

# Risk and Safety in Play

The law and practice for  
adventure playgrounds

Dave Potter  
for PLAYLINK



E & FN SPON  
An Imprint of Chapman & Hall



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# RISK AND SAFETY IN PLAY

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# Risk and Safety in Play

## The law and practice for adventure playgrounds

PLAYLINK

Written for PLAYLINK by Dave Potter



**E & FN SPON**

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# Play statement

Every child needs to play freely in order to grow into a healthy, happy, creative and confident adult. It is the responsibility of the community to ensure that each child has access to a range of stimulating play opportunities.

For more than 30 years PLAYLINK has been helping communities to provide for their children's play. We offer advice, information and playwork training. We carry out site audits for adventure playgrounds and design and build play structures to suit playgrounds' individual requirements.

PLAYLINK works to increase awareness of children's play needs and promote quality in services and play facilities.

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The research, writing and consultation for this publication would not have been possible without the support of the Sports Council. PLAYLINK is most grateful for their grant which has enabled us to produce this code of practice to a standard which playworkers and managers have a right to expect and which we hope will make a significant contribution to the safety and well-being of children at play.

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PART ONE



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# Introduction

Opportunities to play are vital for the survival and healthy development of children. The Charter for Children's Play produced by the Children's Play Council states that:

play is an essential part of every child's life and vital to the process of human development. It provides the mechanism for children to explore the world around them and the medium through which skills are developed and practised. It is essential for physical, emotional and spiritual growth, intellectual and educational development, and acquiring social and behavioural skills

## ADVENTURE PLAYGROUNDS

PLAYLINK believes that the best play provision aims to offer children access to the widest possible range of experience in a setting free from unacceptable risk. Adventure playgrounds are specifically designed to meet children's play needs in this way. They allow the child to explore, manipulate, directly experience and affect their own environment and manage an acceptable level of risk without coming to harm, as well as to experience the pure pleasure of play. Within the adventure playground setting, it is possible to offer opportunities for creativity and imagination where the emphasis is always on the child's choice and control over their own experience.

An adventure playground is defined as an enclosed play area, supervised by playworkers, which is not accessible to children when not supervised. Typically they provide outside space with a variety of environmental modifications and play structures and an indoor space with tables and chairs and materials for crafts, drama, games and so on. Because they are free of charge at the point of entry, are permanently staffed and community based, they provide a familiar environment for children which gives them both a sense of belonging and ownership and the valuable opportunity for making sustained relationships with trusted adults outside the home.

With the exception of specialist facilities for children with disabilities, such as those provided by HAPA, adventure playgrounds do not provide day care.

Playworkers will ensure that there is no suggestion or inference by formal or informal arrangements (for example by agreeing to prevent a child from leaving the site) that these facilities offer a day-care service. However they do take full responsibility for the health and welfare of children while they are on site.

The aim of these facilities is to provide children who use them with access to physical, human and other resources as stimuli for play activities. Play is an instinctive behaviour through which children interact with the world around them. It enables them to explore and experiment, learn skills and develop as individuals. When children experience a wide variety of high-quality play opportunities this development is significantly enhanced. The quality of the child's play experience is linked to the variety of resources available for use in their play, and the way in which those resources are presented and made available.

Adventure playgrounds offer this variety by giving children access to a wide range of physical and human resources. By placing the play needs of children at the centre of the process they are uniquely positioned to facilitate development and growth in children, and therefore they have an extremely important place within the range of play provision that should be available in the community.

They also give children opportunities to learn about making choices and exercising their autonomy. This evolving independence is vital for all children, but particularly for those whose life experiences are limited by factors such as the effects of disability, special needs, poor health, poverty and poor environmental factors.

Adventure playgrounds also provide opportunities for children of all abilities to mix together in an inclusive play environment.

A unique feature of adventure playgrounds is the expectation that children will participate in the development and modification of the facilities and services. This is most striking where children are involved in the construction of play structures for the playground and dens for themselves. Construction provides opportunities for digging, building and creating. The results are often dramatic and add variety and challenge which enhances the play value of the site and promotes a sense of belonging and ownership among the children.

