

Health and Safety Commission Paper		HSC/05/11	
Meeting Date:	11 January 2005	Open Gov. Status:	Paragraphs 12, 15, Annex 3 & Part of Annex 4.1 and all of Annex 4.2 Fully Closed
Type of Paper:	For Discussion	Paper File Ref:	SPD/216/1000/03-02
Exemptions:	Paragraphs 12, 15, Annex 3 & 4.2		

HEALTH AND SAFETY COMMISSION

WORK AT HEIGHT REGULATIONS (WAHR)

**A Paper by Ian Greenwood, Band 2 and Robert Vaughan, Band 3
Falls from Height Policy Team**

Advisor(s): Elizabeth Gibby SCS

Cleared by Jane Willis Board Member on 20 December 2004

Issue

1. Further consideration of the remaining outstanding issues associated with these regulations, with a view to tendering formal advice to the Minister. The key issues are
 - The 2-Metre Rule for the Construction Industry;
 - Regulation 13;
 - Further consideration of a possible exemption for Adventure Activity Providers.

Timing

2. In the course of business.

Recommendation

3. The Commission should:
 - i. Not regulate for a '2m rule' for construction but instead go for guidance and a very strong steer from HSE on how to interpret the regulations.
 - ii. Decide on guidance rather than regulation on the issue of checking places of work at height (Reg 13)
 - iii. Recommend separate treatment for adventure activity providers so that the main body of the WAHR can come into force this Spring.

Background

A '2-metre rule' for the Construction Industry

4. The Commission's regulatory objectives for the first WAHR consultation were for 'goal setting' regulations covering all workers and all sectors. The consultation responses showed, despite these objectives, that some parts of the construction industry still wanted to see the retention of a 2m rule. The balance of judgement at the time, based on the analysis of replies was that despite support from some of the major construction organisations a '2m rule' for construction was at odds with the overall regulatory objectives. And that particularly in the light of the Commission's recently published Strategy a more appropriate way of handling the detail of this issue would be to encourage the industry to produce its own specific guidance.

5. The Commission in July re-endorsed an overall goal setting approach while conceding the need for more specific measures on, for example, guardrails to maintain standards in the construction industry.

6. Nonetheless some elements of the construction industry continued to press the case for the retention of the '2m rule'. In the circumstances the policy team felt it was only fair to return to the Commission in October to test the commitment to the overall goal setting approach. Commissioners received representations ahead of the Open meeting and, against HSE advice, were minded to support in principle a new regulation incorporating a 2m rule.

7. A new draft Regulation was drawn up and a short consultation launched on 25 October. It ended on 3 December, by which stage 475 comments had been received.

Checking Places of Work at Height (Regulation 13)

8. The Commission will recall its discussion at the Open meeting on this issue. At that point no decision was reached and the Commission agreed to revisit the issue before presenting final recommendations to the Minister. HSE offered no recommendation on the first occasion. On balance this time around we recommend withdrawing the regulation in favour of guidance.

Adventure Activity Providers

9. The Commission discussed this in July and again at its meeting in November. At neither meeting was a final decision taken but on both occasions the Commission was minded not to concede an exemption since the sense was that the sector could comply with the Regulations.

Argument

10. The outcome of the '**2m rule' consultation** makes it clear that this is a complex and divisive issue. The results of the consultation are set out in **Annex 1**. HSE's options appraisal, informed particularly by an assessment of which approach is more likely to deliver the PSA target, leads us to recommend guidance rather than Regulations.

11. The evidence to allow the Commission to balance the case for and against **Regulation 13** is set out in **Annex 2**.

12. ➔← **Exempt material**

Consultation

13. The following consultation has taken place on these 3 items:

- a. The **2 metre rule** has been subject to a 6 week consultation period followed by further internal discussion with Construction Division, HSE's Solicitor and informal discussion with industry representatives.
- b. **Regulation 13** was the subject of consultation between December 2003 and April 2004 and discussion by the Commission in October.
- c. The way forward on **adventure activity providers** has been the subject of very intensive discussions over a long period of time with the sector, the Minister, local authorities, HSE Solicitor and most recently the Cabinet Office's Regulatory Impact Unit.

Presentation

14. There is considerable interest in the outcome of the Commission's discussion of the 2m-rule and an exemption for adventure activity providers. Communications Directorate is preparing lines to take and these will be discussed with the Commission in the light of decisions taken.

Costs and Benefits

15. A reduction in falls accident of 7% -10% mean benefits will balance costs → ← **Exempt material**

Financial/Resource Implications for HSE

16. Inspector training and familiarisation with the Regulations are already programmed in even though timetabling has had to be altered. This, guidance on the 2m rule and publication of general web-based guidance on the new Regulations will cost an estimated £0.5 m.

Environmental Implications

17. None

Other Implications

18. The WAHR will be enforced also by local authorities. The more complex the Regulations the more time (and money) LAs will spend on training their enforcement officers.

Action

19. To:
 - o Take decisions on the 3 issues set out in Annexes 1, 2 and 3
 - o To note the further development of the Regulations in Annex 4.1.

Contact

'2M Rule' for the Construction Industry

Summary

At its October meeting the Commission agreed in principle to include a '2m rule' for the construction industry. This fuelled a substantial debate in the construction press that was reflected in replies received to the consultation exercise. The 6-week consultation ended on 3 December 2004 and the results are set out in Annex 1.1. Based on the consultation evidence and the advice of Construction Division (below) HSE reaffirms its original recommendation for goal setting regulations supplemented by industry specific guidance.

