

Health and Safety Commission Paper		HSC/04/107	
Meeting Date:	9 November 2004	Open Gov. Status:	Open
Type of Paper:	Above the line	Paper File Ref:	HD/241/1028/2002
Exemptions:	None		

HEALTH AND SAFETY COMMISSION

Proposed Control of Vibration at Work Regulations: results of the public consultation and recommendations

A Paper by Brian Coles

Advisor(s): Mike Shepherd and Elizabeth Gibby

Cleared by Jane Willis on 30 September 2004

Issue

1. Results of the public consultation on the proposed Control of Vibration at Work Regulations and supporting guidance and approval of the draft regulations for submission to the Minister.

Timing

2. Routine.

Recommendation

3. We invite the Commission to:
- note the results of the public consultation summarised at Annex A;
 - approve the recommendations made at Annex A;
 - note the revised Regulatory Impact Assessment at Annex B;
 - approve for submission to the Minister, the draft regulations at Annex C, as amended (the substantive amendments are described in paragraph 9);
 - note the outline structure for guidance on the regulations at Annex D.

Background

4. Paper HSC/03/130 covered the proposals for public consultation on the proposed regulations, including draft consultative documents on hand-arm (HAV) and whole-body vibration (WBV) respectively. Earlier Papers HSC/98/212, MISC/20/99, MISC/31/99, MISC/97/00, MISC/02/09, HSC/02/128 gave the background on the Vibration Directive which the regulations will transpose into British legislation.

Argument

5. 1085 paper copies of the CDs were issued and 9045 were downloaded from HSE's web site. The number of responses to the CDs received was 133. This included responses from a wide range of key stakeholder bodies representing employers and trade unions. The responses, which are broadly supportive of the proposed regulations and guidance, are summarised at Annex A together with recommendations for action.

Main issues arising from the consultation

6. Some of the main concerns identified by respondents related to the practicalities of complying with the regulations. For example the need for:

- employers to be able quickly to decide if they have a vibration problem or not;
- concise, non-technical guidance for employers on assessing risk and introducing simple controls;
- examples of risk assessment and control techniques;
- employer's guidance to be kept separate from more complex material aimed at experts such as vibration technicians, nurses and doctors;
- guidance which helps employers to be able to comply with the Regulations without need for costly expert help;
- guidance on how and where to obtain suitable vibration data;
- guidance on how to use vibration data without recourse to complex mathematical formulae;
- priority to be given in guidance towards the less costly methods of compliance;
- improved provision of occupational health services.

7. HSE share these concerns. They will need to be addressed in order to support employers' compliance with the Regulations. We believe that they can be tackled effectively, for example, by:

- giving guidance on simple 'rules of thumb' which can be used to assess whether the action value is likely to be exceeded
- making clear that employers should direct their efforts into reasonably practicable, effective risk controls rather than detailed exposure assessments;
- providing in guidance a range of simple, low cost control actions that employers can take;
- providing a range of easy-to-use and suitable vibration data for those employers who may need to do a more detailed exposure assessment ;
- Providing clear guidance on when it may be appropriate to arrange for vibration exposure to be measured;
- providing easy-to-use ready-reckoners, charts and web page calculators to help employers use vibration data to estimate vibration exposure levels for their employees;
- keeping the guidance for technical and medical experts separate from that for employers and employees;
- encouraging occupational health service providers to take up training on hand-arm vibration syndrome (HAVS) health surveillance;
- provision of guidance on a tiered system of health surveillance with simple, low cost surveillance at the lower tiers (the lower tiers are pre-employment screening and

routine screening of vibration-exposed employees. The higher tiers are referral to a nurse or doctor if screening indicates possible symptoms of HAVS).

8. The summary of the results of the public consultation at Annex A, including such recommendations as may be approved by the Commission, will be sent to all those who responded. In addition, the summary will be placed on the HSE web site for wider public information.