In some cases the playwork skills and understanding to sustain activities that children have traditionally chosen have been lost from adventure playgrounds or abandoned in response to changes in health and safety regulation. Den building is a good example of a rich play activity which has been an inherent part of adventure playground life since their inception but which is now disappearing. This is regrettable since the experience it offers children cannot normally be found elsewhere and when it is found by children on their own the environments are likely to be at best unsuitable and possibly dangerous. Given the objectives of the child's choice and the offer of the widest possible experience through play, the presumption should be that children will be supported in this and similar activities and ways will be found to reduce risk to acceptable levels.

Although these facilities continue to involve children by giving them choice and control of a range of other aspects of playground life, the loss of opportunities to build, dig, and create has taken away from children an experience of interaction

with the environment the need for which is as important to them now as when the concept of adventure playgrounds was first proposed.

This handbook will help voluntary groups and local authorities to enrich the environments that they provide for play. It demonstrates how unacceptable risks can be eliminated without reducing the opportunity for challenge and excitement.

## A BRIEF HISTORY

The Danish Landscape Architect, Professor Sorensen, was the first to propose the establishment of adventure playgrounds. He spoke of the need for environments, 'sort of junk playgrounds...in which children could create, shape, dream and imagine'. The first facility to take up the ideas of Professor Sorensen was opened in Emdrup, Copenhagen in 1943.

In the same year, a survey in Britain noted the popularity among children of bomb sites as play areas.

After a visit to Emdrup by Lady Allen of Hurtwood in 1946 the concept of 'junk playgrounds' became a reality in London, when in 1948 the first public example was opened by the Voluntary Organisation of Camberwell. Many other voluntarily run projects followed. The term 'adventure playground' was coined to describe these facilities.

In 1954, the National Playing Fields Association provided capital for two new playgrounds, one in Liverpool and one in London, which were very successful until their closure in 1960.

In the 1970s and early 1980s, many adventure playgrounds were established and run successfully in both rural and urban areas around the country with significant concentrations in centres such as Bristol and Newcastle as well as London.

## PLAYLINK

In 1962, the London Adventure Playground Association was set up to 'advance the understanding of the educational, social and welfare values of adventure play'. From the four adventure playgrounds which were the founder members of LAPA, by 1977 there were 25 receiving grant aid from the Inner London Education Authority and others, known as 'Play Parks', run by the Greater London Council in London Parks.

In 1969, concerns shared by both LAPA and ILEA about the haphazard way in which adventure playgrounds were being established and run led to LAPA becoming an agent for ILEA. The Authority funded LAPA's full-time fieldwork and training staff. This enabled LAPA to develop and disseminate good practice and standards for local management, playwork and training which were endorsed by ILEA and widely accepted as best practice for adventure playgrounds.

With the ending of ILEA in 1990, LAPA's relationship with the individual playgrounds changed from monitoring and fieldwork to service delivery.

In 1993 LAPA's name was changed to PLAYLINK in recognition of a new wider remit to play service providers beyond London. PLAYLINK continues to promote the original philosophy that gave birth to adventure playgrounds and to develop the concepts and practice standards which lead to high quality in this type of provision for children.

## THIS PUBLICATION

This publication is intended as a code of practice for those developing and operating adventure playgrounds, and provides the foundation and detail of a formal safety policy for individual playgrounds.

It is not an Approved Code of Practice as defined within the terms of the Health and Safety at Work etc. Act 1974. However the Health and Safety Executive welcomes the production of guidance by responsible organizations who clearly understand not only the benefits of adventure playgrounds, but also the precautions which could be expected. It accepts that 'industry-led' codes of practice, that is those that have been designed by practitioners themselves are often as good as, and can be better and more effective than, codes imposed from outside.

As a self-regulating code of practice this publication sets standards which would be referred to in the event of a dispute on matters of health and safety.

The recommendations set out in this edition take account of changes in legislation and regulations which have taken place up to November 1996, and the development of good practice which has taken place since it was last revised in 1984.