Recommendation

HSE does not recommend the insertion of a 2m rule into the WAHR for the construction industry. Instead there should be HSE guidance with a very strong steer on its enforcement expectations which can be developed and promulgated by the industry.

Background

1. At its Open meeting in October the Commission endorsed in principle the call by some parts of the construction industry for a '2 metre rule' that would negate the need for risk assessment at or above 2m.
2. The subsequent 6-week consultation exercise has been characterised by strongly expressed views, with both sides making use of the construction press to argue their cases.
3. This debate in the media stimulated a large response (475 replies and a 'petition' with 230 names) with each side commenting on the additional consultation. HSC/E has been accused of being 'nobbled' on one hand and 'dithering' on the other.
4. The analysis of consultation replies is at Annex 1.1. This does not give an unequivocal result.
5. Ahead of this latest discussion we have sought the views of the Construction Division. These are set out in paragraphs 14 - 20 below

Argument

Some basic numbers from the Consultation by way of background

6. Overall a ratio of about 5:4 respondents opposed the 2M rule. A petition organised by one company, containing 230 names, also opposed it (but they did say that if a rule was needed it should be a 1M rule). Of respondents who described themselves as 'working in or representing the Construction Industry' the ratio of those opposed narrowed to 6:5. Of those respondents who gave details of the sector in which they worked the ratio was about 50:50 for and against. Construction Industry Associations are against it about 5:3. The Trade Unions unanimously support it. Large employers (employing > 100) are more likely

to favour a 2m rule. Trainers were most likely to be in favour of a risk based approach and safety professionals broadly split 50:50.

7. 5 out of 6 respondents who answered the question said the 2M rule would have implications for other industries.

8. A number of separate 'write-in campaigns' have been operating in an attempt to influence the outcome of this consultation (from both the for and against camps) with obvious copying of the same material being submitted in other's names. There is nothing now that can be done about this, but the Commission may want to reflect at some stage in the future on the effect that such practices may have on the credibility of its consultations generally.

Summary of the arguments

9. **Those responding to the consultation in favour of a 2M rule** for construction point to: its long history, the strong need for prescription and simplified communication for an industry that responds best to 'command and control' style management. Regulation removes ambiguity, deters unscrupulous employers and so reduces risks to workers who work at height.

10. **Those responding to the consultation in favour of a risk-based approach** for construction point to: the fact that a duty to select the most suitable approach to safety is already here. Retaining a prescriptive approach in regulation undermined the principle of total risk assessment, stifles innovation and flexibility in safety and that the two-metre rule leads many to ignore risks below two-metres.

11. **Those working in industries other than construction responding about the effect of the 2m rule** on them. Significant numbers of those working in construction and elsewhere express concern about the impact on them (despite the fact that the 'rule' has been around so long). Others argue that what is good for construction should be good for everyone. However, the Commission would need to be very cautious about this argument because if it was minded to extend the 2m to all industries this will have significant cost implications and HSE would need to revisit the Regulatory Impact Assessment and gain clearance from Prime Minister's Panel for Regulatory Accountability.

12. **The effect of a 2m rule on the PSA1 target.** Falls from (any) height is the biggest cause of fatal injuries and one of the main causes of major injury. Significant reductions in the number of low falls (2119) is the only way the falls target can be met. Since the Construction Industry contribution to the total number of low falls is so significant (499 or 23%) the target won't be met unless the industry delivers. Running through the consultation evidence is a consistent theme that because of the 2m rule, employers 'take their eye off of low falls'. If that is the case then reintroducing the rule through the WAHR constitutes a very significant business risk for the delivery of PSA1.

13. A practical example of this issue emerged during the first week of the latest consultation. A designer/supplier of work equipment for the construction industry rang the policy team to say he had just lost an order. He was designing and supplying a 1.5m platform with guardrails to be used by plasterers. The customer in cancelling the order cited coverage of the Commission's Open meeting in Construction News under the headline "2m rule saved!" saying the kit was "no longer necessary".

The view of the Construction Division

14. The statistical picture, as shown below, suggests that for major injuries the majority of accidents relating to falls from height are under the 2-metre mark and this is an area that is relevant to the PSA targets.

Numbers of major injuries to employees in construction by kind of accident 1996/97-2002/03

Kind of Accident	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03
Falls from height	1126	1427	1600	1594	1588	1234	1217
Of which							
Up to and inc 2m	480	631	775	774	805	579	528
Over 2m	534	649	723	740	702	478	492
Height not stated	112	147	102	80	81	177	197

15. The consultation has confirmed the widespread lack of understanding of existing law. The current legislative framework requires that all falls should be prevented (sfarf). Below 2 metres how the risk is controlled is largely left to the duty holder. However once work takes place over 2 metres a prescriptive hierarchy of control is introduced that must be adhered to in order to manage the risk. A number within the industry interpret this as only ever having to take action at or above two metres. In our opinion it is this lack of understanding and failure correctly to interpret the hierarchy that has led to disharmony on this matter within the Construction Industry.

