

WORK AT HEIGHT REGULATIONS: CONSULTATION EXERCISE

The consultation process has proved invaluable in informing the further development of these Regulations and thinking about the need for guidance.

The results of the formal written consultation are set out in Part 1.

Part 2 describes some of the informal consultation with key stakeholder groups that has also taken place.

Part I: Report on Formal Written Consultation**Background**

1. The HSC agreed the draft regulatory package for consultation at its meeting on 11 November 2003.
2. A formal Consultation Document containing draft regulations, guidance and a copy of the Directive was launched on 4 December 2003. Consultation closed on 2 April 2004.
3. In addition to the formal consultation the policy section responsible, took every opportunity to attend meetings and give presentations about the Regulations as a way of gathering additional evidence from non-traditional stakeholders. Views of small business in particular were sought through research undertaken for HSE by AEA Technologies.

Formal Consultation Responses

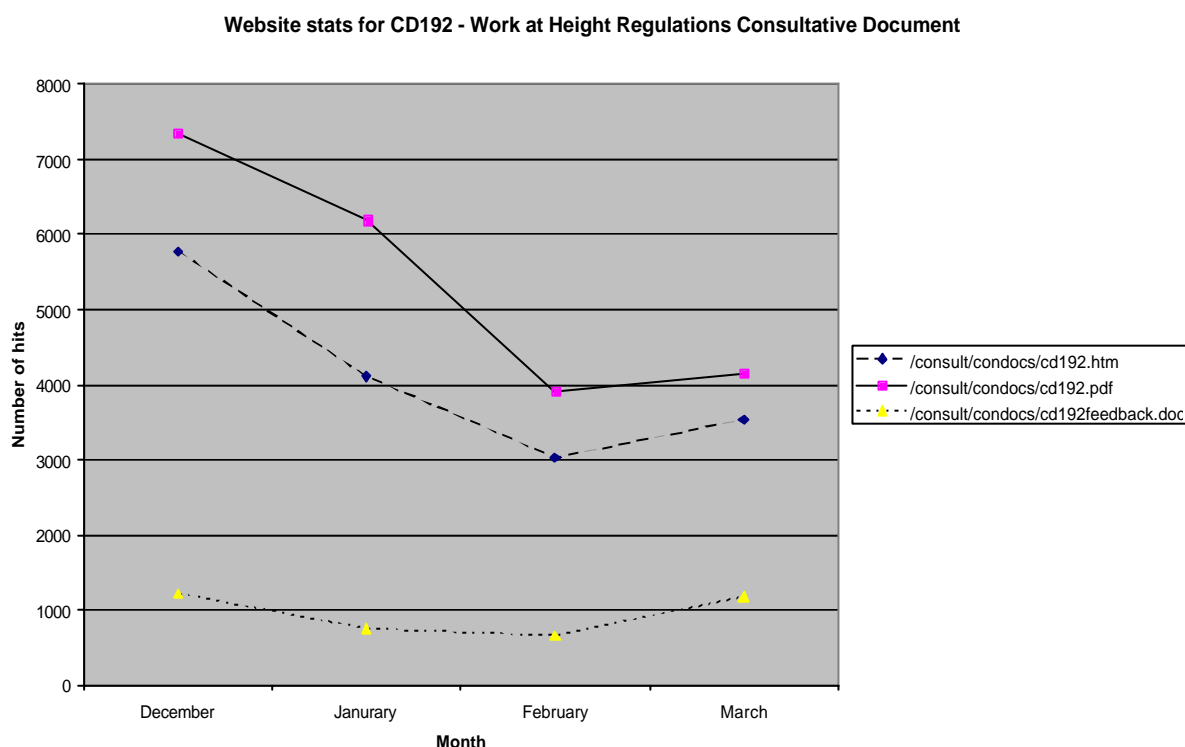
4. We received 751 responses. 408 of these came from individuals and organizations in the outdoor activity sector conducting a campaign against aspects of the Regulations and the inclusion of the sector's workforce altogether. For this reason the quantitative analysis of responses to consultation questions (part I) contains both gross results and results for adventure activity respondents only.
5. Comments received on the conduct of the consultation exercise have been included as part of a lessons learned report that will be circulated within HSE.
6. Respondents also had the opportunity to comment on the Regulatory Impact Assessment that formed part of the Consultation Document.

