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HEALTH AND SAFETY COMMISSION

Work at Height Regulations

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Issue

1. Proposals for Work at Height Regulations (WAHR)

Timing

2. Urgent. These regulations will implement the Temporary Work at Height Directive (TWAHD), which should have been implemented by 19 July 2004. The HSC knows that the consultation exercise raised some challenging issues and preferred that the regulations should be fit for purpose even if this missed the EU designated implementation date.

Recommendation

3. The Commission is asked to:
 - Take decisions regarding the outstanding issues detailed at paragraph 9, 14, 15 and Annex 0
 - Confirm that the proposals meet its regulatory objectives as set out in Paragraph 8 below; and
 - Resolve to delegate to the Chair the power to approve any final adjustments to the regulations in line with HSC's policies, and to advise Ministers about the Regulations accordingly.

Background

4. Falls from height are the biggest killer in the workplace and the second biggest cause of major injuries. Two thirds of these major injuries are the result of 'low falls' i.e. falls below 2m. This is the main driver behind the HSC's decision to press for a single set of

goal setting regulations on work at height for *all workers in all sectors across GB* and these Regulations are the centrepiece of the HSC's Falls from Height Programme. They also implement the TWAHD.

5. The draft regulations, generic guidance and the draft Regulatory Impact Assessment (RIA) were consulted upon between December 2003 and April 2004. An analysis of responses to the consultation questions is at Annex 1.

6. The consultation replies posed a number of challenging issues that were put back to the HSC for a strategic steer in July. In summary the outcomes agreed by the HSC were:

- To confirm the HSC's commitment for a single set of working at height regulations, particularly in the face of consultation feedback which suggested that copying existing regulations into the WAHR had caused some confusion;
- To endorse the need to protect specific existing construction industry standards for work at height within the goal-setting regulations;
- To reaffirm the HSC's commitment to allow two handed working on stepladders;
- A preliminary view on continuing to include adventure activity workers in these regulations; and
- To endorse HSE's recommendation, based on evidence from the consultation, not to continue with HSE produced generic guidance. Instead, any necessary sector specific guidance should come from industry, supported by an HSE-produced plain English commentary on the regulations.

7. With these strategic steers, HSE completed its analysis of the consultation comments informed by further internal and external stakeholder input. That analysis is set out in Annex 2. Revised draft regulations based on this analysis are at Annex 3. These are in 'mark-up mode' so Commissioners can see the changes made to the consultative draft. Unresolved issues for HSC's further consideration are highlighted separately in Annex 0.

Argument

8. The HSC is asked to decide whether the revised draft regulations (Annex 3):

- Meet its original regulatory objectives, and whether it still wishes these regulations to cover all workers in all sectors;
- Can contribute to communicating the HSC's message about risk assessment;
- Implement the TWAHD, as far as is practicable;
- Fairly reflect the views expressed in the consultation exercise; and
- Reflect adequately its intent over the treatment of the construction industry as expressed in July.

Regulatory Objectives

9. We believe that, with the strategic steer we were given in July, the revised regulations meet all the HSC's regulatory objectives. *The revised regulations bring together existing requirements for work at height into a single set of regulations, which are goal setting and risk based.* These regulations will implement the TWAHD and will help to underpin work to tackle a significant safety hazard. The consultation and publicity surrounding the development of these regulations has raised awareness across all industry of issues surrounding work at height. Anecdotal evidence suggests that good employers and suppliers of equipment are taking steps to anticipate the introduction of these regulations and there has, as a result, been a safety gain.

10. The HSC is asked to consider whether, in the light of consultation and further representations, it wishes to temper this objective to cover all workers and recommend to Ministers not to apply these regulations to workers in the adventure activity sector.

Communicating about risk assessment

11. Central to the HSC's strategy is the idea of sensible risk assessment. In essence Regulation 13 seeks to capture this idea. There are arguments for and against retaining this regulation (these are set out in Annex 0) and the HSC is asked for its advice.

Implementing the TWAHD

12. The draft regulations implement Directive 2001/45/EC, the 2nd amendment to the Work Equipment Directive. This has been achieved without goldplating or double banking requirements. At its meeting in July the HSC was advised that there might be a small risk of infraction proceedings regarding its approach to allow for two handed working from step ladders. Legal advice is now that the approach taken to implement this policy intent no longer presents such a risk.