16. Nevertheless wording within the existing framework has, over time, led to improvements in compliance and standards. In recent years focussed and targeted effect by HSE, working in collaboration with the Industry has also led to innovation in safety technology and there is quite strong evidence about the improvements in performance, technical standards and reduction of high falls. However the drive from both sides is inspired not so much by what the law says but rather to tackle significant causes of major and other accidents. But the fact remains that a step change in culture and expectation has not been achieved across the Industry.

17. Setting aside our EU obligations to transpose the Directive, the question is how do we use the vehicle of the new Regulations to support the step change in culture and approach of the Industry on this issue. It is arguable whether effectively maintaining the 'Status Quo' will do that. HSE Inspectors are frequently challenged on construction sites by companies who adopt an approach that accepts the need to do something when working above two metres but believes that nothing is required below that level.

18. Due to the confusion held by sections of the industry on the two-metre rule, retention of it may well limit our ability to push forward the broader agenda on falls from height within the Construction Industry. There is a risk that low falls will not be tackled by the industry

and that a lot of positive work that has already been undertaken with the industry may lose momentum and support or that when the agenda is pressed, we are accused of 'Regulatory Creep'.

19. It is therefore not an issue of standards so much as one of perceptions about what these standards mean. The controversy over the two metre rule can therefore be used to our advantage by making a clear statement in revoking the two metre rule and establishing clear guidance setting out what is required in relation to the Regulations as well as expectations in relation to work over two metres.

20. The Construction Division supports the recommendation not to regulate for a two-metre rule within the Construction Industry for the reasons outlined above and is equipped to work closely with Industry to produce clear and transparent guidance on the Regulations as a whole and action to be taken at different heights.

A suggested way forward

21. There is a clear risk for HSC/E in regulating for a 2m rule in construction. Instead, HSE recommends guidance rather than regulation. An ACoP was considered during the options analysis but rejected because other than the 2m rule there seemed to be little of substance to include and expanding an ACoP for the sake of it, will only add to the time taken to produce it. Guidance could be quickly produced. This would be supported by a strong steer from HSE on how to interpret the regulations. Guidance fits the Robens' model and is in line with the Commission's Strategy. This guidance could also be the opportunity to emphasise the importance of low falls and ways of dealing with the risks involved. This approach is consistent with the view of the Construction Division.

Summary of Consultation Results

Explanation of the results

475 replies were received. Not everybody answered every question. Unanswered questions have been ignored for the sake of simplicity but this does mean that the number of responses to individual questions varies.

Introduction

1. This consultation was put together very quickly after the Commission's Open meeting. Nevertheless, because the issue was well trailed in the construction press this 6-week consultation attracted a significant amount of interest with 475 replies and a 'petition' with some 230 signatures.

2. The 'downside' was that others have clearly learned lessons from the adventure activity providers 'campaign' for exemption from the WAHR and a number of groups organised 'write in' campaigns to this consultation. This was clearly common knowledge outside HSE and could be a reputation management issue for future consultations. As one respondent put it:

"Rumours that this consultation process is influenced simply on the numbers and volume of responses you receive is having a detrimental effect on its credibility ..."

3. The consultation also raised passions on both sides:

"How pleased I am to see the HSE taking this positive stance and listening to the safety community."

"I will not comply with this regulation, or at least I would not bother to quote for smaller jobs therefore leave them to the cowboys. This type of regulation will be another example of knee jerk reaction which will have no effect on accident statistics or even constitute a retro-step."

"Stick to the proposed WAHR and remove this 2metre farce!"

"Get a backbone and implement some real initiatives to reduce fall from height and then drum cowboys out of our industry forever."

"Regulation 7(3) serves no purpose."

4. It is clear from the consultation exercise that a number within the industry do not understand the existing legislation on falls from height. Therefore whether they have fully appreciated what it is they have been consulted upon is not clear. This lack of

understanding and a failure to correctly interpret the original proposed hierarchy has led to disharmony on this matter within the industry.

Results

5. Question 1 (a) asked: ‘Do you support the introduction of a 2-metre rule for the construction industry?’

	‘Yes’	‘No’
Overall Response (451)	203	248
Of those responding who said they ‘worked in or represent the construction industry’	111	130
Those who identified the sector they worked in ‘construction’ or allied activities	72	68
Of the Construction Industry Associations responding	9	14

- o Large employers (employing > 100) were more likely to say ‘Yes’
- o While the CBI supported the 2m rule they also commented that: *“The matter can be dealt with by well communicated sector guidance supported by work practices and enforcement consistency.”*
- o There were 6 responses from the TUC/Trade Unions all of whom supported the 2m rule
- o Trainers most likely to be in favour of a risk based approach and safety professionals broadly split 50:50 with 92 no and 101 yes

6. Question 1 (b) asked: If Yes to 1(a), do you think Regulation 7(3) is workable in the construction industry?

	‘Yes’	‘No’
Overall Response (234)	157	77
Of those responding who said they ‘worked in or represent the construction industry’	97	49
Those who identified the sector they worked in ‘construction’ or allied activities	68	22
Of the Construction Industry Associations responding	8	2

- o Large employers (employing > 100) were more likely to say ‘Yes’

7. Question 1(c) invited those who said ‘No’ to Q1(b) to explain why the draft Regulation was unworkable. Either here or in answer to other questions we received just over 90 suggestions for alternatives to Reg. 7(3) – including 30 suggestions to do away with the

Regulation all together and replace it with ACOP/Guidance. However, a number of respondents suggested ways to simplify the Regulation and a simplified version has been presented to the Commission for its consideration.