Summary of Quantitative Information from the Proposals for Work at Height Regulations Consultation CD 192 December 2003 – April 2004

General Health Warning

This analysis aims to give a quantitative flavour for what respondents said about the questions asked. But being response based all replies count as '1'. This means a reply from a well-known high street retailer employing many thousands of workers counts for '1' as does a reply from a self employed window cleaner.

The regulations attracted considerable interest as is shown in the following graph of internet 'hits' on HSE's web site which plot monthly the number of users looking at the consultation document and the electronic response forms.



Background on those responding

The total Number of respondents was 751 of which 408 were from the adventure activities sector. There were 90 requests for confidentiality. Details of numbers responding by size and sector are provided over page.

Numbers responding by size of company/organisation

Number of employees	Number of responses
1 – 5	65
6 – 10	16
11 – 25	42
26 – 50	26
51 – 100	18
101 – 500	45
Over 500	109
Not Known	430

Numbers Responding by Sectors

Sector	Numbers Responding
Adventure Activities	408
Agriculture	2
Chemical/Pharmaceutical	6
Communications	7
Construction	67
Distribution	9
Energy Industry	8
General Maintenance	1
Health and Safety Consultants	15
Inspection	1
Local and Central Government	42
Manufacturers/suppliers	24
Ports/Maritime	2
Retail	11
Rope Access Industry	6
Scaffolding Industry	3
Steeplejacks	1
Training Company	7
Window Cleaning	1
Other	65
Blank	65

General views on consultation exercise

In your view how well does the Consultation Document identify and address the key issues?

	Very Well	Well	Not Well	Poorly	No reply
All responses	46	159	46	72	428
Adventure activity sector	2	12	23	66	305

Quantitative detail of responses to questions in the Consultation document

Transitional Arrangements

Q1. Should any industries, groups or provisions relating to specific items of work equipment be subject to these transitional arrangements?

	Yes	No	Don't Know	No reply
All responses	482	70	45	154
Adventure activities	342	6	9	51

Regulation 2 – Interpretation

‘Work at Height’

Q2. Is the definition of ‘work at height’ clear?

	Very Clear	Clear	Don't Know	Unclear	Very Unclear	No reply
All responses	42	138	9	351	83	128
Adventure activities	6	7	2	291	58	44

‘Working platform’

Q3. Are the definitions about ‘working platforms’ set out in the Work at Height Regulations a) clear?

	Very Clear	Clear	Don't Know	Unclear	Very Unclear	No reply
All responses	44	150	22	63	16	456
Adventure activities	3	11	16	10	15	353

b) workable?

	Very Workable	Workable	Don't Know	Unworkable	Very Unworkable	No reply
All responses	15	150	48	51	21	466
Adventure activities	0	5	16	11	19	357

'Fragile Surfaces'

Q4. Do you agree that we have adopted the right approach to fragile surfaces?

	Yes	No	Don't Know	No reply
All responses	198	378	22	153
Adventure activities	4	349	4	51

Q5. Do you agree that we have adopted the right approach to Personal Fall Protection Systems?

	Yes	No	Don't Know	No reply
All responses	180	387	28	156
Adventure activities	5	354	2	47

Regulation 3 – Application

Q7. Do you agree that the WAHR should be applied offshore in the way proposed?

