

**WORK AT HEIGHT REGULATIONS – COMMENTS AND PROPOSALS**

All comments on the draft Regulations were read more than once by the project team and any changes are the result of detailed consideration prompted by the consultation exercise. In some cases the changes are clearly attributable to comments received, from individuals or groups. Wherever possible these are acknowledged. Other changes have come about as a result of the interplay of different ideas that needed to be balanced one against the other. In these cases time and resource constraints mean that an audit trail is not provided.

**Regulation 1: Citation and Commencement**

1. This Regulation provides the title and date the Regulations come into force. This could be used to delay implementation through transitional arrangements for example.
2. The Directive, under Article 2, gives Member States the right to make use of a transitional period (of no longer than two years from 19 July 2004) in order to ease the introduction and implementation of the provisions in the Directive. The Directive suggests that this would be particularly relevant to small and medium sized enterprises (SMEs), which could use the period to implement the requirements relevant to them whilst spreading the associated costs over time.

**Comment**

3. A majority of those responding, both including and excluding the adventure activity sector, supported the idea of transitional arrangements (Q1). Most said the time would allow them to update equipment and management practises used for work at height.

**Argument**

4. The issue of updating equipment has been muddled by the requirement in the Regulations for guardrails etc. of a uniform height. Proposals are made to resolve this (– see below).
5. By and large, those employers regularly working at height already have management practises in place although these may need some updating and revision.
6. There is a risk that delay in implementation will lead employers to put off actions that they could otherwise take today. There is also anecdotal evidence that many employers have already anticipated the Regulations coming into force soon.

**Recommendation**

7. The HSC should not recommend a transitional period for these Regulations but rather HSE and LAs should, for the first year at least adopt a 'measured approach' to enforcement. This is consistent with the way in which other Directives

have been implemented. Moreover, it would maintain pressure on those sectors already familiar with work at heights but allow others a breathing space in which to bring procedures up to requirement. Such an approach would need the full cooperation of local authorities and be openly and consistently communicated.

### **Regulation 2: Interpretation**

8. This provides definitions of particular terms used in the regulations. The consultation document (CD) invited comment on four of these: (Q2) “work at height”, (Q3) “working platform” (Q4) “fragile surfaces” and (Q5) “personal fall protection systems”.

#### **Comment.**

9. Whilst virtually all of the adventure activities respondents reported that the definition of work at height was unclear, the majority of the other respondents reported that the definition was clear. However there were some concerns that the specific removal of 2 metres as a reference point for the use of work equipment, as set by the Construction Health Safety and Welfare Regulations 1996 (CHSWR), might require guard rails or fall arrest equipment below 2 metres while at the same time not specifying it above 2 metres.

10. Respondents generally felt that the definition of working platforms was clear and workable, except the retail sector that generally reported that the definition was unclear as it did not specifically include or exclude ladders. Several respondents also suggested that the disapplication to buildings or other permanent structures should be removed.

11. As with the definition of work at height, virtually all respondents from the adventure activities believed we had failed to adopt the right approach to fragile surface, whilst most other respondents thought our approach was correct. The same response pattern was recorded to the definition of Personal Fall Protection Systems.

#### **Argument**

12. Concerns were raised about the removal of the perceived “2 metre rule” as a result of the more general definition of work at height, especially from some of those involved in construction. On the one hand respondents were anxious that they would be required to have edge protection, or other precautions, even when workers were nominal distances above the ground and on the other hand respondents were anxious that the removal of a specific reference to use 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. The approach adopted by the regulations is goal setting and requires employers to adopt the safest method for the work with regard to the risk. Annex 0 asks the HSC to give a view on this approach. Whatever the case there is a communication issue that must be addressed to ensure duty holders are clear that, where there is a risk, precautions should be taken regardless of the height.

13. Some minor changes have been made to the definition of “line” to include wires and also to the meaning of “report” and “plan” to allow for these to be kept in an electronic fashion that is secure and accessible. The disapplication to buildings

or permanent structures has been removed from the definition of working platforms. There were a number of requests for definitions of various other items of work equipment, or for such equipment to be included in existing definitions. This has been resisted as too many or too detailed definitions might inhibit technological development. Questions regarding specific items of work equipment could be dealt with in others ways e.g. sector specific guidance.

### **Recommendation**

14. Amend Regulation 2 to clarify definitions where necessary.

### **Regulation 3: Application**

15. The draft Regulations applied to employers, the self-employed and persons in control of others at work to the extent of their control. Regulations 4-16 were not applied to the master and crew of a ship in respect of normal shipboard activities of the ship's crew and to places specified within certain other docks and fishing related regulations. And Regulation 11 was not to be applied to offshore installations and wells.