8. The other part of Question 1 (c) asked respondents to explain how retention of the 2-metre rule will improve safety. A few respondents took issue with the question itself and recast it e.g.

“The question is not how the 2-metre rule would improve safety performance (since the rule exists) but what would happen if it was not there. By inference 1/3 of all injuries occur at heights over 2m and owing to the greater fall distance these are the ones more likely to have serious or fatal consequences. If there were no specific requirement for fall protection at 2m, then contractors would not provide it and since they are in a highly competitive market, safety standards would quickly fall across the board. Relying on the industry to regulate itself will not enhance safety standards since the probability is that many operators do not belong to or are regulated by a trade body, it is not sufficient to rely on a risk assessment to state whether handrails should be provided or not as no two risk assessments will be alike. The industry understands the 2m-rule (it is included in government promotion training schemes) and in a culture where men are accustomed to working at heights far greater than 2m, it is a useful starting point. Of rather more concern is why the 2m rule is not applied to all industries as some activities such as the erection of equipment for an adventure playground, may be argued as not being construction and slip through the net.”

9. Most of those who answered the question used the space to make the case for, or against the proposed Regulation – for example:

“I believe it is unnecessary rather than unworkable. All that is really required are competent safety advisors drawing up sensible procedures and employers appointing competent persons to manage, supervise and operate. This is just a ploy from an industry that still prefers to consider that it is different but really starts from the belief that a prescriptive rule fixes all problems.”

10. Question 2 (a) asked: Does the introduction of a 2-metre rule for the construction industry have implications for other industries/sectors?

	'Yes'	'No'
Overall Response (420)	351	69
Of those responding who said they 'worked in or represent the construction industry'	172	46
Those who identified the sector they worked in 'construction' or allied activities	89	33
Of the Construction Industry Associations responding	17	9

- o The 4 Trade Unions responding were equally divided on this question

- o Qualitatively there was a very wide range of opinions on the sort of effects the 2m-rule would have and this generally coincided with the respondents view – for or against – the 2m-rule.

For example:

“Adoption of the two-metre rule would place our industry at a direct commercial disadvantage”

“If it's good for construction, surely its good for everyone else!”

11. Despite the fact that the 2m-rule has been in existence in the construction industry so long and so widely applied there were almost 50 comments either expressing concern about the definition of ‘construction’ and whether this new regulation would affect them; or pointing out the problems associated for firms that serviced both construction and non-construction sites.

For example:

“Confusion for every other industry sector as they may claim not to be involved in construction so does therefore not apply to them.”

“Although we manufacture industrial machinery, we can get into the grey area of what could be "Construction work" when we go on site to install the machinery

“The question appears to be based on the concept that construction work can be seen as being ring fenced from other industrial activities. But this is not the case. The wide definition of construction work in CDM means that there are extensive overlaps”.

12. Overall the two sides of the case can perhaps be encapsulated in the following contributions from the Construction Confederation (‘Yes’) and the Access Industry Forum (‘No’)

Construction Confederation

Falls from height are the biggest killer in construction.

Fatalities from falls from heights are thankfully on a downward trend in construction under a regulatory framework that includes a clear threshold for action above 2m.

The underlying assumption made in the Regulations that a wholly goal-setting based approach to work at height will result in better performance in construction is fundamentally flawed, and fails to understand the prevailing realities in UK construction.

The industry understands and accepts the current requirement to provide controls, such as guard-rails, above 2m.

Construction also understands the requirement to work safely includes work below 2m, and as such the 2m rule does not have a detrimental effect upon work at lower heights.

Current poor performance on some sites below 2m merely reflects willingness amongst some to work to the lowest standards where the law is poorly defined. It does not reflect a lack of understanding of the risk due to any undue emphasis in the Construction (Health, Safety and Welfare) Regs. on work over 2m.

Without the 2m rule, the definition of work at height would be based upon an assessment of whether a 'person could fall a distance liable to cause personal injury' - this would allow disreputable employers to exploit the lack of a clear threshold for action in all cases. Contractors, particularly SMEs, who seek to protect their employees from the risk from work at height, would face greater competition from those happy to place their employees at risk.

The threshold for action would wholly depend on risk assessment, entailing extra paperwork and bureaucracy, rather than the consistent application of hard-won industry standards for safe work at height

The draft regulation 7 provided in this Consultation Document seems unduly ambiguous and subject to differences of interpretation. Whilst, it could be interpreted in a manner that is consistent with maintaining industry standards, there is a risk that it could be interpreted to require an absolute requirement for certain control measures, such as working platforms, when other measures such as airbags or nets are the most effective methods for a given task.

The guiding principle for HSE in responding to the needs of the construction sector should be that whenever work above 2m is carried out, this is by definition 'work at height'. Above 2m there should be a clear and unambiguous assumption that this is, in all cases, 'a distance liable to cause personal injury'. This would remove the risk of spurious assumptions about the likelihood of personal injury above 2m, and invoke all the relevant sections of the work at height regulations.

The inclusion of the '2m rule' should in effect act as a 'trigger' for the application of the regulation 6 hierarchy of controls, and all other relevant duties. The CC has no wish to see the introduction of an absolute duty to create a working platform for all work above 2 metres. What is essential is that it is clear to all that doing nothing above 2 metres, regardless of the risk assessment assumptions and outcomes, is not an option.

