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HEALTH AND SAFETY COMMISSION

Proposals for the Control of Vibration Regulations

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Issue

1. Consultation on transposition of the Physical Agents (Vibration) Directive into UK law by Regulations under the HSW Act. Commission approval that the two consultative documents on hand-arm and whole-body vibration (attached) be published.

Timing

2. The Regulations must come into force by 6 July 2005. In order to maintain the timetable to meet this deadline it is essential that the consultative documents be published this year.

Recommendation

3. That the Commission approve the two consultative documents for publication.

Background

4. Paper HSC/02/128 advised the Commission of the coming into force of the Physical Agents (Vibration) Directive and covered a Ministerial submission setting out the Commission's plans for implementation. Papers HSC/98/212, MISC/20/99, MISC/31/99 and MISC/02/09 give the earlier background to the Directive.
5. The Physical Agents (Vibration) Directive came into force on 6 July 2002 when it was published in the Official Journal of the European Communities. The text of the Directive is set out at Annex 3 of each consultative document. Member States have three years to implement the Directive.
6. The attached consultative documents propose new Control of Vibration at Work Regulations (set out at Annex 1 of each consultative document) which will transpose the Directive in Great Britain in relation to all industries except for sea transport (subject to Merchant Shipping legislation). We are liaising with the authorities in Gibraltar and Northern Ireland, and with the Maritime and Coastguard Agency, to ensure the Directive is fully transposed in the area of UK responsibility.

7. At Annex 2 of each consultative document we have drawn up substantial draft guidance on the Regulations. The guidance offers employers advice on how the Regulations can be complied with through cost-effective control measures, and also provides more technical information for competent persons and occupational health professionals. The whole-body vibration guidance recognises that back pain has many causes and recommends a holistic approach addressing all factors rather than concentrating solely on vibration.
8. A wide range of industries and occupations are likely to be affected by the proposals, in particular agriculture, construction, mines and quarries, engineering, forestry, public utilities, shipbuilding, aviation and vehicle manufacture and repair. We consider that compliance with the Regulations should result in time in the virtual elimination of hand-arm vibration syndrome (currently a significant ill-health problem) while the whole-body provisions should contribute to a reduction in back pain and injury to industrial vehicle operators.

Ministerial Panel on Regulatory Accountability

9. Paper HSC/02/128 advised the Commission of the interest in the proposals expressed by this Ministerial Panel, which monitors Departmental initiatives to ensure that industry is not unduly burdened. Following three Ministerial submissions prepared by HSE, including a paper on detailed options and costings, the Panel has declared itself content with the development of the draft proposals and does not propose to make representations to the Commission.

Argument

10. The risks from HAV are well known and are covered by general health and safety legislation. HSE has published comprehensive guidance on the subject since 1994 including leaflets, booklets, case studies, a video and a CD-ROM. It also included HAV in its major national campaign "Good Health is Good Business". Furthermore, the Courts have, in recent years, awarded substantial and well publicised compensation payments for vibration white finger, most notably for ex-coal miners (estimated 165,000 miners at a cost of £3bn). Other substantial awards have been made to rail, gas and local authority employees. Industry can reasonably be said to be aware of the hazard and the need to control it. The new regulations will introduce a more strict exposure action value than is recommended in current HSE guidance and will also introduce a new exposure limit value. HSE believes the Regulations will give added impetus to employers' efforts to improve the control of this widespread hazard. They will also further stimulate equipment suppliers to develop lower vibration equipment and alternative working methods thereby helping with the primary aim of reducing or eliminating exposure at source.
11. The position with regard to whole-body vibration is quite different. While there has for some years been an understanding that there is a link between long term, high levels of exposure and lower back pain, there has also been (and there remains), a view that a dose/response relationship has not yet been established. This made it difficult for HSE, prior to the Vibration Directive, to recommend an action value (a level of exposure where the risks to health are clear and where action should be taken to control risks). In these circumstances HSE published a free leaflet on the subject in 1997 which gave general guidance on the likelihood of risks to health and

recommended practical controls which could be introduced, without specifying an action level.