## USING THIS CODE OF PRACTICE

In Part One, Chapters 1 and 2 review the legal framework in which adventure playgrounds operate. After an introduction to the English legal system, there is focus on the two pieces of legislation which have the most impact on their operation; the Health and Safety at Work etc. Act 1974 and the Children Act 1989. A summary of other significant Laws and Regulations is also included.

Chapters 3 to 10 set out how these legal requirements impact on the work of an adventure playground, and provide specific recommendations on good health and safety practices.

In Part Two, Chapter 11 provides summaries of the main piece of Health and Safety Legislation which relates to Adventure Playgrounds, and Chapter 12 provides details of other significant legislation.

An index has been provided which can direct the reader to specific topics, and is useful for quick reference.

In the preparation of this edition, much assistance has been received from individuals and organizations from the adventure playground movement and beyond, and we are greatly indebted to them. A full list of contributors is provided at Appendix 1.

---

It is important to remember when considering the guidance and advice set out in this publication that the ultimate test for any action is one of reasonableness. A checklist of 'do's and don't's', however conscientiously applied, can never be a substitute for the exercise of skilled judgement supported by reasons. It is necessary to distinguish between what the law says must be done in specific terms, i.e. where there is no discretion, and where it is a matter of judgement as to how to carry out responsibilities.

Judgement should be exercised in the light of the objectives of the adventure playground and the underpinning values as described in the introduction. That is to say, where judgement is exercised it must balance the objective of allowing the children access to experience and learning through play.

## FURTHER READING

The following are the main source documents for this introduction:

Brunner, J. (ed.), (1985) *Play, its Role in Development and Evolution*, Penguin.

Ellis, M.J. (1973) *Why People Play*, Prentice Hall.

HAPA Information Sheet 1, *The Benefits of Adventure Play*, undated.

Moyles, J. (1990) *Just Playing*, OUP.

*A Charter for Children's Play*, (1992) Children's Play Council.

PLAYLINK, *Open Access Play and the Children Act*, undated.

Shier, H. *Adventure Playgrounds*, undated.



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## Chapter 1

# The legal framework

### 1.1 INTRODUCTION

There is no law which defines how adventure playgrounds should function. There is however a legal and quasi-legal framework within which they must be operated. This framework is based on a combination of Statute Law and Common Law.

This chapter highlights the main components of this legal framework, and identifies how they affect the operation of adventure playgrounds.

### 1.2 STATUTE LAW

Statute Law is law which has been drawn up and approved by Parliament. Once approved it is published in written form as an Act of Parliament.

Statute Laws can be both Criminal Laws and Civil Laws. There is an important distinction between Civil Law and Criminal Law. Criminal Law is concerned with punishment, and Civil Law is concerned with compensation. Adventure playgrounds come within the framework of both these branches of law.

The main way that adventure playgrounds come within the jurisdiction of the Criminal Law is through the Health and Safety at Work etc. Act 1974 which is enforced through the criminal courts.

There is a list of Acts of Parliament which affect adventure playgrounds below.

An Act of Parliament often contains duties and powers.

Duties or requirements are mandatory and there is no choice about complying. They are usually very general, and are often elaborated in Regulations, which are published some time after the Act of Parliament is passed. Regulations give details of how duties should be carried out. They also are mandatory.

For example, among other things the Children Act, 1989 gives local authorities a general duty to inspect premises where day care for children under eight years of age takes place. The Act does not describe how this should be done. In 1991 Regulations were published by the Department of Health which described how these inspections should be carried out.

Alongside published regulations there is often Guidance. Guidance provides further or additional information on how duties can be carried out. Although guidance is not mandatory, it provides useful information, and could be used to establish whether or not an adventure playground is meeting its legal requirements. In the Children Act example given above, regulations and guidance were contained within the same publication.

Acts of Parliament also describe powers. These give authority for action, but also give discretion as to whether the action is carried out or not. These powers are also often elaborated in regulations.