Access Industry Forum

We have noted, with great concern, the decision at this late stage to go back out to Industry for further Consultation on the above and are disappointed with the position taken by the Construction Confederation in particular (Construction News, October 21) regarding this decision. Our belief is that the decision is ill-founded and unnecessary and would cite the following reasons:

- 1) To support the introduction of a 2 metre rule into WAHR totally flies in the face of Principles of Goal Setting and Action based upon Risk Assessment. We understand these to be essential fundamentals of the new Regulations and, as an Access Industry, wholeheartedly support them.*
- 2) We have, over the past 8 years at least, worked closely with HSE, our Client Industries and the Trade Unions to establish and agree Best Practice in the provision of Working Platforms at height. The NASC SG4 guidance, IPAF Operator's Safety Guide, and PASMA Operator's Code of Practice are all recognised as being definitive sources of Best Practice in our respective sectors of the wider access industry. They have all undergone review and*

comprehensive revision in line with WAHR. Almost all of this valuable work has been based upon Goal Setting and Risk Assessment Principles mentioned above and support of the 2 metre rule would consign much of it to the shredder.

3) The alleged concerns of the Construction Confederation, that "lack of a 2 metre rule could see unscrupulous employers exploiting the freedom" is diametrically opposed to reality. It is well known that two thirds of fall injuries occur below 2 metres and any "exploitation" will result in this area and not the higher and more obvious areas, where Risk Assessment would indisputably demand the requisite protection.

4) One of the major benefits of WAHR is that they encompass all of industry and, as the provision of access to Work at Height also covers many Industry Sectors, a consistent approach in this area is essential. Can we really expect our operatives in the Access Industry to switch from one set of rules to another, perhaps on a daily basis, depending upon where they are working - we think not!! We cannot possibly satisfactorily train the access competence on this basis.

Members of the Access Industry Forum represent every sector of the Work at Height industry and include amongst their members manufacturers, hirers, contractors, and training organisations which comprise the major international, national, regional, and indeed local specialists in the provision of every conceivable method of working at height. Our members are, without doubt, at the forefront of Training, Competence Assessment, and Certification of Operatives within the Specialist Sectors and, with NASC managing the longest established Skill Card in the construction Industry, IPAF's PAL Card recognise internationally - with a delegate throughput in excess of 40,000 per annum, PASMA training in of 15,000 operatives per annum, and SAEME and FASET all operating NVQ based Skill Cards, we really do believe that the HSE should take cognisance of our knowledge and experience and reject the HSC recommendation to include Regulation 7 (3) in WAHR.

It is neither the standard nor the quality of the provision of Working at Height Platforms that causes fall injuries - is misuse by the users. We would suggest that the Construction Confederation leaves the assessment of Access requirements to the experts. As evidenced by the safety records and Annual Reports of members of the Access Industry Forum, we have a superior Record to the Construction Industry at large as well as being involved in the Petrochemical, Power, and Nuclear Industries where safety performance is much better than in the Construction Industry, which we believe is further evidence to accept our position on this matter. We would prefer that the Construction Industry join our other client industries in working with us to attain the goals set out in the WAHR instead of reverting to the anachronistic 2 metre rule which puts them out of step with the rest of British Industry, and which, instead of taking us forward, takes us two steps backwards

Regulation 13 (Checking places of work before use)

Introduction

1. At its Open meeting the Commission was asked to decide whether Regulation 13 should be retained or removed and instead promoted through guidance and communication as good practice. HSE offered no recommendation. After a full discussion the Commission was unable to reach a consensus but agreed to return to the matter at a later date.
2. Draft Regulation 13 requires that

Every employer shall so far as is reasonably practicable ensure that the surface and every parapet, permanent rail or other such fall protection measure of every place of work at height are checked on each occasion before the place is used.
3. A clear majority of respondees to the (first) consultation exercise agreed that it was sensible to visually scrutinize surfaces, permanent rails and similar fall protection measures prior to work at height being performed. However a significant number including the emergency services thought that this would not be reasonably practicable in every case. In addition many respondents commented that it would be difficult to enforce as there was no requirement to record what had happened and any requirement to do so would be very onerous and impractical (eg Construction Confederation, British Retail Consortium, CBI, Institute of Civil Engineers, Fire and Police). Several commentators suggested that the word “check” rather than “inspect” should be used to distinguish this duty, which is about work surfaces and permanent features, from that in Regulation 12 which is about inspecting work equipment.
4. In light of the consultation the duty in Regulation 13 was modified to reflect the concern that it is not always reasonably practicable to visually check surfaces and protection measures before they are used. Reference to “inspect” was changed to “checked” for the reasons given above.

Argument

5. Draft Regulation 13 is not required by the Directive and could be seen as gold plating. Additionally Regulation 13 does not require that the checks made are recorded and it would be burdensome to insist upon this.
6. As a statutory duty, Regulation 13 does send out an important message about the continuing need for sensible risk assessment and safety checks before starting work at height. But it can be argued that the duty is not strictly enforceable, in which case is it necessary to have it set out in regulation at all? Or, is this message promoted best through guidance and other communications on good practice.

Recommendation

7. The message about sensible risk assessment can be communicated without the need to regulate. Regulation 13 would not be enforceable and so on balance HSE recommends guidance not regulation.