12. The German Presidency's proposal for a Vibration Directive included a low WBV exposure limit value which would have placed severe and unjustified restrictions on employers' ability to operate industrial vehicles such as tractors, construction machinery and many other industrial machines. However, HSE were able to negotiate an exposure limit value around double the original proposal, which has broad industry acceptance. Additionally, the transitional periods negotiated for the exposure limit values will allow them to be deferred until 2010 (2014 for agriculture and forestry) in cases where it is impossible to get below it with current working methods and machinery.
13. While WBV's contribution to lower back pain as compared to other risk factors may be unclear, back pain is a major cause of sickness and absence from work. We believe these regulations may provide an opportunity to take concerted action on the main causes of back pain for industrial machinery/vehicle operators/drivers, ie manual handling, poor posture and ergonomics and exposure to WBV.
14. The consultative documents set out a number of key questions on which we particularly seek views. Most of these questions relate to the advice on compliance set out in the guidance, but a few describe implementation options inherent in the Directive. These latter are addressed below among other issues that the Commission may wish to consider.

Why are there two consultative documents for one set of Regulations?

15. We are proposing that there be separate guidance for hand-arm and whole-body vibration as the causes, risks and control measures are very different, as are the activities and industries affected. There are likely to be comparatively few firms who will wish to consult both guidance documents. Whether people want two sets of guidance is one of the questions we are asking of consultees. It therefore seemed logical to separate the consultations on each type of vibration. There would be no problem in combining the two consultative documents if the Commission so wished.

Why is the draft guidance so long?

16. There is no current legislation addressing vibration. Nevertheless exposure to both hand-arm and whole-body vibration is widespread. It is therefore important that employers and others have access to good and comprehensive advice on what they need, and do not need, to do to reduce risk. We have therefore based the guidance broadly on the well-received guidance on noise, another physical agent. This guidance on the Noise Regulations, "Reducing Noise at Work (L108)", incorporates detailed guidance for the employer and for the competent person.
17. The hand-arm vibration guidance replaces the existing HSE book "Hand-Arm Vibration (HSG88)", but we have had to add to that detailed guidance on the new Regulations, and have chosen to incorporate some case studies and some additional help on preparing risk assessments.
18. The whole-body vibration guidance recommends a holistic approach to back pain incorporating factors such as manual handling and posture. We are considering preparing separate guidance on back pain in drivers which will address all these factors and will use some of the whole-body vibration material in the consultative

document. The final guidance on the Regulations is likely therefore to be shorter than the consultative draft.

19. We have also included in the guidance on both types of vibration a summary for employers. This may be published as a separate free leaflet. One of the questions we are asking consultees is what their views are on the structure and content of the guidance.

Is there any “gold-plating” of the Directive?

20. Although the requirements of the Directive, as is the norm, do not apply to **the self-employed**, the Regulations, with the exception of the provision on health surveillance, do. This is in accordance with other Regulations addressing widespread health and safety issues. It is likely that many self-employed workers, particularly in the construction industry, use powered hand tools and may be at significant risk of ill-health, while many others may drive vehicles such as tractors across rough terrain.

21. The Directive allows for a **transitional period from the exposure limit value** where it is not possible to comply with it using equipment used before 2007. The transitional period finishes in 2010, but for the agriculture and forestry sectors not until 2014. This extra dispensation was negotiated because of the problems farmers face in driving their tractors for long periods for certain activities such as at harvest-time. There would appear, though, to be no reason for the extra dispensation for hand-arm vibration, and so we are proposing, in fairness to other sectors, to limit the extra agriculture and forestry transposition period to whole-body vibration. One of the questions we are asking is whether there is any need for the agriculture and forestry sectors to have an extra four years to comply with the hand-arm vibration exposure limit value.

