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HEALTH AND SAFETY COMMISSION

Temporary Work At Height Directive: Implementation of supporting regulations

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Issue

1. At their meeting on 25th June 2002 (HSC/02/40), Commissioners were given early sight of the draft Regulations to implement the Temporary Work At Height Directive. This paper brings Commissioners up do date on progress since then, and gives details of proposals for public consultation on the draft Regulations.

Timing

2. Urgent. HSE must commence public consultation on behalf of HSC by late summer 2003 in order to meet our obligations to consult fully and introduce the implementing Regulations by the end of June 2004. Failure to do so may result in infraction proceedings.

Recommendation

3. That the HSC confirm that they are content with the draft Consultative Document (Annex B) including the draft Regulations and Guidance (Annex A), and agree that the implementation team begin the formal consultation on this basis.

4. The results of this consultation will be the subject of a further Commission paper in due course.

Background

5. On 14th June 2001, the European Council and European Parliament formally adopted a new Directive on Temporary Work at Height (2001/45/EC). The Commission were given sight of this Directive and of a draft set of implementing Regulations on 6 November 2001 (HSC/01/182). At this meeting, the Commission decided that the best strategy for implementation, from the options provided, was to develop a set of self-standing Regulations that would apply to work at height in all sectors of industry.

6. This approach was confirmed at the Commission meeting of 25 June 2002 (HSC/02/40), and the implementation team has taken the project forward on this basis.

Argument

7. Implementing the Directive, whilst at the same time knitting together the relevant parts of the Construction Health Safety & Welfare Regulations (CHSWR) and the Workplace Regulations, as well as including elements of the Provision and Use of Work Equipment Regulations (PUWER), has been a challenge. The process has taken longer than expected; informal consultation (see paragraph 12 below) has been extensive. However, it is hoped that the time and effort invested at this stage will be repaid in terms of draft Regulations and Guidance which might have less need of amendment when the formal consultation is carried out.

8. The following key points should be noted:

- The draft Regulations make considerable use of 'So Far As Is Reasonably Practicable', which could be considered controversial in the light of the current debate between the UK and the EC on the use of this term in legislation implementing EC Directives. However, as health and safety legislation stands in this country - including Regulations which are being incorporated into the WAHR - it has proved essential to use SFAIRP to draw up goal-setting, wide-ranging regulations. If SFAIRP has to be changed in future, the WAHR will be only a small part of the whole body of law in the UK which would have to be reviewed.
- We have consciously gone beyond simple implementation of the Directive in the Regulations, in order to make the package a coherent whole covering all work at height. We have included parts of previous regulations which implemented other Directives, specifically parts of the Temporary and Mobile Construction Sites Directive and the Workplace Directive which were previously implemented via CHSWR and the Workplace Regs respectively. In fact, there are very few additional requirements in these Regulations which are not already in some other legislation, or embodied in existing good practice.
- We have also taken this opportunity to improve on present Regulations affecting work at height (mainly in CHSWR) by updating and improving them: for example by changing 'fragile material' to 'fragile surface'; by using the term 'personal fall protection system'; and by reduced bureaucracy relating to inspection duties in relation to 'working platforms'.
- The draft package comprises a set of Regulations and Guidance, but not an Approved Code of Practice (ACoP). The implementing team feel that an ACoP is not necessary in view of the fairly detailed nature of some of the Regulations' requirements (many of which derive from the CHSWR which has no supporting ACoP), and the fact that any further supporting requirements need to be flexible enough to stand the test of time. It should be appreciated that the technology for safe systems of work at height is

developing fast. In addition, the wide range of activities covered by the Regulations means that there could be difficulties in giving ACoP status to material which might not be fully applicable in all sectors. On the other hand, some consultees would favour an ACoP. It has not been clear, however, precisely what issues those in favour of an ACoP would want to be included in it. In order to fully bottom out this issue, this question, amongst others, has been left fairly open in the Consultative Document in order to encourage a wide response and allow us to better understand respondent's views and wishes.

9. There are several important concerns which remain:

- The inclusion in the scope of the Regulations of such sectors as adventure activities (e.g. mountaineering, abseiling, potholing when carried out as work, for example as instructors), acrobats, tightrope walkers and stuntpeople presents some difficulties. Such activities were probably not considered during the drafting of the Directive, though in legal terms there is no doubt that they are covered as they are carrying out a work activity. In including for these rather specialist activities within the scope of the Regulations it would be important not to dilute the requirements applying to more conventional work at height. The HSC may be aware that the adventure activities industry has lobbied for exemption from the Regulations. The culmination of the campaign was an article in the 'Daily Telegraph' by former Sports Minister Kate Hoey on 12 July criticising HSE for making regulations which would damage the industry. Legal advice received is that exemption of occupational groups would be likely to incur infraction proceedings from the EC. If the HSC felt that exemption was appropriate, they would have to advise Ministers who would have to balance the arguments for and against doing so. There could however be some scope for partial exemption of some activities, for example. The implementing team have recently met a representative of the outdoor activities sector to try to resolve matters of outstanding concern; the key issue appears to be the 'single rope' working provision (Schedule 5, Part 3, para. 3) which reflects the Directive (end of para. 4.4). The Consultation Document draws attention to this matter and asks whether there are other industries where it would present a particular problem.
- At the outset the HSC emphasised the importance of maintaining the legal standards which apply to work at height in construction. The implementing team has been mindful of this, and we believe that we have achieved it in the draft Regulations. The construction industry appears reassured to some extent, but the formal consultation exercise will reveal if this is the case.
- There is concern among users and manufacturers of ladders that we are 'outlawing' or 'banning' the use of ladders. The Directive is clear that their use should be minimised where possible, and this is also the HSE view – ladders are involved in a high proportion of falls accidents. However, they are also used widely and so thus the ladder industry argue that the incidence rate of ladder accidents is not high. The Regulations and Guidance need to strike the right balance between discouraging inappropriate use of ladders and encouraging good practice where they are used.
- It is likely that there remain some aspects of the Regulations and Guidance which do not fully reflect the circumstances of all the industries that are covered, such as arboriculture or the emergency services. The formal consultation exercise should identify these.