### **Comment**

16. The CD invited comment on the appropriateness of the duty holder application (Q6).

17. Respondents generally felt that the scope of the duties was correct but many, including construction and adventure activity respondents, asked for detailed clarification of how they would apply in practise. Most indicated that further guidance on this was needed.

18. Several construction respondents highlighted that in CHSWR the wording for similar duties included reference to "matters under his control" in addition to "persons under his control". They suggested that this was necessary to clarify the extent of duties an employer or self-employed person might have.

19. Several respondents from the construction sector and from the emergency services highlighted difficulties they sometimes have in establishing who is in control of premises they might have to enter.

20. Several respondents asked about the application of duties to ships and ships masters and crew in potential grey areas of enforcement.

21. Although there was a significant number of "don't knows", a majority of respondents agreed with the approach taken to the application of duties offshore (Q7).

### **Argument**

22. The issue raised by the construction sector of 'matters' and 'persons' under his control is we believe already addressed by the current wording of draft Regulation 3(3)(b) 'to any person ... in relation to work by a person under his control, to the extent of his control'. This will be picked up in the proposed commentary on the regulations.

23. We believe the question of the control of premises (for fire and police) is not best addressed by seeking to extend the scope of the regulations but dealt with, as now, by encouraging dynamic risk assessment and training so that workers can identify and deal with potential hazards as they arise. Sector specific guidance should be used to communicate this point.

24. The marine reference has been updated to reflect current good practise.

25. The offshore exemption from Regulation 11 remains as drafted.

#### **Recommendation**

26. Amend Regulation 3(4) to reflect current arrangements with respect to application to ships etc.

#### **Regulation 4: Organisation and Planning**

27. This regulation deals with the way employers should organize and plan work at height. The CD invited comment on both the regulations and guidance provided including Q8, on requirements in WAHR to organize and plan work at height; Q9, on whether our aims to encourage employers to assess the overall risk involved were understood and clear; Q10, on should we say more on a person's physical capability for WAH; Q11, on had we achieved the right balance for health and medical issues; Q12, on should we say more about appropriate supervision; and Q13, on if there was a sufficient explanation about weather conditions and their effect

#### **Comment**

28. Respondents generally agreed that the duty to organize and plan work at height was needed, even though it was already implicit in the Management of Health and Safety at Work Regulations. The majority of respondents said that the aim to encourage duty holders to assess the total risk from an operation was understood, but that our objective could be made clearer. The emergency services highlighted the fact that often their planning had to be carried out on the spot.

29. Those in the adventure activities sector said that we should not say more about a person's physical capability. However there was no clear consensus on whether we should say more, or not, about physical capabilities. Most respondees thought that there was the right amount of detail on health and medical issues.

30. The majority of respondees outside of adventure activities said that we have given enough explanation about weather conditions, whilst those involved with adventure activities felt we had not. The main concerns for the adventure activities sector was that instructors needed to train in adverse weather conditions to make the training realistic, and also it was not always possible to predict the weather conditions for the whole duration of time in the natural environment.

31. Fire, police and other emergency services commented that the requirement to avoid working in weather conditions that might jeopardise health and safety would present particular difficulties for them when acting in an emergency.

### **Argument**

32. The goal setting approach to organization and planning is generally acceptable. The requirement to only work at height when weather conditions do not jeopardise health and safety of the persons involved in the work is an absolute requirement. Precautions such as personal protective equipment can be used to ensure weather conditions do not jeopardise the health and safety of workers but there may be circumstances where weather conditions are such that no precautions can be taken to ensure this. However the fire, police or other emergency services might still need to act (despite the weather) to save life. Article 2 of the Framework Directive allows for a derogation to be given to fire, police and other emergency services in these circumstances and this is what is proposed here.

### **Recommendation**

33. New draft Regulation 4(4) should be added to reflect the need for emergency services to operate in extreme weather conditions in order to save life. This regulation is otherwise unchanged.

### **Regulation 5: Competence**

34. Draft Regulation 5 requires any person involved in work at height to be competent. The draft Regulations did not contain a definition of competence because it was expected that duty holders would wish to assess their own requirements for competency and ensure those carrying out the task had the instructions, skills, knowledge and experience necessary for the task in hand. Nevertheless, Q14 asked whether we can, or should, attempt to define 'competence' in the Regulations. And Questions 15 and 16 asked about the guidance provided on competence.