Fully Closed under FoI and Open Government Provisions relating frankness of policy discussions and advice to Ministers

Adventure Activity Providers

Introduction

1. →← Exempt material

Regulations etc.

This Annex contains the following:

1. 4.1: Amended draft WAHR

The draft offers further minor revisions following internal discussions but the Regulations are directly comparable with the draft submitted to the Commission in October.

Depending on the Commission's decision's: re 2 metre rule for construction and adventure activity providers ahead of making separate regulations the following extracts would be added (or not) to bring the final regulations in line with the Commission's decisions:

2-Metre Rule (Reg 7)

In Regulation 7 Selection of Work Equipment for Work at Height, insert new Regulation 7(3) as follows:

Where work at height is construction work in which a person is liable to fall 2 metres or more, every employer shall select guardrails, toe boards, barriers or similar means of protection and, where necessary, working platforms, save where any such work equipment is not the most suitable work equipment

(a) ➔➤ Exempt material

 1 6 . 1 2 . 0 4 S T A T U T O R Y I N S T R U M E N T S

2005 No.**HEALTH AND SAFETY****The Work at Height Regulations 2005**

<i>Made</i> - - - -	2005
<i>Laid before Parliament</i>	2005
<i>Coming into force</i> - -	2005

ARRANGEMENT OF REGULATIONS

1. Citation and commencement
2. Interpretation
3. Application
4. Organisation and planning
5. Competence
6. Avoidance of risks from work at height
7. Selection of work equipment for work at height
8. Requirements for particular work equipment
9. Fragile surfaces
10. Falling objects
11. Danger areas
12. Inspection of work equipment
13. Inspection of places of work at height
14. Duties of persons at work
15. Exemption by the Health and Safety Executive
16. Exemption for the armed forces
17. Amendment of the Provision and Use of Work Equipment Regulations 1998
18. Repeal of section 24 of the Factories Act 1961
19. Revocation of instruments

SCHEDULE 1

Regulation 6(4)(a)

**REQUIREMENTS FOR EXISTING PLACES OF WORK AND MEANS OF ACCESS OR
EGRESS AT HEIGHT****SCHEDULE 2**

Regulation 8(a)

**REQUIREMENTS FOR GUARD-RAILS, TOE-BOARDS, BARRIERS AND SIMILAR MEANS
OF PROTECTION****SCHEDULE 3**

Regulation 8(b)

REQUIREMENTS FOR WORKING PLATFORMS

PART 1
REQUIREMENTS FOR ALL WORKING PLATFORMS

1. Interpretation
2. Condition of surfaces
3. Stability of supporting structure
4. Stability of working platforms
5. Safety on working platforms
6. Loading

PART 2
ADDITIONAL REQUIREMENTS FOR SCAFFOLDING

7. Additional requirements for scaffolding

SCHEDULE 4 Regulation 8(c)

REQUIREMENTS FOR COLLECTIVE SAFEGUARDS FOR ARRESTING FALLS

SCHEDULE 5 Regulation 8(d)

REQUIREMENTS FOR PERSONAL FALL PROTECTION SYSTEMS

PART 1

REQUIREMENTS FOR ALL PERSONAL FALL PROTECTION SYSTEMS

PART 2

ADDITIONAL REQUIREMENTS FOR WORK POSITIONING SYSTEMS

PART 3

ADDITIONAL REQUIREMENTS FOR ROPE ACCESS AND POSITIONING TECHNIQUES

PART 4

ADDITIONAL REQUIREMENTS FOR FALL ARREST SYSTEMS

PART 5

ADDITIONAL REQUIREMENTS FOR WORK RESTRAINT SYSTEMS

SCHEDULE 6 Regulation 8(e)

REQUIREMENTS FOR LADDERS

SCHEDULE 7 Regulation 12(7)

PARTICULARS TO BE INCLUDED IN A REPORT OF INSPECTION

SCHEDULE 8 Regulation 19

REVOCATION OF INSTRUMENTS

The Secretary of State, in the exercise of the powers conferred on him by sections 15(1), (2), (3)(a), (5)(b), (6)(a) and 82(3)(a) of, and paragraphs 1(1), (2) and (3), 9, 11, 14, 15(1) and 16 of Schedule 3 to, the Health and Safety at Work etc. Act 1974(1) (“the 1974 Act”) and for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission

(1) 1974 c.37. Sections 15 and 50 were amended by the Employment Protection Act 1975 (c.71) Schedule 15, paragraphs 6 and 16 respectively. The general purposes of Part I of the 1974 Act were extended by section 1(1) of the Offshore Safety Act 1992 (c.15). Section 51A was inserted by section 1, and sections 52 and 53 were amended by sections 2 and 6 respectively, of the Police (Health and Safety) Act 1997 (c.42).

under section 11(2)(d) of the 1974 Act, after the carrying out by the said Commission of consultations in accordance with section 50(3) of that Act, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Work at Height Regulations 2005 and shall come into force on 2005.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974;

“access” and “egress” include ascent and descent;

“fragile surface” means a surface which would be liable to fail if any reasonably foreseeable loading were to be applied to it;

“ladder” includes a fixed ladder and a stepladder;

“line” includes rope, wire, chain or webbing;

“the Management Regulations” means the Management of Health and Safety at Work Regulations 1999(2);