	Yes	No	Don't Know	No reply
All responses	117	67	116	451
Adventure activities	4	50	27	327

Regulation 4 – Organisation and Planning

Q9. We aim to encourage dutyholders to assess the ‘overall’ risk involved in working at height, for example by considering the risk of installing equipment for work at height as well as the risks of using it, by taking full account of the nature and duration of the work, by taking account of emergency and rescue situations and by taking a full range of technical solutions:

a) are our aims understood?; and

	Yes	No	Don't Know	No reply
All responses	562	33	9	147
Adventure activities	353	5	1	49

b) could they be made clearer?

	Yes	No	Don't Know	No reply
All responses	469	98	25	159
Adventure activities	342	8	2	56

‘Health and Medical Issues’

Q10. Should we say any more in the Guidance about a person’s physical capability for working at height?

	Yes	No	Don't Know	No reply
All responses	125	438	22	166
Adventure activities	6	342	1	59

Q11. Have we a) achieved a reasonable balance and

	Very Good Balance	Good Balance	Reasonable Balance	Poor Balance	Very Poor Balance	Don't Know	No reply
All responses	6	255	116	44	15	29	286
Adventure activities	1	198	16	5	2	10	176

b) gone into the right amount of detail on health and medical issues?

	Too much detail	Right amount of detail	Not enough detail	Don't know	No reply
All responses	9	304	112	32	294
Adventure activities	3	209	7	11	178

'Appropriate Supervision'

Q12. Should we say more about management of workers and the work process in the Guidance?

	Yes	No	Don't Know	No reply
All responses	450	119	14	168
Adventure activities	338	14	1	55

'Weather Conditions'

Q13. Have we given enough explanation about weather conditions and the effect they can have in the Guidance?

	Yes	No	Don't Know	No reply
All responses	178	409	14	150
Adventure activities	13	341	4	50

Regulation 5 – Competence

Q14. Can or should we attempt to define 'competence' in the Regulations?

	Yes	No	Don't Know	No reply
All responses	471	119	13	148
Adventure activities	340	10	1	57

Q15. Is the Guidance clear in its definition of 'competence'?

	Very Clear	Clear	Don't Know	Unclear	Very Unclear	No reply
All responses	33	139	14	183	49	333
Adventure activities	3	13	5	127	42	218

Q16. To what extent, if at all, should the definition of competence encompass consideration of a person's training and qualifications?

	Significantly	Moderately	Slightly	Not at all	No reply
All responses	205	61	17	9	459
Adventure activities	58	8	1	0	341

Regulation 6 – The hierarchy for controlling risks from Work at Height

Q17. Do you agree with the principles set out in the hierarchy in Reg. 6 – e.g. is there sufficient clarity on what is required of dutyholders?

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	No reply
All responses	50	150	19	301	75	156
Adventure activities	1	6	7	275	63	56

Q18. In the hierarchy is the meaning of a safe place of work for work at height, as defined in Schedule 1, clearly defined?

	Very Clear	Clear	Don't Know	Unclear	Very. Unclear	No reply
All responses	43	139	8	336	70	155
Adventure activities	2	9	1	279	63	54

Q19. Do we need to say more – without being over-prescriptive – about the type of equipment that should be used to meet each step of the hierarchy?

	Yes	No	Don't Know	No reply
All responses	69	528	10	144
Adventure activities	1	354	3	50

Regulation 7 – General principles for selection of work equipment for Work at Height

Q20. We would welcome your views on the proposed selection criteria (Regulations and Guidance), in particular:

- a) Will it ensure that the safest and most effective measures will be selected to perform work at height?

	Yes	No	Don't Know	No reply
All responses	134	416	40	161
Adventure activities	4	348	4	52

Is it clear where differing types of work equipment come into play when considering the hierarchy?

	Very Clear	Clear	Don't Know	Unclear	Very Unclear	No reply
All responses	16	139	17	348	68	163
Adventure activities	1	5	2	286	60	54

- c) Does it address the practicalities of performing work at height in all cases?