Changes to the draft Regulations following the public consultation

9. The draft Regulations are at Annex C showing the amendments which have been made taking account of the results of the public consultation which are summarised at Annex A. The revisions to the Regulations have been underlined in the text at Annex C. There are four significant changes, which are described below:

- **Regulation 4(2).** Deletion of the vibration dose value (VDV) option in favour of the A(8) option for the WBV exposure action value. There is still considerable disagreement, including within HSE, about whether VDV should be used in the Regulations. The A(8) method of assessing personal daily WBV exposure will not show exposure to shocks, which are likely to be a cause of back injury. One HSE vibration specialist's view is that the use of A(8) will discourage employers from recognising shocks and acting to reduce them, and enforcement to reduce risk would therefore prove difficult. On the other hand, the majority of respondents opposed the use of VDV offering various reasons, including its increased complexity and cost and disadvantage for British industry because other Member States would not use it. (See more detail of the arguments and recommendation at Question 7 of Annex A). We propose to accept the views of the majority.
- **Regulations 6(1), 6(2), 6(4)(c), 10(2)(b).** The Directive term "reduced to a minimum" in relation to reducing exposure or risk, has been transposed by "as low as reasonably practicable" (ALARP). This has been done on the basis that it has a clearer meaning, is terminology that has been used in other sets of regulations and is well understood by dutyholders and enforcing authorities. Solicitors advise that the use of ALARP here is appropriate for the transposition of these Directive requirements. The term "to a minimum" necessarily implies that there is a minimum level that is to be defined in practical terms. It is appropriate that this minimum level should be consistent with the general duty imposed on employers by the Health and Safety at Work etc. Act 1974. The ALARP test, just as the SFAIRP standard in HSWA, sets this level in a manner which indicates an achievable standard of risk management to dutyholders and offers workers protection to a standard which we consider to be consistent with the requirements of European and United Kingdom law.
- **Regulation 7(1)(b).** Concern was expressed that the regulation as drafted only required health surveillance at the exposure action value (EAV) on the request of the employee. On the other hand, we would not wish to make health surveillance an absolute requirement at the EAV where exposure was one-off or short-term. The revised draft requires employers to provide health surveillance at the EAV but only where it is appropriate to do so within the meaning of regulation 7(2), where

paragraph (a) would restrict the requirement to situations where there was a risk of ill-health from the actual exposure.

- **Regulation 8(1).** This has been redrafted to make clear that information and training should be provided to employees both where there is believed to be a risk, and also where the exposure action value is exceeded.

10. The Commission is asked to agree the substantive amendments to the draft Regulations described above and underlined in the full set of Regulations at Annex C.

Guidance

11. The results of the public consultation give strong support for HSE to publish plain language guidance which gives practical help to employers. Approval has been given for sets of two free leaflets and a priced booklet for each of the topics (HAV and WBV). These have been exempted from the publications moratorium. Separate sets of guidance will be provided on HAV and WBV as recommended in Annex A. The free leaflets will provide simple, concise and practical guidance to employers and employees. More detailed guidance on the meaning of the Regulations, on risk assessment and control, and on health surveillance and vibration measurement will be provided separately in the priced booklets. An outline of the planned guidance, to be published by March 2005, is shown at Annex D.

Consultation

12. A wide range of industry, trade union and government organisations were consulted as listed in Annexes 6 and 7 of the Consultative documents 190 and 191 respectively. This paper has been circulated for comment to HSE colleagues in Field Operations Directorate, Policy Group and the Financial Policy Unit.

Presentation

13. There was, as expected, no adverse press coverage of the consultation, largely because we had already talked to sectors such as agriculture about how their concerns could be met.

14. There is broad support across industry for the introduction of HAV Regulations. Industry recognises that it is a widespread health risk with serious consequences both for workers and for employers, and that regulation is needed. We will present the Regulations and accompanying guidance as an important step forward which has wide support from industry.

15. The control of HAV is part of HSE's strategic programme and is therefore a priority for HSE activity. The Regulations will reinforce activities under the HAV programme which has the overall goal of eliminating new, disabling cases of HAV syndrome by 2015. It is estimated that, currently, around 1 million people may be exposed above the HAV exposure limit value. One of the supporting goals of the HAV programme will be to help and encourage industry to reduce these high exposures to below the exposure limit value (ELV) by 2010, when the transitional periods for the ELV expire.

16. In contrast to the position on HAV, there is little support from industry for the regulation of exposure to WBV from industrial vehicles and machines. This is because the relative contribution of WBV to low-back pain is uncertain and other known risk factors for low-back pain such as manual handling, poor ergonomics and postural risks are often present where exposure to WBV occurs. Nevertheless, it is accepted in the scientific community as a risk factor for low-back pain, particularly where there are exposures to shocks and jolts. Low-back pain is one of the main causes of working days lost in the UK, and it should therefore be possible to present this aspect of the regulations as making a useful contribution to tackling this problem. However, the regulatory requirements will need to be presented carefully in guidance to show that they are simple, low cost and effective. It will also be important to emphasise that, in order to be effective, action on WBV will need to be taken in concert with action on the other low-back pain risk factors. WBV risks are included in HSE's overall strategic programme but as part of the musculo-skeletal disorders programme which covers other low-back pain risks such as manual handling.