Are there any other issues for consideration?

22. The Directive offers **two methods of defining the whole-body vibration exposure limit and exposure action values**. The argument is set out at paras 31-38 of the whole-body vibration consultative document. In an informal consultation on which method we should use (for the exposure action value only – there is a large measure of agreement on the exposure limit value) opinion was polarised. Similar divergent views have been expressed within HSE and we have therefore, unusually, offered both options in draft Regulation 4(2) and have specifically sought further views on the issue.
23. The Directive requires employers to assess exposure to whole-body vibration. Little data on typical exposures exist but, rather than require employers to undertake complex measurements, we are in discussions with industry groups (currently mining, quarrying and construction) to commission research to develop **generic risk assessments** of typical exposures on typical activities using typical vehicles, which employers can then adapt to their own circumstances. How far this can be taken will depend on the extent of HSE’s research budget – industry are prepared to offer the vehicles and manpower for testing but not the funds.
24. The Directive gives an entitlement to appropriate **health surveillance** to workers who are exposed in excess of the exposure action value. We have no problem with this for hand-arm vibration and are recommending a tiered system of health surveillance for workers regularly exposed above the exposure action value. However we do not consider that formal health surveillance is appropriate for

whole-body vibration because suitable methods do not exist for detecting the onset of back pain and even if they did the back pain could not be linked to whole-body vibration exposure alone. We are therefore suggesting (and seeking views on) a system of holistic health monitoring which will identify cases of back pain by self-reporting of symptoms and lead to action on any possible causative factors (see Part 5 of the whole-body vibration guidance).

Consultation

25. We suggest a consultation period of four months running from November 2003 to February 2004. A list of formal consultees is shown at the end of each consultative document. We have throughout the negotiating and implementation stages maintained informal contacts with industry and held several meetings with other government departments, Industry and Trade Unions. We will advise our own large consultation list of the publication of the consultative documents and where they can be obtained.

Presentation

26. We do not feel that the consultative documents will generate much interest outside the specialist health and safety media. There is no public concern about industrial exposure to vibration. However, during negotiations of the Directive some media comment, stirred up by the agriculture lobby, was critical of the potential impact of the whole-body vibration provisions. This criticism was directed towards Europe rather than the UK Government. The UK was successful in negotiating out the more onerous provisions in the draft directive to the extent that most observers now accept it, though the RIA still shows costs greatly outweighing benefits (see below). Uninformed and outdated criticism still emerges from time to time as an adjunct to more general attacks on HSE, but it is unlikely to be an issue in its own right.

Costs and Benefits

27. Updated RIAs are given at Annexes 4 and 5 respectively of the hand-arm and whole-body vibration consultative documents. The ratio of costs to benefits for hand-arm vibration is about even, but that for whole-body vibration ranges from 2:1 to 10:1. The upper value is slightly higher than in the last draft RIA because the Treasury have changed the basis for discounting costs and benefits, which has the effect of uprating costs more than benefits. The costs assume full compliance with the Regulations with a current base, in the case of whole-body vibration, of very little action to reduce exposure.

Financial/Resource Implications for HSE

28. Costs falling to HSE include:

- a) Further development of the Regulations and guidance
- b) Enforcement of the Regulations
- c) Research into generic risk assessments (see para 20).

It is expected that a) and b) can be undertaken using planned resources. Some funds (£30k) have been allocated provisionally from HSE's research budget for 2003-4 for item c).

Environmental Implications

29. None.

Other Implications

30. Local authorities. The Regulations would impact on areas enforced by local authorities and require training of environmental health officers.

31. Small and medium sized enterprises. Exposure to both hand-arm and whole-body vibration is experienced in businesses of all sizes and the Regulations will therefore place duties on SMEs. The RIAs include a section outlining the effect on SMEs.

32. Devolution: none.

Action

33. To approve the consultative documents for publication.