	Yes	No	Don't Know	No reply
All responses	98	462	30	161
Adventure activities	3	352	1	52

- d) Does the supporting Guidance illustrate adequately the various issues to consider when choosing different work equipment?

	Very Clear	Clear	Don't Know	Unclear	Very Unclear	No reply
All responses	21	128	23	86	65	428
Adventure activities	2	5	4	23	59	315

Regulation 9 – Fragile Surfaces

Q21. Are the Regulations too restrictive in insisting on coverings and other protective measures for fragile surfaces?

	Too Restrictive	Restrictive	Right Balance	Not Restrictive Enough	Don't Know	No reply
All responses	370	41	122	21	36	161
Adventure activities	346	2	3	1	3	53

Q22. Should duties concerning fragile surfaces be qualified by SFAIRP?

	Yes	No	Don't Know	No reply
All responses	452	103	41	155
Adventure activities	336	11	7	54

Regulation 12 – Inspection

Q23. Have we succeeded in making it clear what needs to be inspected and when in the Regulations and the Guidance?

	Very Clear	Clear	Don't Know	Unclear	Very Unclear	No reply
All responses	41	135	17	69	51	438
Adventure activities	6	10	9	15	43	325

Q24. Is it right that we drop the requirement in CHSWR for records of inspection of scaffolding to be kept for 3 months?

	Yes	No	Don't Know	No reply
All responses	83	89	86	493
Adventure activities	1	3	39	365

Q25. Is it right that only scaffolding, and not other working platforms such as MEWPs, should be subject to the requirement to be inspected every 7 days (as currently required in the Construction (Health, Safety and Welfare) Regulations 1996)?

	Yes	No	Don't Know	No reply
All responses	105	96	72	478
Adventure activities	4	2	40	362

Q26. Should the provisions governing the lifting of people using rope access and positioning equipment be removed from LOLER and placed in the WAHR?

	Yes	No	Don't Know	No reply
All responses	111	77	79	484
Adventure activities	6	14	33	355

Regulation 13 – Inspection of places of work at height

Q27. Do you agree that a duty to inspect visually the surface before work at height commences should be included in the Regulations? Is it practicable?

	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly Disagree	No reply
All responses	129	382	22	45	22	151
Adventure activities	46	290	4	5	10	53

Regulation 14 – Duties of persons at work

Q28. Is the proposed approach to the duties on persons at work acceptable?

	Yes	No	Don't Know	No reply
All responses	543	36	13	159
Adventure activities	341	6	3	58

Q29. Is it right that we place specific duties in the WAHR, rather than relying on the duties as stated in other legislation?

	Yes	No	Don't Know	No reply
All responses	208	360	20	163
Adventure activities	8	335	7	58

Regulation 15 – Exemption by the Health and Safety Executive

Q30. Should any group of people, type of premises, type of work equipment or class of activities be exempted from these Regulations?

	Yes	No	Don't Know	No reply
All responses	434	124	47	146
Adventure activities	358	2	2	46

Schedule 1 – Requirements for places of Work at Height

Q31. Are these requirements a) clear and

	Very Clear	Clear	Don't Know	Unclear	Very Unclear	No reply
All responses	44	157	8	312	60	170
Adventure activities	6	10	1	275	54	62

b) appropriate

	Very Appropriate	Appropriate	Don't Know	Inappropriate	Very Inappropriate	No reply
All responses	31	153	11	306	71	179
Adventure activities	2	3	2	271	62	68

Schedule 2 – Requirements for Guard-rails, etc.

Q32. Is it right that we should increase the minimum height of guard-rails to at least 950 mm?

	Yes	No	Don't Know	No reply
All responses	171	49	67	464
Adventure activities	3	10	36	359

Q33. Are the other specific measurements in this Schedule a) necessary; and

	Yes	No	Don't Know	No reply
All responses	164	34	67	486
Adventure activity sector	5	7	34	362

b) appropriate?