### **Comment**

35. Almost all adventure activity respondents replying to this question argued that competency should be defined in the Regulations. A majority of all other respondents agreed. Suggestions of how to define it included linking Regulation 5 with the definition of competence in the Management Regulations, other Regulations or British Standards.

36. There were clear sector divides as to whether competence should be defined with sectors not currently affected by work at height legislation being more opposed.

37. In detailed comments many respondents argued that the scope of the proposed Regulations was too broad to effectively define competence for all tasks covered.

### **Argument**

38. On reflection we believe that defining competence generically in these regulations runs the risk of being over-prescriptive in some cases and insufficient in others. Competency appears to be sufficiently well understood in the different contexts in which it applies. Any further elaboration of competency is better suited to sector specific guidance where the context will help expand a purpose.

## **Recommendation**

39. Draft Regulation 5 should not be changed.

## **Regulation 6: Avoidance of risks from work at height**

40. Regulation 6 is at the heart of these regulations. It sets out the hierarchy of avoid, prevent and mitigate falls from work at height. Q17 of the CD asked whether sufficient clarity had been provided on what was required of duty holders; Q18 asked if the meaning of a safe place of work at height as characterised in Schedule 1 is clearly understood.

## **Comment**

41. The majority of those responding from the adventure activities sector disagreed with the principles set out in the hierarchy, whilst outside of adventure activities most people agreed with these principles. This pattern was replicated in the reaction to whether the meaning of a safe place of work at height was clear. The vast majority of respondents reported that we don't need to say more about where each piece of work at height equipment fits within the hierarchy.

42. On the detail of the regulation respondents suggested that it would be beneficial to stress the importance of the risk assessment by moving it to the head of the regulation. And that it was not always possible to minimise the distance of a fall, and the important factor was to reduce the level of injury. Other respondents commented that it was not perfectly clear where ladders, PPE and stilts fit within the hierarchy, as they neither prevented nor mitigated against the effects of a fall. It was also commented that references to giving collective protective measures priority over personal protective measures did not need to be covered in both Regulation 6 and 7.

## **Argument**

43. Outside the adventure activities sector the hierarchy is broadly understood and accepted as good practise for working at height. The organization of the hierarchy has been clarified to make clear that where it is not reasonably practicable to avoid or prevent falls steps should be taken to minimise the distance and consequences of the fall and where it is not reasonably practicable to minimise the distance the consequences should still be addressed. Finally a lowest level to the hierarchy is included. This requires additional measures such as training etc to be taken where fall risks still remain. It is also agreed that the principle of collective protective measures over personal protective measures applies generally to the selection of work equipment and therefore the reference to it at the end of the hierarchy has been deleted and the similar reference in Reg 7 has been brought to the top of Reg 7.

## **Recommendation**

44. Amend Regulation 6 to clarify the hierarchy.

## **Regulation 7 General principles for selection of work equipment**

45. Regulation 7 of the Work at Height Regulations sets out criteria, which should be taken account of when selecting work equipment for work at height. These

criteria would be expected to form the basis of the risk assessment.

46. The CD asked (Q20) whether these criteria would ensure that the safest and most effective measures would be selected; whether it is clear where different types of work equipment come into play; and whether the regulation addressed the practicalities of performing work at height in all cases.

### **Comment**

47. Responses to these questions appear to have been strongly influenced by the treatment elsewhere in the Regulations of specific pieces of work equipment (e.g. ropes, ladders etc.).

48. Two thirds of Respondents outside adventure activities agreed that the general principles for the selection of work equipment would ensure that the most effective measures would be selected for work at height, and more than this felt the regulations and guidance were clear on how differing equipment came into play when considering the hierarchy. Adventure Activity respondents did not agree with this.

49. Less than half of non-adventure activity respondents said that the Regulations addressed the practicalities of performing work at height in all cases.

50. A small number of respondents argued that the reference to later provisions in Regulation 7(a)(viii) seemed odd since matters like weather conditions mentioned earlier in the Regulations should also form part of any risk assessment. It was repeatedly mentioned that it was not possible to have “passage without risk”, as required by Regulation 7(2)(a)(ii). The Directive 4.1.1 requires that the dimensions of the work equipment must “allow passage without danger”, and that “decks or gangways must not give rise to any additional risks of falling”.

### **Argument**

51. Generally the principles for risk assessment are understood and accepted. Even those adventure activity representatives involved with the joint paper agreed that they could work with the provisions of Regulation 7, although they had reservations generally about the regulations. Where the requirements do not reflect the practicalities of working at height we believe this reflects sector specific concerns that can be addressed by guidance. We agree that earlier provisions (as well as later) are relevant to the risk assessment and this should be clarified in the regulations. “Danger” is not regarded as a lesser test than “risk” which is the expression we tend to use in regulation. It should also be achievable for work equipment to have dimensions, which “allow passage without risk”, even if events intervene to create a risk.

