbers of what we would today call serious accidents in play or leisure has reduced as a result of the application of the HASAWA. Therefore as far as we can see, there is no recognisable benefit from applying the act in this field.

6 To our knowledge no other country in the world combines policing safety in leisure and policing safety at work. In Canada, for example, we understand that play spaces fall outside workplace health and safety legislation. The European Directive 89/391/EEC, for instance, is entirely about the health and safety of workers.

7 HSE Inspectors' thinking, experience and training is based on the work place where all risk should be reduced as far as reasonably practicable , whereas in play there is a need to balance benefits against risk. Children need as much risk as we can reasonably accommodate.

8 The number of serious accidents in the field of play is statistically not significant. By that I mean that no patterns can be established that would enable remedial action.

9 Inclusion under the Act brings this field into the remit of the H&S Officers of Local Authorities, who are not trained in this field either and who are often less reasonable and more dogmatic than HSE Officers, thus increasing inhibition even further.

10 Removal of this sector from the remit of the Act would be a significant reduction in bureaucracy and red tape in this field, in itself creating an enormous amount of paperwork. Apart from the cost, this distracts those responsible for play provision from the actual task of managing the primary risk. Removal would also accord with the Government's objective of "light touch governance".

Consequently we, the recognised experts in play provision, believe that a review is urgently needed. The legislation as currently interpreted and applied is having serious unintended consequences on developmental opportunities for children and, we add, young people. A review would be a welcome opportunity to take a considered view of the evidence and arguments, and would in itself have no detrimental effect on the safety of children and young people. Whether or not the remit changed, the outcome could only be beneficial and reinforce the Government's commitment to "Common Sense - Common Safety".

I hope that you will view this letter as a genuine attempt to move the debate on constructively and I very much look forward to meeting again on the 18th February.

With best wishes, Yours sincerely, D. R. Robin Sutcliffe, Play Safety Forum Chairman

Playday Planning Seminar, 30 March, Alona Hotel

A Workshop on Permission to Play will be held at the Play Scotland Playday Planning Seminar which will promote the benefits of risk in Play.

Cost is £25 per person including lunch and a discount of 10% will be given to two or more places booked. For further details please contact info@playscotland.org

Marguerite Hunter Blair, Chair of the Play and Risk Debate
March 2011