	Yes	No	Don't Know	No reply
All responses	148	48	66	489
Adventure activities	5	11	34	358

Schedule 3, Part 2 – Scaffolding

Q34. What would be the impact of having specific requirements for scaffolds?

	Positive	Negative	Don't Know	No reply
All responses	142	17	94	498
Adventure activities	7	1	35	365

Q35. Should we define 'scaffolding' in order to make it clear that this is meant to be covered?

	Yes	No	Don't Know	No reply
All responses	158	35	65	493
Adventure activities	9	0	33	366

Q36. Does the Guidance explain fully enough what is required in a scaffolding plan and when a plan is necessary?

	Very well explained	Well explained	Adequately explained	Poorly explained	Don't know	No reply
All responses	2	59	64	52	74	500
Adventure activities	0	1	2	3	35	367

Schedule 4 – Collective Fall Protection Systems

Q37. In the requirements for 'collective safeguards for arresting falls', do we need to include any more technical detail on these, in the Regulations or the Guidance?

	Yes	No	Don't Know	No reply
All responses	78	117	66	490
Adventure activities	7	6	33	362

Schedule 5 – Personal Fall Protection Systems

Q39. Should the Guidance give more examples to illustrate the systems that are referred to?

	Yes	No	Don't Know	No reply
All responses	425	53	84	189
Adventure activities	338	12	4	54

Schedule 6 – Ladders

Q41. Have we struck the right balance between deterring inappropriate use of ladders and accepting their practicalities and the fact that they are commonly used in a wide variety of situations?

	Very Good Balance	Good Balance	Average Balance	Poor Balance	Very Poor Balance	No reply
All responses	30	136	35	40	8	502
Adventure activities	2	7	6	2	3	388

Q42. Regarding the Guidance, should we say more about when it is appropriate to use, and the usefulness of, ladder stabilisation and ladder anti slip devices?

	Much more detail needed	Slightly more detail needed	Amount of detail about right	Less detail needed	Much less detail needed	No reply
All responses	45	70	114	4	4	514
Adventure activities	2	4	9	1	1	391

Q43. Is Schedule 6 of the Regulations appropriate for all types of ladders, including stepladders and fixed ladders?

	Very Appropriate	Appropriate	Don't Know	Inappropriate	Very Inappropriate	No reply
All responses	16	144	31	46	4	510
Adventure activities	1	9	9	0	1	388

Q44. Are the requirements for rest platforms on portable and fixed ladders still appropriate?

	Yes	No	Don't Know	No reply
All responses	146	35	53	517
Adventure activities	5	3	13	387

Part 2

Stakeholder engagement during consultation

1. From the outset these Regulations have attracted considerable interest from a diverse range of sources. This has involved HSE officials in a variety of meetings etc. in preparation for the HSC meeting. It includes presentations and meetings involving a wide cross section of stakeholders, at which feedback was encouraged. In all about 35 such events were attended.
2. HSE also commissioned research among small firms into their views on the Work at Height Regulations. Because of time constraints the number of small firms contacted was not large. Nevertheless, the evidence gathered is supportive of the overall thrust of recommendations in this paper.
3. This research also supports:
 - (a) The conclusions of analysis of formal responses that industry specific guidance is preferred to more generic guidance; and
 - (b) The evidence and anecdote from other sources that employers have in some cases already anticipated the introduction of the new Regulations, in particular in the selection of work equipment.
4. In addition to presentations and the research there have been discussions with particular sectors on specific issues.