Fairly reflecting the consultation exercise

13. Annex 2 outlines the recommendations arising from consultation. The responses to consultation were, in general, supportive of the approach taken. There were some detailed issues and particular sector concerns (the most significant being the application to adventure activities and to construction). We consider the revised regulations are a fair reflection of the views expressed both in the written responses to the consultation document and to the meetings held with specific stakeholders during and after consultation.

Treatment of Construction

14. The discussions at the 13 July HSC meeting provided a clear direction to maintain standards in the construction industry. The draft regulations propose that the prescriptive principles on height of guardrails etc. and inspection of working platforms should be carried over from the Construction (Health, Safety and Welfare) Regulations 1996. This approach has proved less easy in the case of toe boards and the HSC is asked to give the matter further consideration (details are in Annex 0).

15. Outside construction goal setting standards have been established. However, some parts of the industry remain concerned that the regulations do not specify the work equipment to be used above 2metres and argue this is a lowering of standards. (Again the details are in Annex 0.)

Consultation

16. These regulations have involved extensive consultation with a wide range of traditional and non-traditional stakeholders. HSE officials have attended many presentations on the road to implementation and have held many focused meetings with consultees. The extent of this consultation is detailed in Annex 1.

Presentation

17. We expect considerable interest in these Regulations and handling that interest will be an important part of any implementation strategy. Key ways of getting the message across include:

- Cascade training for all HSE/LA inspector (this can begin as soon as the Minister signs the Regulations)
- A plain English commentary on the regulations (this work can begin immediately after the Commission has agreed the regulations and be ready before they come into effect)
- Key messages to be used in presentations and press briefing to support duty holders in understanding requirements (these will be finalised after the regulations are agreed).

Costs and Benefits

18. The consultation provided additional information and guidance with which to refine the RIA. A revised RIA is at Annex 4. In summary the changes made are:

- The costs of familiarisation and training have risen to between £130m - £144m and between £19m - £56m. This has increased total costs arising from these regulations from £175m - £267m to £309m - £448m over the appraisal period;
- It has not been possible to quantify potential benefits, but the costs of major and over 3-day injuries have been included in the total cost of falls from height. This has now increased to £4,287m over the same period; and
- Benefits will balance costs if there is a reduction in the number of reportable injuries of between 7% and 10%.

Financial/Resource Implications for HSE

19. There will be some additional costs to HSE and LAs to familiarise inspectors with the new regulations (as there is every time new regulations come into effect). Depending on the outcome of the adventure activities issue, HSE has suggested there could be a number of regional gatherings for inspectors and adventure activity centre managers and staff to explain the regulations and how they will be enforced. HSE proposes to contract out the production of the plain English commentary on the regulations, for which resources are already agreed.

Environmental Implications

20. None – there will be no signs on mountains because of these Regulations, despite media reports to the contrary.

Other Implications

21. None

Action

22. The Commission agree the recommendations in Paragraph 3.

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ISSUES FOR FURTHER HSC CONSIDERATION

Main Paper Paragraph 9: Communicating about Risk Assessment

1. A key message of the HSC's Strategy is the need for sensible risk assessment. Regulation 13 is about pre use checks for the surfaces and fall protection features for places of work such as the surface and edge protection on a flat roof. It is intended to complement the requirements in Regulation 12. However it is not about a detailed inspection of these features more a visual check to ensure they are sound and that surfaces are safe to work on. In the case of anyone working at height where there is a risk they could fall it should be a sensible precaution.
2. A clear majority of respondees agreed that it was appropriate to check visually surfaces and fall protection measures etc prior to work at height being performed, but a significant minority including the emergency services thought that this would not be reasonably practicable in every case. Some also said the duties would be difficult to enforce as there was no requirement to record the inspection.
3. Paragraph 69 of Annex 2 explains that the duty has now been qualified by reasonably practicable in recognition of the practical difficulties of checking some places before they are used and also the term "inspect" has been changed to "check" to distinguish it from the inspections required for work equipment in Regulation 12. To make this duty truly enforceable it would be necessary for these checks to be recorded, however the benefit of such records compared to the additional burden presented would be difficult to justify.
4. Regulation 13 is not currently required by law and therefore HSC will wish to decide on the balance between a regulation that is strictly speaking not enforceable (unnecessary additional regulation – another theme in the strategy) and the opportunity Regulation 13 provides to send out important messages about the continuing need for sensible risk assessment and safety checks before starting work.
5. *The Commission is therefore asked to decide whether Regulation 13 should be retained or removed and instead promoted through guidance and communication as good practice.*