### **Recommendation**

52. Regulation 7 to be amended to make clear that all relevant provisions of the regulations should be considered when selecting work equipment. And as indicated at paragraph 43 above to make requirements to consider collective over personal the first consideration.

### **Regulation 8: Requirements for particular work equipment**

53. This regulation is mainly a legal device to draw into play the details in each of the schedules dealing with particular pieces of work equipment. No questions were asked about this regulation in the CD and respondents raised no significant issues. Apart from some minor drafting changes this regulation is therefore unchanged.

#### **Recommendation.**

54. Regulation 8 amended as shown.

### **Regulation 9: Fragile surfaces**

55. This regulation, essentially from the CHSWR, is not part of the Directive but deals with an important aspect of safe work at height. The CD asked whether (Q21) the regulations were too restrictive in insisting on coverings for fragile surfaces and whether duties should be qualified by "so far as is reasonably practicable" (SFAIRP) (Q22).

#### **Comment**

56. Achieving an appropriate balance for this regulation to all industry has posed a major challenge. The construction industry, from which it has come is acutely aware of the seriousness of this hazard and wanted no dilution in standards. At the same time absolute standards would create practical issues because of the degradation of materials over time, as a result of weathering, or fire. This issue poses major operational difficulties for the emergency services. The natural environment set other challenges because the outdoor activity industry exists (in part) to show how the hazards of snow, ice and scree can all be successfully managed.

#### **Argument**

57. Regulation 9 is intended to operate as a hierarchy of measures. However its current wording did not make this clear and made certain tasks practically impossible – even though they could be carried out safely provided necessary precautions were taken. The Regulation has therefore been recast to more clearly reflect a hierarchy and to overcome a specific issue for outdoor activities and others such as the emergency services, which unless qualified by 'SFAIRP' would have restricted a lot of their activities. The regulation has also been amended to recognize that where it is not reasonably practicable to provide signage to alert persons at work to the risks arising from fragile surfaces other measures should be taken to achieve this.

#### **Recommendation**

58. Amend Regulation 9 to reflect the hierarchical approach of avoid, prevent, minimise.

### **Regulation 10: Falling objects**

59. Regulation 10 deals with the consequences of objects falling from a height where a work activity is taking place. The CD asked no questions about Regulation 10, and it is proposed it remains unchanged in all essential respects.

### **Regulation 11: Danger areas**

60. Regulation 11 is from the Workplace Directive not TWAHD. It deals with protecting people from falls from height and falling objects, by preventing unauthorized access and ensuring these areas are clearly indicated. The CD asked no questions about Regulation 11, and it is proposed it remains unchanged.

### **Regulation 12: Inspection of work equipment**

61. This regulation is about ensuring equipment used for work at height is inspected regularly and a record of this inspection is retained. It carries over the existing inspection requirements of the Provision and Use of Work Equipment Regulations (PUWER), and some provisions of the CHSWR. Q23 asked if it was clear what was required to be inspected; (Q24) whether it was right to drop the CHSWR requirement to keep records of scaffolding inspections for 3 months; (Q25) whether it was right that only scaffolding, and not other working platforms should be inspected every 7 days; and whether inspection of equipment for lifting people using rope access should be covered by WAHR rather than the Lifting Operations and Lifting Equipment Regulations (LOLER) (Q25).

### **Comment**

62. Whilst the intention was to replicate the relevant requirements of PUWER and the CHSWR, it was clear from comments that this has not been achieved in a way, where people understand that the WAHR do not increase the inspection requirements for work equipment. For example some respondents were concerned that they would be forced to inspect a ladder, Mobile platform or rope in every position it was used, which is not the case.

63. There was an equal split in respondents who felt that it was right to drop the requirement to keep scaffolding inspection reports for 3 months, and those who felt it was not. However the vast majority of respondents did not answer this question. There was a similar split and response level for whether just scaffolding should be inspected weekly. From within construction there was overall support for retaining current arrangements for inspection.

64. There was a slight majority of respondents in favour of the requirements for the lifting of people to be removed from LOLER and placed in the WAHR.

### **Argument**

65. The re-drafting of Regulation 12 should make the transfer of the inspection requirements for equipment for work at height to these regulations easier to follow, and more clearly replicate the duties in PUWER, existing standards for construction should be retained and carried over to WAHR. The assumption that rope access working was subject to LOLER was a misinterpretation of LOLER and should be corrected through clear guidance and communication rather than addressed in these regulations.