Adventure Activities

5. This sector has objected to its inclusion in the WAH regulations as an issue of principle and practice. The sector believes its practices are safe, with high quality systems requiring continuous refresher training and underpinned by National Governing Bodies (NGBs) guidance. The sector's accident statistics tend to support this view. The sector is regulated for health and safety purposes by HSE/LAs; and parts are regulated also under the Adventure Activity Licensing Scheme. The sector sees its inclusion in the WAH regulations as 'regulation for regulation sake'.
6. Quite apart from the objection of principle the sector also had issues over the detail of the regulations. These led to media coverage about, for example, signs on mountains and scaffolds on cliff faces.
7. A meeting on 31 March 2004 succeeded in narrowing the gap on the matters of detail. HSE reaffirmed its support for the NGB approach to risk management. The, HSE inspector responsible for advising on enforcement at Activity Centres, has reassured the sector about the way the regulations might be enforced in detail.
8. HSE has identified and can recommend to HSC a way forward on the outstanding regulatory issue of substance - fragile surfaces in the natural environment (Reg. 9).
9. The NGBs will continue to play an essential part in developing and maintaining standards for safe working at height and are a natural ally for the HSC in this endeavour. In the course of discussions with the sector it is clear that the NGBs struggle to get funding from national sporting bodies because they 'do not win medals'. We believe it would help improve relations if HSC would write to the funding bodies to underline the importance of the NGBs in supporting its regulatory framework. Draft Letters will be provided if the HSC agrees.
10. HSE received some 408 written responses from this sector to the formal consultation exercise. Over 150 individual pieces of correspondence have been responded to mainly involving MPs and Ministers and 84 MPs also signed an Early

Day Motion critical of HSEs approach to implementation of the TWAHD. Jane Kennedy met MPs and representatives of the sector on 23 June 2004. As a result of that meeting there have been a number of submissions to the Minister on this issue. The possibility of an exemption is still being considered.

Construction

11. The risks created by this sector are in many respects at the heart of these regulations being generally the largest and most hazardous sector involved in working at height. A key issue, resolved at the HSC meeting in July, was how to accommodate sector specific requirements from the Construction Health Safety and Welfare Regulations within the goal-setting framework of these regulations. We believe we have now achieved the HSC's objective although the sector has some remaining concerns on the removal of the so-called two metre rule and the HSC is asked to advise on this (see Annex 0 and Annex 2). Whatever the outcome there is a need for direct communication of key messages of reassurance to ensure the requirements of the regulations are understood with respect to construction.

Emergency Services

12. The Fire Brigade and police remain concerned about the dynamic risks they can face in crisis situations when working at height e.g. where fire weakens flooring or makes fragile the surface on which fire-fighters operate or when the police are faced with quickly developing situations involving protestors for example. No amount of forward planning and training can cover all such contingencies. HSE met representatives of both sectors in June and were able to reassure them with respect to their concerns. Notwithstanding this it has been necessary to qualify the application of the requirements to fire, police and other emergency services in respect to weather conditions to allow them to operate in an emergency (see annex 2). Additionally we believe the approach, agreed by the HSC in July, of not issuing generic guidance but leaving it to sector specific guidance developed in partnership with HSE, is the most flexible way forward for these services.

Ladder manufacturers and users.

13. These two groups have had to deal with the implications of the draft regulations and late in the day the evidence from research commissioned by HSE into ladder stability devices. The research has helped to provide evidence for changes in the transposition of the original Directive. Because ladder use is ubiquitous to all parts of industry HSE aims to issue general guidance on ladder safety. A key message that needs to be regularly reiterated is that HSC/E is not banning ladders.

Retail Sector

14. Representatives from the **retail sector** sent in a number of very similar responses. In their view the regulations, were essentially intended for the construction industry. The Retail sector has a good safety record on falls and they felt they had little place in the new regulations. Moreover, the Sector had issues of detail concerning some practices and pieces of work equipment (e.g. stepladders, working platforms and inspection). We met the British Retail Consortium (BRC) on 10 June and have amended Schedule 6 to meet the sector's concerns over using stepladders. As explained to the HSC in July, the proposal meets the policy objective, set out in the CD, and legal advice is that the wording proposed accords with the requirements of the Directive. The sector's other issues have been raised by other respondents and are not dealt with here as sector specific. The sector is very supportive of the idea of producing its own work at height guidance.