Main Paper Paragraph 14: Toe Boards Schedule 2 Paragraph 3.

6. The HSC agreed at its meeting in July to treat the construction industry as a special case and to allow specific requirements for work equipment in the Construction Health Safety and Welfare Regulations (CHSWR) to override the general goal setting approach of the WAHR. This has been achieved for guardrails and the inspection of working platforms.
7. An unanticipated issue has arisen in the case of toe boards and we are asking the HSC to revisit their decision.
8. In summary, there are different national/international standards for the minimum heights of toe boards. For scaffolding the standard is at least 150mm and for mobile elevated working platforms (MEWPs) 110 and 100 mm depending on the circumstances.

The same MEWP can be used on a construction site or off it. These different standards are generally not thought to be safety critical and so while the CHSWR sets 150mm as the minimum requirement for toe boards on construction sites it has not been rigorously enforced in the case of MEWPs.

9. The options are:

- i. To regulate for specific separate standards on construction sites and have a goal setting approach ('suitable and sufficient') in the rest of industry – in essence what you decided in July;
- ii. To regulate for a general suitable and sufficient standard intended to prevent the fall of persons or materials etc.

10. The standards may change over time but they are not significantly different to warrant separate treatment and should be a matter of sensible risk assessment based on particular circumstances. We believe these matters are best left for national/international standard making bodies and industry good practice rather than specific regulation – which if rigorously applied could involve substantial additional costs.

11. *We recommend a single regulation for toe boards, applied to all sectors, in which the criterion is 'suitable and sufficient height'. Does HSC agree?*

Main Paper Paragraph 15: 2 metre rule in construction

12. Some parts of the construction industry believe there is a need to enshrine the so-called '2 metre rule' for construction in the new WAHR. This is the requirement that where a person is liable to fall a distance of 2 metres certain precautions such as guardrails, should be used. In contrast the proposals are that where there is a risk of a fall these risks should be assessed and precautions taken to avoid or prevent the fall or to minimise the distance and/or consequences of a fall using the most appropriate work equipment to achieve these ends. Thus the new regulations prescribe goals rather than the type of work equipment.

13. This has created the concern that on the one hand employers would be required to have edge protection, or other precautions, even when workers are nominal distances above the ground and on the other hand that the removal of a specific reference to work equipment to prevent or arrest falls above 2 metres might lead to guardrails, nets or other fall protection measures not being used when they should. This argument has more to do with industry custom and practice than the law since the CHSWR has always had a requirement to prevent falls from any height. The Work at Height regulations retain this duty and do not represent a lowering of standards with respect to work above 2 metres. The same duty to prevent, or where this is not reasonably practicable to minimise the distance and consequences of falls still applies, it is only the work equipment necessary to achieve these ends that is not specified as this should be down to the risk assessment and what is reasonably practicable.

14. Simplicity and consistency with the past are important aspects in maintaining a safety culture. However in this case there are a number of other factors to consider:

- i. While the 2 metre rule has probably contributed to a reduction in 'high falls' there is no hard evidence to confirm this.

ii. Across all industries two thirds of major injuries are the result of falls below 2 metres (in construction just over half). There is a risk that a “two metre rule” could lead the construction industry to not give proper attention to the serious problem of low falls.

iii. A separate numeric standard for construction will undermine the risk based approach for the rest of industry

15. The Commission is invited to consider two options:

i. To re-introduce a 2 metre rule for construction

ii. To reaffirm its goal setting approach on this particular issue and apply it to all sectors.

16. *We recommend a goal setting approach for all sectors. Does HSC agree?*