For example, Children Act Guidance and Regulation Volume 2, empowers local authorities to provide social, cultural or leisure activities in order to promote the upbringing of children by their families, but leaves it to them to decide whether they do it or not.

Although written down, Acts of Parliament often change and evolve. This is particularly true of Civil Law. For example they can be amended by later Acts of Parliament. Also Regulations can be added after the original Act was made Law, providing they are allowed for in the original Act.

For example, in 1993 Personal Protective Equipment at Work Regulations came into force. These Regulations were additions to the Health and Safety at Work etc. Act which was made law 19 years earlier in 1974.

Also, Civil Statute Law can evolve through the interpretation of Judges. For example, if one party disagrees with another over the meaning of a part of an Act of Parliament, a court case may result. If it does, the judgement given at the trial will help clarify and will sometimes develop the meaning of the original Act of Parliament. The precedents set by Judges in this way are called Case Law.

The main Acts of Parliament of concern to providers and organizers of adventure playgrounds are:

1. The Health and Safety at Work etc. Act 1974, and its Regulations:
  - Safety Signs Regulations 1980
  - Electricity at Work Regulations 1989
  - The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1985
  - Control of Substances Hazardous to Health Regulations (COSHH) 1994
  - Workplace (Health, Safety and Welfare) Regulations 1992
  - Personal Protective Equipment at Work Regulations 1992
  - Manual Handling Operations Regulations 1992
  - Management of Health and Safety at Work Regulations 1992
  - Provisions and Use of Work Equipment Regulations 1992
  - Gas Safety (Installation and Use) Regulations 1994
2. Unfair Contract Terms Act 1977
3. The Equal Pay Act 1970
4. The Rehabilitation of Offenders Act 1974
5. The Sex Discrimination Act 1975
6. The Race Relations Act 1976

7. Employment Protection (Consolidation) Act 1978
8. Occupiers' Liability Acts 1957 and 1984
9. Data Protection Act 1984
10. Food and Environmental Protection Act 1989 Part III, the Control of Pesticides Regulations
11. Fire Precautions Act 1971, as amended by the Fire Safety and Safety of Places of Sport Act 1987
12. Consumer Protection Act 1987
13. Children Act 1989
14. Environmental Protection Act 1990
15. Food Safety Act 1990
16. Food Hygiene Regulations 1991
17. The Activity Centres (Young Person's Safety) Act 1995
18. Adventure Activities Licencing Regulations 1996

These provide a framework of requirements and guidelines which should be complied with as a matter of respect for employees and for playground users, and in order to ensure that parents/carers can be confident in permitting their children to use the facilities.

More information on these can be found in the following pages.

### 1.3 COMMON LAW

Some laws are not laid down in written form by an Act of Parliament, because they have grown up over time and have never been written down. These make up the Common Law.

The most significant of these is the Tort of Negligence. Under this unwritten law each citizen is said to owe a 'duty of care' to each other citizen. If one person breaches that duty (is negligent), and another person suffers loss, damage or injury as a result, then the first person may be required to compensate the second for that loss or injury. The test as to whether negligence has arisen is one of 'reasonableness' (see below).

This duty of care applies to organizations as well as individuals, and therefore to providers of adventure playgrounds.

Because common law is unwritten it is continually evolving. As with statute law, common law can be interpreted by Judges through case law. In fact, Judges' decisions form the basis for interpretation and understanding of common law, as they are written down and therefore act as precedents.

For example, in the case of *Donoghue v. Stephenson* in 1932 a judge described a test to be used when assessing whether a breach of a duty of care had taken place. He said:

you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.

This test, based on the foresight of the reasonable man (*sic*), is applied in all cases

where there is a claim in negligence. For cases where children are involved this has been further defined, and the test in these cases is based on the foresight of a reasonable parent. This is known as the reasonably careful parent test.

## 1.4 BRITISH STANDARDS

British Standards are another important aspect of the legal framework within which adventure playgrounds operate, and there are British and other Standards which relate to fixed-equipment playgrounds.