### **Recommendation**

66. Amend Regulation 12 to more closely reflect duties in PUWER and to carry over inspection duties for working platforms from CHSWR.

### **Regulation 13: Inspection of places of work at height**

67. This regulation requires that every employer ensure that the surface to be worked on, and fall protection measures, of places of work at height are visually inspected before use. It is not part of the Directive. Q27 asked whether the duty to inspect visually the surface before work at height commences should be included in the Regulations.

#### **Comment**

68. Whilst a clear majority of respondents agreed that it was practicable to inspect visually surfaces & fall protection measures etc prior to work at height being performed, 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.

#### **Argument**

69. Whilst enforcement of this requirement could be an issue, it is common sense to visually check surfaces and protection measures before they are used. However, it was also recognized that the duties should be qualified by "so far as is reasonably practicable" and "check" rather than "inspect" to distinguish it from duties in Regulation 12. The HSC has been asked separately to consider whether it is necessary to retain this duty in the regulations or to rely on guidance/communication.

#### **Recommendation**

70. Amend Regulation 13 to include SFAIRP and the word "check" rather than "inspect". HSC is asked to advise on the general necessity for this duty to be included in regulation (Annex 0).

### **Regulation 14: Duties on persons at work**

71. Draft Regulation 14 is taken from the Management Regulations, and requires employees to report dangerous occurrences, and to use safety equipment provided. Q28 asked if the proposed approach to the duties on persons at work is acceptable, and if it is right to place specific duties in the WAHR regulations rather than rely on the duties in other legislation (Q29).

#### **Comment**

72. The majority of respondents believed that the duties on persons at work were acceptable. Although the majority of respondents from the adventure activities sector did not believe such duties should be placed in the WAHR. The majority other than those involved in adventure activities accepted this regulation as drafted.

#### **Recommendation**

73. Leave unchanged from the draft

### **Regulation 15: Exemption by the Health and Safety Executive**

74. This regulation is a standard form of words allowing exemptions to be made for those parts outside the Directive. Q30 asked if any group of people, type of premise, type of work equipment, or class of activity should be exempt from the regulations.

## **Comment**

75. The vast majority of those responding from the adventure activities sector believed that their sector should be exempt from these regulations. However, outside of adventure activities most respondents were not seeking an exemption for their sector. Although some did comment that the provisions for guardrail heights might present difficulties in some instances.

76. The adventure activities sector wanted an exemption from these regulations, as they perceive that the Directive was drawn up with the construction industry in mind, and therefore was not appropriate to their sector. Other respondents felt that the emergency services should be exempt, although most respondents involved in this sector did not feel that an exemption was necessary.

## **Argument**

77. The adventure activities sector's campaign is being considered by the Minister. The first amendment to the Use of Work Equipment Directive (95/63/EC) does allow for Member States to establish alternative procedures that achieve a level of safety corresponding to the objectives in the work at height directive. This would be relevant where due to national practise it was not possible to comply with the specific requirements of the Directive. HSE's discussions with representatives of the industry suggest that they are able to comply with all aspects of the Regulations that would affect them and therefore does not see a case for exemption.

78. The WAHR are intended as goal setting and so there should be very few instances where the dutyholders cannot comply with the regulations. In recognition of this it is currently proposed that any exemptions offered are limited to where the specific requirements for guardrails detailed in schedule 2 paragraph 3 cannot be met and HSE is satisfied that other steps have been taken to protect health and safety.

## **Recommendation**

79. Amend Regulation 15 to restrict exemptions to instances where provisions in schedule 2 paragraph 3 cannot be met.

## **Regulation 16: Exemption for the Armed Forces**

80. This regulation allows the Secretary of State for defence to issue an exemption from the WAHR for the armed forces. The MOD have advised that because many operations might increasingly involve a mixture of armed forces and civilian personnel the proposed wording of the exemption is no longer appropriate. It is therefore proposed that the wording be modified to reflect this.

## **Recommendation**

81. Amend Regulation 16 as shown.

## **Regulations, 17, 18 and 19**

82. These regulations dealt with amendments to other regulations. No comments were made on them, and they remain unchanged.

## **SCHEDULES**

### **Schedule 1: Requirements for existing places of work and means of access or egress at height**

83. This schedule sets out the criteria, which should be met by any place of work at height if it is to be considered safe. Existing places of work are not mentioned in the directive, but are the equivalent to the term “suitable surface” which does appear in the Directive and is also relevant to the Regulation 6 hierarchy. Q31 asked if these requirements are clear, and appropriate.