10. The HSC are asked to consider the appropriate length of time for the formal consultation period – whether this should be 3 or 4 months. 3 months would mean that the consultation exercise would be complete before Christmas and increase the chances of timely implementation. Most of the key stakeholders are already well aware of the issues. It may be felt, however, that a longer period is necessary in view of the wide range of sectors and businesses affected.

Consultation

11. Draft versions of these Regulations and Guidance have been considered by, amongst others, the HSC's Safety of Work Equipment Temporary Work at Height Sub Group, Construction IAC's steering group and the Health and Safety Executive/Local Authority Enforcement Liaison Committee. Presentations on the proposals have also been made to the Institute of Occupational Safety and Health, the Engineering Construction Industry Association, the Offshore IAC, the Adventure Activities IAC, the Agriculture IAC, and about a dozen other trade associations and health and safety groups.

12. The implementation team has also developed and maintained a database of over 300 interested stakeholders, who have been kept in touch with proposals and developments. Many of the contacts made and comments received through this channel have been invaluable in our understanding the issues raised by the proposals, and in the development of the draft Regulations themselves.

13. The implementation team has convened 7 meetings of an internal HSE group to consider the draft Regulations and Guidance.

14. FOD, HID, the Solicitor's Office and other relevant policy sections in HSE have cleared this paper.

Presentation

15. There is likely to be considerable public interest in this issue given the wide applicability of Regulations, and high profile falls accident cases such as that involving the Metropolitan Police. Some groups are unhappy with the application of the WAHR to them, especially the adventure activities sector who recently carried out a letter-writing campaign in order to try and earn exemption from the Regulations. It is intended to use the interest generated by the Regulations to draw attention to the HSC's Falls from Height Priority Programme.

16. This consultation is to be the first formal consultation to use a predominantly electronic response system, developed for HSE by a third party contractor. This system is designed to speed up and simplify analysis of the responses whilst ensuring the data collected is focussed on the issues and of high quality. This response analysis tool has performed well in trials and when tested on the recent '**Revitalising Health and Safety in Construction Discussion Document**'.

Costs and Benefits

17. The Regulatory Impact Assessment (RIA) (Annex C) has estimated that the benefits of the WAHR would be savings of around £175 million over ten years, based on a 5% reduction in the rate of accidents involving work at height. The RIA also estimates ten year costs, based on year 2000 values, of between £174 million and £267 million. These costs are based on full compliance with the Regulations for all use of ladders, scaffolding or rope access equipment. There is a correlation between costs and benefits, and for costs to balance benefits, an 8% reduction in work at height accidents would need to be achieved. (The HSC's Falls from Height Priority Programme aims for a 10% reduction in fatal and major injuries caused by falls from height over the 10-year period of the Programme.)

18. The majority of the costs will be policy costs, such as purchasing new equipment (i.e. Mobile Elevated Working Platforms) or modifying existing equipment. Yearly costs, such as training, are expected to be between £14 million and £23 million.

19. The total cost of the WAHR is high due to the wide range of industries affected by the Regulations. However, on average, the Regulations will cost each business an average of £100. The cost to each business is proportional to the amount of work at height equipment each company has. Any given business, depending on its nature, may incur anything from no extra costs to (for a few) significant costs. There are no costs which would represent an unreasonable or disproportionate burden on small and medium sized enterprises.

Financial/Resource Implications for HSE

20. Work towards implementation of the WAHR has been met, and will continue to be met from within existing resources. The likely costs to HSE of enforcing the new Regulations are estimated in the RIA to be £420,000 in the first year (including £115,000 in familiarisation costs). Ongoing costs are expected to be around £30,000 in subsequent years. Total costs to HSE are likely to be in the region of £660,000 over ten years in present value terms.

Action

21. The HSC is requested to:

- Approve the draft Consultative Document (Annex B), including the draft Regulations and Guidance (Annex A);
- Determine the timescale of the formal consultation

Attachments

Annex A Final draft of the Work At Height Regulations and Guidance

Annex B Final Draft of the Work At Height Consultative Document

Annex C Final draft of the Work At Height Regulatory Impact Assessment

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