As these Standards relate to the provision of unsupervised play, they do not apply directly to adventure playgrounds. However they provide a useful reservoir of information and advice in respect of the design and operation of these facilities, which would almost certainly be referenced alongside this publication in the event of a dispute at common law or statute law. Although compliance with these Standards would not itself confer immunity from legal obligations, they can be used to establish whether reasonable care has been taken and form part of the legal framework in which adventure playgrounds operate.

British Standard (BS) 5696 is concerned with play equipment that is intended for permanent installation outdoors, and gives advice and guidance on the design, construction, performance, installation and maintenance of play equipment and surfaces; and the design and layout of play areas. The German DIN Standard 7926 provides information on items such as aerial runways. They will be superseded by a new European Standard which is currently in draft form.

## 1.5 CODES OF PRACTICE

Codes of Practice are an additional resource for information on good practice on adventure playgrounds.

Although there is no Approved Code of Practice as defined within the terms of the Health and Safety at Work etc. Act 1974, this publication and other 'industry led' codes of practice (for example the Code of Practice for Safety in Indoor Adventure Play Areas) would certainly be referenced in the event of a dispute or claim under common or statute law. The Health and Safety Executive accepts that such codes of practice which have been designed by practitioners themselves are often as good as, and can be better and more effective than, codes imposed from outside.

## 1.6 FURTHER READING

The following is the main source document for this chapter:  
Keenan, D (1992) *English Law*, Pitman.

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## Chapter 2

# The Health and Safety at Work etc. Act 1974 and the Children Act 1989

### 2.1 INTRODUCTION

The Health and Safety at Work etc. Act 1974 and the Children Act, 1989, are the major pieces of legislation which inform good practice in the health and safety operation of adventure playgrounds. Conformity to their requirements is mandatory and enforceable.

### 2.2 THE HEALTH AND SAFETY AT WORK ETC. ACT 1974

#### 2.2.1 Introduction to the Act

One of the principal objectives of the Health and Safety at Work etc. Act is to involve everybody at the workplace—management and workers—in consideration of good health and safety practice and to generate awareness of its importance.

Upon publication it became the co-ordinating legislation for previous statutory provisions relating to the health, safety and welfare of employees while at work. In addition it extended statutory protection to all members of the general public in so far as they might be affected by work activities.

Under the Act duties to uphold reasonable practice in relation to health, safety and welfare fall upon:

- employers with regard to employees;
- employers with regard to the general public;
- employees with regard to fellow employees and themselves;

- employees with regard to the general public;
- the controllers of premises;
- manufacturers and suppliers;
- the self-employed.

It requires all persons at work and all persons responsible for any part of any work environment not only to be aware of the need for health and safety but also to ensure that, as far as is reasonably practicable, optimum conditions exist for minimizing risks arising from health and safety hazards.

Failure to discharge one's duty under the Act is a criminal offence.

### 2.2.2 Who is responsible?

The primary responsibility for occupational health and for avoiding accidents rests with those who create the risks. This is why the Act directs its message first and foremost to the employers and employees in the workplace.

It is for the employer to ensure that appropriate health and safety policies are in place and that the procedures which flow from these policies are being carried out.

In practice there is a variety of arrangements for the management of adventure playgrounds and the employment of staff. These include playgrounds operated by local authorities or by voluntary organizations and those where arrangements are shared.

Where the operation of the playground is the sole responsibility of one agency, it is the duty of that agency to ensure that the provisions of the Act are implemented. Where responsibility for the operation of the playground is divided between agencies, a formal agreement specifying the particular areas of responsibility of each party should be established.

The health and safety of adventure playgrounds operated by local authorities is assessed by the Health and Safety Executive. Those sites where a local authority has no control of the operation are assessed by the Environmental Health Department of the local authority. A list of Health and Safety Offices is provided at Appendix 2.

Inspectors have wide-ranging powers. They may forbid the carrying out of specific activities within all or part of any place of work (including closing a site), and require improvement in conditions or in practice.

### 2.2.3 Duties and responsibilities

The Act sets out duties and responsibilities for employers and employees.