#### **Comment/Argument**

84. The majority of those responding from the adventure activities sector believed that the requirements for existing places of work were unclear and inappropriate. However, a significant number of respondents from the other sectors reported that these requirements were both clear and appropriate. Some detailed comments were made on the Regulations but these were more seeking clarification and can be dealt with through the plain English commentary which is proposed will accompany these regulations.

#### **Recommendation**

85. Schedule 1 should remain unchanged, except for some minor amendments to clarify duties.

### **Schedule 2: Requirements for guardrails etc.**

86. The requirements set out in Schedule 2 are drawn from the CHSWR. However different standards exist for the height of guardrails and toe boards in the Building Regulations, European Standards and the Workplace Regulations. The CD (Q32) asks if it is right that we should increase the minimum height of guardrails to at least 950mm, and (Q33) asks if the other specific measurements in the Schedule are necessary and appropriate.

#### **Comment**

87. Whilst a significant number of respondents, mostly from the adventure activities sector, did not answer Q32, the majority who did, agreed that we should increase the minimum guardrail height to 950mm. However a significant number commented that there was a potential conflict between these measurements and other standards for mobile platforms and tower scaffolds etc and also for building regulations. There might also be significant cost implications for adjusting fixed guardrails, etc. Most respondents did not answer Q33, those who did commented that the other specific measurements in Schedule 2 were necessary and appropriate.

#### **Argument**

88. Guardrails are an important safety component for working at height, especially in construction but elsewhere as well, and need to be suitable and sufficient to protect people from falls. However, there is already a range of statutory and standard based requirements for heights of guardrail and prescribing a minimum guardrail height could either jeopardise safety if too low, or lead to costs without a

safety benefit if too restrictive. What is actually required of edge protection in all cases is that it does the task for which it is intended, and is therefore of suitable and sufficient dimensions and strength to prevent falls. Such a stance would overcome concerns raised over retrospective changes.

89. However for the construction sector the HSC agreed that the regulations should maintain the specific measurements in CHSWR, except for guardrail heights, which should be increased to 950mm (in line with the outcome of consultation and European Standards). This has been done. However, this does not address circumstances where construction work is being carried out on sites with preexisting fixed guardrails at 910mm for example. A requirement to modify all fixed guardrails in these circumstances could not be justified on safety grounds and it is therefore proposed that a derogation be included for construction sites with guardrails fixed at the coming into force of these regulations.

90. For toeboards there are similar conflicting measurements, for example in CHSWR the requirement is for 150mm whereas for MEWPS and some tower scaffolds it can be 100mm. The primary purpose of a toeboard is to prevent the materials or objects such as tools etc being “kicked” off the working platform and injuring someone below. Therefore having suitable and sufficient edge protection for this purpose should meet this requirement. However, not to have the specific measurement might imply a slight lowering of standards. The HSC has been asked separately to consider this and to give a view (Annex 0).

#### **Recommendation**

91. The HSC is asked to advise on the wording of the duty as applied to toeboards.

### **Schedule 3 Requirements for working platforms**

#### **Schedule 3 Part 1 all working platforms**

92. Part 1 of this schedule sets out the requirements for all working platforms. No questions were asked on this part of the schedule. Some comments were made on the consistency of language between this schedule and schedule 1 and this has been revisited to ensure it is consistent where this is necessary.

#### **Recommendation**

93. Amend to ensure where necessary the language is consistent with Schedule 1.

#### **Schedule 3 Part 2: Scaffolding**

94. Part 2 of this schedule sets out the specific requirements for scaffolds, including grandstands and other structures made of scaffolding components. These requirements are based on the Directive. The CD asks (Q34) what the impact of having specific requirements for scaffolding would be, and (Q35) should scaffolding be defined.

#### **Comment**

95. The vast majority of respondees did not answer Q34. Generally those who did felt that having specific requirements for scaffolds would have a positive effect. A similar response pattern occurred for Q35. The majority was in favour of scaffolding

being defined. A number of construction industry respondents asked that the specific requirements for strength and stability calculations, retention of assembly plans and erection and dismantling under competent supervision and by trained personnel only should be extended to other forms of collective protection.

#### **Argument**

96. On balance we decided not to define scaffolding because the variety of applications and types and also potential for technological changes is such that any definition might inhibit further development. The particular additional requirements for scaffolding in Part 2 are taken necessarily from the Directive. They duplicate general requirements for strength and stability, planning and competency elsewhere in these regulations but also reflect specific risks relating to the dynamic nature of scaffolds. The general requirements already apply to all other forms of collective protection and there is no need to replicate them in the same way elsewhere in the Regulations.