“personal fall protection system” means—

(a) a fall prevention, work restraint, work positioning, fall arrest or rescue system, other than a system in which the only safeguards are collective safeguards; or

(b) rope access and positioning techniques;

“suitable” means suitable in any respect which it is reasonably foreseeable will affect the safety of any person;

“work at height” means—

(c) work in any place, including a place at or below ground level;

(d) obtaining access to or egress from such place while at work, except by a staircase in a permanent workplace,

where, if measures required by these Regulations were not taken, a person could fall a distance liable to cause personal injury;

“work equipment” means any machinery, appliance, apparatus, tool or installation for use at work (whether exclusively or not) and includes anything to which regulation 8 and Schedules 2 to 6 apply;

“working platform”—

(e) means any platform used as a place of work or as a means of access to or egress from a place of work;

(f) includes any scaffold, suspended scaffold, cradle, mobile platform, trestle, gangway, gantry and stairway which is so used.

(2) S.I. 1999/3242.

(2) Any reference in these Regulations to the keeping of a report or copy of a report or plan shall include reference to its being kept in a form—

- (a) in which it is capable of being reproduced as a printed copy when required;
- (b) which is secure from loss or unauthorised interference.

Application

3.—(1) These Regulations shall apply—

- (a) in Great Britain; and
- (b) outside Great Britain as sections 1 to 59 and 80 to 82 of the 1974 Act apply by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2001⁽³⁾.

(2) The requirements imposed by these Regulations on an employer shall apply in relation to work—

- (a) by an employee of his; or
- (b) by any other person under his control, to the extent of his control.

(3) The requirements imposed by these Regulations on an employer shall also apply to—

- (a) a self-employed person, in relation to work—
 - (i) by him; or
 - (ii) by a person under his control, to the extent of his control; and
- (b) to any person other than a self-employed person, in relation to work by a person under his control, to the extent of his control.

(4) Regulations 4 to 16 of these Regulations shall not apply to or in relation to—

- (a) the master and crew of a ship, or to the employer of such persons, in respect of the normal ship-board activities of a ship's crew which—
 - (i) are carried out solely by the crew under the direction of the master; and
 - (ii) are not liable to expose persons at work other than the master and crew to a risk to their safety;

⁽³⁾ S.I. 2001/2127.

- (b) a place specified in regulation 7(6) of the Docks Regulations 1988⁽⁴⁾ where persons are engaged in dock operations; or
- (c) a place specified in regulation 5(3) of the Loading and Unloading of Fishing Vessels Regulations 1988⁽⁵⁾ where persons are engaged in fish loading processes.

(5) Regulation 11 of these Regulations shall not apply to an installation while regulation 12 of the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996⁽⁶⁾ apply to it.

(6) In this regulation “ship” includes every description of vessel used in navigation, other than a ship belonging to Her Majesty which forms part of Her Majesty’s Navy.

Organisation and planning

4.—(1) Every employer shall ensure that work at height is—

- (a) properly planned;
- (b) appropriately supervised; and
- (c) carried out in a manner which is so far as is reasonably practicable safe,

and that its planning includes the selection of work equipment in accordance with regulation 7.

(2) Reference in paragraph (1) to planning of work includes planning for emergencies and rescue.

(3) Every employer shall ensure that work at height is carried out only when the weather conditions do not jeopardise the health or safety of persons involved in the work.

(4) Paragraph (3) shall not apply where members of the police, fire, ambulance or other emergency services are acting in an emergency.

Competence

5. Every employer shall ensure that no person engages in any activity, including organisation, planning, and supervision, in relation to work at height or work equipment for use in such work unless he is competent to do so or, if being trained, is being supervised by a competent person.

⁽⁴⁾ S.I. 1988/1655, to which there are amendments not relevant to these Regulations.
⁽⁵⁾ S.I. 1988/1656.
⁽⁶⁾ S.I.1996/913.

Avoidance of risks from work at height

6.—(1) In identifying the measures required by this regulation, every employer shall take account of a risk assessment under regulation 3 of the Management Regulations.

(2) Every employer shall ensure that work is not carried out at height where it is reasonably practicable to carry out the work safely otherwise than at height.

(3) Where work is carried out at height, every employer shall take suitable and sufficient measures to prevent, so far as is reasonably practicable, any person falling a distance liable to cause personal injury.

(4) The measures required by paragraph (3) shall include—

(a) his ensuring that the work is carried out—

(i) from an existing place of work; or

(ii) (in the case of obtaining access or egress) using an existing means,

which complies with Schedule 1, where it is reasonably practicable to carry it out safely and under appropriate ergonomic conditions; and

(b) where it is not reasonably practicable for the work to be carried out in accordance with sub-paragraph (a), his providing sufficient work equipment for preventing, so far as is reasonably practicable, a fall occurring.

(5) Where the measures taken under paragraph (4) do not eliminate the risk of a fall occurring, every employer shall—

(a) take such suitable and sufficient measures as it is reasonably practicable to take, including, where suitable work equipment exists the provision of sufficient work equipment, to minimise—

(i) the distance and consequences; or

(ii) where it is not reasonably practicable to minimise the distance, the consequences,

of a fall; and

(b) without prejudice to the generality of paragraph (3), provide such additional training and instruction or take other additional suitable and sufficient measures to prevent, so far as is reasonably practicable, any person falling a distance liable to cause personal injury.