17. Because we were able to negotiate successfully for a more practicable exposure limit value than originally proposed for the Directive, together with lengthy transitional periods, industry opposition to the WBV element has diminished. HSE has collaborated closely with industry to commission research to establish workplace levels of WBV exposure. Results to date suggest that exposures are likely to be significantly lower than originally thought. This has helped reduce industry concerns about the practical difficulties of compliance with the Regulations. These factors, and our intention to take full account of the results of public consultation, lead us to believe there is unlikely to be public criticism of the Regulations on their introduction in 2005.

Costs and Benefits

18. The Regulatory Impact Assessment (Annex B) has been revised to reflect the comments received and the recommendations made (Annex A) following the public consultation. The overall effect has been to reduce the costs side of the equation by £1.5 - 2.5 billion, most of this reduction relating to the cost of reducing WBV exposures. The HAV costs over 10 years are estimated to be £0.8 -1.2bn compared to 10 year benefits of £0.7 - £1.4bn (ratio approximately 1:1). The WBV 10 year costs are estimated to be £1.5 - £3.0bn compared to 10 year benefits of £0.5 - £1.3bn (ratio between 1:1 and 6:1).

Financial/Resource Implications for HSE

19. There will be costs for HSE in training approximately 500 inspectors on the new Regulations. These costs are estimated to be in the region of £65,000. There will be costs for training Local Authority Environmental Health Officers on the Regulations although these costs will not fall to HSE. The cost of printing the planned leaflets and booklets is estimated to be around £45,000. HSE has commissioned several research projects on likely WBV exposures in collaboration with key industry sectors. Research costs for these projects are estimated at around £300,000 and are being funded from existing research budgets. These projects should be completed in the current financial year. The research findings will be important in minimising risk assessment costs to individual employers by providing simple "rule of thumb" WBV exposure assessment information for a wide range of industrial vehicle and machinery. The results will be made

available to employers through HSE's web site. In due course, we plan to bid for funds for research to evaluate the effectiveness of the Regulations. This research is expected also to be relevant to the evaluation of HSE's strategic programmes on vibration. The evaluation research is likely to cost in the region of £100K. All the costs to HSE which are described here will be accommodated within agreed budgets.

Environmental Implications

20. None

Other Implications

European Directives

21. The Regulations will implement European Directive 2002/44/EC. The Directive is required to be transposed into domestic legislation by 6 July 2005. The Vibration Regulations are expected to be made and laid by February 2005 and to come into force on 6 July 2005, with transitional periods for the exposure limit values until July 2010 (2014 for the WBV exposure limit value for agriculture and forestry sectors). The Directive will be transposed separately for sea transport (Maritime and Coastguard Agency lead), for Northern Ireland and for Gibraltar, based on the British Regulations.

Local Authority

22. Local Authority enforced premises will be covered by the Vibration Regulations. Local Authority Environmental Health Officers enforcing health and safety regulations will need to be trained on the new Vibration Regulations.

Devolution

23. The Regulations' powers are not devolved but the Scottish and Welsh devolved administrations have been consulted on them and will be kept informed of progress on their introduction.

Small and medium sized enterprises.

24. All employers will be covered by the new Regulations, including SMEs. However, HSE's guidance will aim particularly to provide information and assistance which will help SMEs to comply with minimal cost in simple and practical ways.

Action

25. If the Commission approves the recommendations set out in Annex A and the amended draft Regulations set out in Annex C, arrangements will be made to send the draft Regulations to the Minister under cover of a letter from the Chairman together with a submission from the Executive, a synopsis of the Regulations, a copy of the Regulatory Impact Assessment and an Explanatory Memorandum to Parliament. Submissions will also be made to the Parliamentary Committees on Statutory Instruments (the Joint Committee on Statutory Instruments and the Merits Committee). The HSE Solicitor and

the Parliamentary Relations Unit of the Department for Work and Pension will also be instructed to proceed with their work on making and laying the Regulations.