#### **Recommendation**

97. No changes are proposed to this schedule.

#### **Schedule 4 Requirements for collective safeguards for arresting falls**

98. This schedule sets out the requirements for collective safeguards to arrest falls. These requirements are based on existing good practise, and the CHSWR. They are not part of the Directive. The CD asks (Q37) if we need to include any more technical detail in this schedule.

#### **Comment**

99. Whilst most respondees did not answer Q37, the majority who did believed that we did not need to include any more technical data on collective fall protection systems. In addition to the comments mentioned above suggestion that the specific requirements for scaffolding be extended to cover other collective safeguards, it was commented that collective fall arrest safeguards should only be used where persons have received adequate training especially to rescue people from the safeguard should they fall into it. The point was also made that collective fall arrest systems should only be used where a risk assessment had demonstrated that the task could be performed safely while using them and only where there was sufficient room for a clear zone.

#### **Argument**

100. It is accepted that collective safeguards should only be used when a risk assessment had demonstrated that the task could be performed safely, and where necessary there is sufficient room for a clear zone. It is also agreed that there is practical benefit in health and safety terms from making clear that persons using collective safeguards should be specifically trained in that safeguard including procedures for rescue, even though this is strictly speaking provided for under more general regulations. The text has been amended to reflect this.

#### **Recommendation**

101. Amend Schedule 4.

## **Schedule 5 Requirements for personal fall protection systems**

### **Schedule 5 Part 1: all personal fall protection systems**

102. This part of Schedule 5 deals with the requirements for all personal fall protection systems; they are based on Article 4.4 of the Directive. No questions were asked about this part of the schedule however internal discussions with technical experts in FOD have led to some minor changes.

#### **Recommendation**

103. Amend Schedule 5, part 1.

### **Schedule 5 Part 2: work positioning**

104. Part 2 of Schedule 5 details the requirements for work positioning systems. No questions were asked directly about this. The CD (Q38) asks for views on the applicability of the requirements of Parts 2 & 3 of the Schedule 5 to all work positioning systems in various industries.

#### **Comment**

105. Most of the responses to Question 38 concerned Schedule 5, Part 3. However, where Part 2 was specifically mentioned the comments concerned a lack of clarity of what Work Positioning Systems were and the content of the Schedule. Some respondents stated that the requirement for a physical back up system was not always practical although other precautions were taken to compensate.

#### **Argument**

106. It is accepted that it may not always be practicable to operate a back up system. The regulations have been revised to reflect this provided other suitable measures to protect health and safety are taken.

#### **Recommendation**

107. Amend Schedule 5, part 2.

### **Schedule 5 Part 3: rope access and positioning techniques**

108. Part 3 of the Schedule 5 concerns the requirements for rope access and positioning techniques. These requirements are taken from the Directive, but have been expanded following consultation with industry trade associations. The CD (Q38) asks for views on the applicability of the requirements of this part of the Schedule to all work positioning systems in various industries. Views on where the use of two ropes was more dangerous were also sought (Q40).

#### **Comment**

109. Most of the respondents to Q40, actually described fall arrest systems, rather than rope access. A few respondents reported that double rope working should always be used, whilst most respondents said that speed, entanglement, carrying additional weight and (in the case of adventure activities) not compromising the rock surface were reasons why single rope working was often safer, especially where rescue was involved.

110. It was suggested that we are not fully implementing the Directive, as Article 4.4(d) requires that for rope access and rope positioning work 'tools and other

accessories to be used by a worker must be secured to the worker's harness, or seat, or by some other appropriate means.'

### **Argument**

111. There has been no general call to revise this part of schedule 3. On the matter of tools and other accessories, whilst this schedule does not explicitly state that these should be secured, draft Regulation 10 does require that every employer take steps to prevent the fall of any material or object this would include all work at height and not just rope positioning techniques and this should ensure that Article 4.4(d) is implemented.

### **Recommendation**

112. Some minor changes are proposed to make the language clearer and to ensure that these requirements do not hinder future innovations.

113. Amend Schedule 5, part 3 as in Annex 2

### **Schedule 5 Part 4: fall arrest systems**

114. Schedule 5, part 4 gives the requirements for fall arrest systems. These requirements are not from the Directive. No questions were asked specifically about this part of Schedule 5 of the CD. Some minor drafting changes are proposed.

