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HEALTH AND SAFETY COMMISSION

Temporary Work at Height Directive: Implementation regulations

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Issue

1. At their meeting of 5 August 2003, Commissioners considered a draft Consultative Document on regulations and supporting guidance to implement the Temporary Work at Height Directive (paper HSC/03/43). They asked for some changes to be made to the text of the Consultative Document and the Guidance.

Timing

2. Urgent. The implementing regulations are to be made by July 2004. Although this deadline is unlikely to be met, it is important that they are not delayed significantly. The HSC agreed on 5 August that the consultation period should be four months. To meet that requirement and provide time for analysis the consultation should commence in December 2003.

Recommendation

3. That the HSC agree to the publication of the revised draft Consultative Document (Annex A).

Background

4. HSC/03/43 outlined the development of the implementation project, including the extensive informal consultation undertaken by the implementing team.

Argument

5. When the draft Consultative Document was considered by the HSC in August, the Commission noted that it was content with the draft regulations, but that the Introduction to the Consultative Document should more fully reflect the discussions which had been held with representatives of industries affected, and also that it should more explicitly address the criticisms and misconceptions about the regulations (e.g. 'banning ladders'). The key points which are now given greater emphasis are:

- the need to implement the EC Directive gives the opportunity to tackle the problem of falls from height, which is the single biggest cause of deaths in the workplace and the second biggest cause of major injuries;
- the way in which this is done will be proportionate and practical, concentrating on areas of highest risk and not imposing unreasonable requirements on low risk activities;
- a single set of goal-setting regulations covering all industries will bring together all existing legal requirements on work at height, making the law simpler and giving enough flexibility to cover all industries and allow for technical developments;
- the risk-based approach will build on existing good practice and compliance with the current law.

6. The Introduction has been amended to do this, and has been set out in a briefer, more punchy format.

7. Particularly prominent recently have been the concerns expressed, in the Press and through letters to the Chair and Ministers, of the 'adventure activity' industry about the way in which the regulations may affect them. The concern has centred especially on the provision (derived from the Directive) allowing for work from a single rope 'only if a risk assessment has demonstrated that the use of second line would entail higher risk to persons, and that appropriate measures have been taken to ensure safety'. This provision would also affect a number of other activities including the emergency services, theatres and arboriculture. Discussions will continue with representatives of these industries about the practical application of this regulation to them, although in general they have been more relaxed about it than the adventure activities sector.

8. A meeting between HSE officials and representatives of the adventure activities industry to discuss the regulations was held in September, and another is planned with those involved specifically in climbing activities. The aim of the meeting will be to discuss the way in which the risk assessment required to justify single rope working could be built on existing good practice within the industry, and how the judgements currently made about the safety of such work could be made more explicit. The HSE implementation team plan to use HSL to develop generic risk assessment for climbing activities, which could assist the adventure activities industry in meeting the regulations by establishing agreed standards as to what is required.

9. The Commission will recall that there has been debate about possible exemption of certain groups of workers from the scope of the regulations. Confusion was caused by the publication of a letter from the London office of the European Commission which seemed to imply that the scope of the Temporary Work at Height Directive was limited to certain industries. However the EC have now confirmed (see letter attached at Annex B) that the Directive (and hence, necessarily, the implementing regulations) applies 'to all sectors of activity where temporary work at height is carried out'.

10. The implementation team was also asked to look at the draft Guidance to see whether it could be made shorter and easier to digest. The Guidance has been shortened somewhat and the emphasis has changed from a line-by-line explanation of the regulations, to a more general explanation of what they require in a practical sense. A number of practical examples of planning and carrying out work at height in

different scenarios have been added. Most of the actual content that remains (which has been subject to extensive consultation with outside and internal stakeholders) has remained unaltered.

Consultation

11. With Policy Group, Press Office, Solicitors, COSAS.

Presentation

12. The HSE implementing team and Press Office are developing a media strategy for the launch of the Consultative Document and the consultation period. Media interest is likely to be high in view of recent controversies over work at height. The key messages are emphasis of the importance of reducing the number of falls from height at work and the practical, risk-based approach HSC/E is taking towards the regulations. Commissioners will be provided with a key points brief on the regulations in preparation for the launch.

Costs and Benefits

13. The Regulatory Impact Assessment (RIA) is included in the package at Annex A and was summarised in HSC/03/43. Costs of enforcement for Local Authorities have now been included.

14. Assuming full compliance, the total cost over ten years of the Regulations has been estimated at between £174m and £266.8m, in present (2000) value terms. The potential benefits (given a 5% reduction in injuries) have been estimated at around £175m over ten years. The total costs appear high compared to benefits because of the wide range of industries affected by the regulations. However on average, the regulations will cost each business an average of £100 (proportionate to the action each company has to take). The media strategy will address the comparison of costs and benefits, alongside the significant toll in deaths and injuries caused by falls from height.

Financial/Resource Implications for HSE

15. Covered in HSC/03/43

Action

16. The HSC is recommended to agree to the publication of the Consultative Document at Annex A, for a consultation period of four months.