Employers must, as far as is reasonably practicable, provide a safe working environment and inform, instruct, train and supervise employees on all matters outlined in the Act.

The Act lists five particular duties of an employer to an employee:

1. the provision and maintenance of plant (equipment) and systems of work that are safe and without risks to health;
2. arrangements for ensuring safety and absence of risks to health when using, handling, storing and transporting articles and substances (this covers everything used at work and all work activities);
3. the provision of relevant information, instruction, training and supervision;
4. maintaining any place of work under the employer's control in a safe condition and without risks to health;
5. the provision and maintenance of a safe working environment without risks to health, and of adequate welfare facilities.

The term 'employee' as used in the Act refers to an individual who works under a contract of employment. The duties of employees are:

1. to co-operate with their employer so far as is necessary to enable the employer's legal duty on health and safety to be carried out;
2. not intentionally or recklessly to interfere with anything provided which would effect the implementation of their employer's legal duty on health and safety;
3. not intentionally or recklessly to interfere with anything provided for their health, safety and welfare;
- 4 not to interfere with or misuse equipment, plant or machinery in any dangerous way.

### 2.3 THE MANAGEMENT OF HEALTH AND SAFETY AT WORK REGULATIONS 1992

Some of the requirements of the Health and Safety at Work etc. Act have been elaborated through the issuing of a series of Regulations, which are summarized in Part Two of this publication.

The most significant of these is the Management of Health and Safety at Work Regulations, 1992. These establish the principle of risk assessment which is now central to Health and Safety Management. The Regulations are supported by an Approved Code of Practice which has been drawn up to give practical guidance on carrying out its general duties.

They require employers to make what is called a suitable and sufficient assessment of all the risks arising from their undertaking. This does not need to be complicated or perfect. Checking hazards is mostly a matter of common sense based on experience of working in the playground environment. The assessment must consider risks to both employees and to other persons including members of the public. The purpose of the assessment is to identify the measures that the employer needs to take in order to comply with their legal obligations under the Health and Safety at Work etc. Act and its Regulations.

Where an employer has five or more employees, the significant findings of this assessment and any group of employees identified as especially at risk must be

recorded. PLAYLINK recommends that assessments should be recorded irrespective of the number of employees.

### 2.3.1 Risk assessment

A suitable and sufficient assessment of risks involves identifying hazards and then evaluating the extent of the risk involved. It must identify significant risks, identify and prioritize the measures that need to be taken in order to comply with any relevant legal requirement. It should be appropriate to the nature of the activity on the playground and keep in mind the objective of meeting childrens' play needs, including the need to encounter some acceptable level of risk.

Assessment must be reviewed, and if necessary modified, to take account of any change in circumstances.

There are no fixed rules about how a risk assessment should be undertaken. However the general aims are to:

- ensure that all relevant risks are addressed;
- address what actually happens in the workplace or during the work activity;
- ensure that all groups of employees and others who might be affected are considered;
- identify groups of workers who might be particularly at risk;
- take account of existing preventative or precautionary measures.

The following procedures would provide a suitable framework for risk assessment on an adventure playground:

1. Identify and list all aspects of the **building, outside area, structures and programme** which may give rise to hazards.
2. Identify and list any and **all hazards** to health and/or safety which may result from each of these areas of work.
3. Identify and list any and **all the risks** each of these hazards pose to employees and other persons.
4. Identify and list any and all of the **precautions already taken** in respect of each of the risks identified.
5. Assess the **level of risk which remains** after the precautions identified have been taken (more information is given below on how to do this).
6. Identify and **carry out measures** which are required in order to eliminate, minimize or reduce the risk.

The assessment of the level of risk in step 5 above must take into account both how serious an injury could be and how likely it is to occur. So for example:

- a high risk—would be a very serious injury which has a high probability of occurring;
- a medium risk—would be a very serious injury which is unlikely to occur, or a lesser injury likely to occur;
- a low risk—would be where any injury is unlikely and would be slight if it did occur.