### **Recommendation**

115. Amend Schedule 5, part 4.

### **Schedule 5 Part 5: work restraint systems**

116. Part 5 of Schedule 5 details the requirements for work restraint systems. These requirements are existing good practise and not from the Directive. No questions were asked specifically about this part of Schedule 5 of the CD but the heading has been amended to be consistent with others in this schedule.

### **Recommendations**

117. Amend Schedule 5, part 5.

### **Schedule 6: Ladders**

118. Draft Schedule 6 was based upon the requirements outlined at paragraph 4.2 of the Directive. The Schedule also draws upon existing UK legislation, most notably Schedule 5 of CHSWR.

### **Comment**

119. A clear majority of respondents, with the exception of the retail sector, said that we had struck the right balance between deterring inappropriate use of ladders and accepting their practicalities and widespread use (Q41). Most thought draft Schedule 6 of the Regulations was appropriate for all types of ladder (Q43). There was a clear consensus that the requirements for rest platforms on both portable and fixed ladders remain appropriate (Q44).

120. There were specific comments that we should reflect the recently published research into ladder stability undertaken for HSE by Loughborough University.

121. The retail sector was unanimous in assessing the balance in the use of ladders as “poor” and in wanting to see stepladders treated separately from other types of ladder. Their principal concern was that the draft Schedule did not seem to allow for two-handed movement of bulky stock items because of the requirement for a safe handhold to be maintained.

122. Some ladder manufacturers/suppliers felt there is an inherent bias in the Schedule towards other access equipment, which in their view is not justified by the injury statistics.

### **Argument**

123. There is a requirement to ensure ladders are only used where a risk assessment has demonstrated the use of more suitable equipment is not justified etc. This reflects the wording of the Directive and is necessary to ensure ladders are used appropriately. The RIA deals in more detail with the ladder industry’s comments on the incident of injuries from ladders compared to other forms of access equipment.

### **Schedule 6.5 ‘feet’ and ‘effective stability devices’**

124. The draft regulation makes reference to preventing ‘the feet of a portable ladder from slipping’ in line with the Directive. However, the Loughborough research makes clear there are four ladder slip failure modes - base slip, top slip, flip and top contact. The research has also shown that there is no need to distinguish between anti-slip and effective stability devices.

125. Solicitor’s Office had advised that in removing the reference to ‘feet’ from the Regulations we would still be complying with the Directive. The question of whether such a change could lead to a charge of ‘gold plating’ was also addressed and this is one of a number of instances where we will have made provision which the Directive does not itself require, for sound health and safety reasons.

### **Schedule 6.10 Stepladders**

126. The HSC started the consultation with a strong positive statement in the CD that “It is not true ... that we will be absolutely preventing anyone from performing a two handed task from a stepladder”. HSC was advised at its meeting in July that this might be at odds with the Directive [4.2.3] that requires “Ladders must be used in such a way that a secure handhold and secure support are available to workers at all times. In particular, if a load has to be carried by hand on a ladder, it must not preclude the maintenance of a safe handhold”.

127. The retail sector argues that stepladders are not ladders but that flies in the face of European ladder standards. A suggestion was to create a separate schedule for stepladders but we believe that to do so would not be a satisfactory solution, as it would in virtually all respects mirror that for other ladders.

128. The HSC’s policy is clear that performing a two handed task from a stepladder can be performed safely and this should not be banned. Schedule 6.10 has been redrafted to reflect this policy. In drafting this requirement legal advice is that the approach taken meets the requirements of the Directive.

**Recommendation**

129. Draft Schedule 6.5 and 6.10 should be amended in line with the above arguments.

130. The ladder industries concerns should be dealt with through the communication strategy.

**Schedule 7: Particulars to be included in a report of inspection**

131. This schedule deals with the particulars to be included in a report of inspection for scaffolding and other working platforms in the construction sector. These requirements are not in the directive, but are taken from CHSWR. No questions were asked about this schedule and no substantive comments made.

**Recommendation**

132. Leave unchanged from the draft

**Schedule 8: Revocation of instruments**

133. Schedule 8 concerns the revocation of instruments, which will be superseded by the Work at Height Regulations. No questions were asked about this schedule in the CD.

**Recommendation**

133 Leave unchanged from the draft

**Comments on the draft Guidance**

134 A substantial number of comments were made on the draft guidance. The extensive nature of these comments confirmed that it would be difficult to prepare sufficiently comprehensive guidance to satisfy the wide range of industries and good practises that operate for work at height.

135 At its meeting on the 13 July the HSC agreed that rather than produce generic guidance on work at height a plain English commentary on the regulations should be produced and industries and sectors should be encouraged to produced or amend their own guidance on work at height to suit their needs.