Selection of work equipment for work at height

7.—(1) Every employer, in selecting work equipment for use in work at height, shall—

- (a) give collective protection measures priority over personal protection measures; and
- (b) take account of—
 - (i) the working conditions and the risks to the safety of persons at the place where the work equipment is to be used;
 - (ii) in the case of work equipment for access and egress, the distance to be negotiated;
 - (iii) the distance and consequences of a potential fall;
 - (iv) the duration and frequency of use;
 - (v) the need for easy and timely evacuation and rescue in an emergency;
 - (vi) any additional risk posed by the use, installation or removal of that work equipment or by evacuation and rescue from it; and
 - (vii) the other provisions of these Regulations.

(2) An employer shall select work equipment for work at height which—

- (a) has characteristics including dimensions which—
 - (i) are appropriate to the nature of the work to be performed and the foreseeable loadings; and
 - (ii) allow passage without risk; and
- (b) is in other respects the most suitable work equipment, having regard in particular to the purposes specified in regulation 6.

Requirements for particular work equipment

8. Every employer shall ensure that, in the case of—

- (a) a guard-rail, toe-board, barrier or similar means of protection, Schedule 2 is complied with;
- (b) a working platform—
 - (i) Part 1 of Schedule 3 is complied with; and
 - (ii) where scaffolding is provided, Part 2 of Schedule 3 is also complied with;

- (c) a net, airbag or other collective safeguard for arresting falls which is not part of a personal fall protection system, Schedule 4 is complied with;
- (d) a personal fall protection system, Part 1 of Schedule 5 and—
 - (i) in the case of a work positioning system, Part 2 of Schedule 5;
 - (ii) in the case of rope access and positioning techniques, Part 3 of Schedule 5;
 - (iii) in the case of a fall arrest system, Part 4 of Schedule 5;
 - (iv) in the case of a work restraint system, Part 5 of Schedule 5,are complied with; and
- (e) a ladder, Schedule 6 is complied with.

Fragile surfaces

9.—(1) Every employer shall ensure that no person at work passes across or near, or works on, from or near, a fragile surface where it is reasonably practicable to carry out work safely and under appropriate ergonomic conditions without his doing so.

(2) Where it is not reasonably practicable to carry out work safely and under appropriate ergonomic conditions without passing across or near, or working on, from or near, a fragile surface, every employer shall—

- (a) ensure, so far as is reasonably practicable, that suitable and sufficient platforms, coverings, guard rails or similar means of support or protection are provided and used so that any foreseeable loading is supported by such supports or borne by such protection;
- (b) where a risk of a person at work falling remains despite the measures taken under the preceding provisions of this regulation, take suitable and sufficient measures to minimise the distances and consequences of his fall.

(3) Where any person at work may pass across or near, or work on, from or near, a fragile surface, every employer shall ensure that—

- (a) prominent warning notices are so far as is reasonably practicable affixed at the approach to the place where the fragile surface is situated; or
- (b) where that is not reasonably practicable, such persons are made aware of it by other means.

(4) Paragraph (3) shall not apply where members of the police, fire, ambulance or other emergency services are acting in an emergency.

Falling objects

10.—(1) Every employer shall, where necessary to prevent injury to any person, take suitable and sufficient steps to prevent, so far as is reasonably practicable, the fall of any material or object.

(2) Where it is not reasonably practicable to comply with the requirements of paragraph (1), every employer shall take suitable and sufficient steps to prevent any person being struck by any falling material or object which is liable to cause personal injury.

(3) Every employer shall ensure that no material or object is thrown or tipped from height in circumstances where it is liable to cause injury to any person.

(4) Every employer shall ensure that materials and objects are stored in such a way as to prevent risk to any person arising from the collapse, overturning or unintended movement of such materials or objects.

Danger areas

11. Without prejudice to the preceding requirements of these Regulations, every employer shall ensure that—

(a) where a workplace contains an area in which, owing to the nature of the work, there is a risk of any person at work—

(i) falling a distance; or

(ii) being struck by a falling object,

which is liable to cause personal injury, the workplace is so far as is reasonably practicable equipped with devices preventing unauthorised persons from entering such area; and

(b) such area is clearly indicated.

Inspection of work equipment

12.—(1) This regulation applies only to work equipment to which regulation 8 and Schedules 2 to 6 apply.

(2) Every employer shall ensure that, where the safety of work equipment depends on how it is installed or assembled, it is not used after installation or assembly in any position unless it has been inspected in that position.

(3) Every employer shall ensure that work equipment exposed to conditions causing deterioration which is liable to result in dangerous situations is inspected—

(a) at suitable intervals; and

(b) each time that exceptional circumstances which are liable to jeopardise the safety of the work equipment have occurred,

to ensure that health and safety conditions are maintained and that any deterioration can be detected and remedied in good time.

(4) Without prejudice to paragraph (2), every employer shall ensure that a working platform—

(a) used for construction work; and

(b) from which a person could fall 2 metres or more,

is not used in any position unless it has been inspected in that position or, in the case of a mobile working platform, inspected on the site, within the previous 7 days.

(5) Every employer shall ensure that no work equipment, other than lifting equipment to which the requirement in regulation 9(4) of the Lifting Equipment and Lifting Operations Regulations 1998⁽⁷⁾ (“LOLER”) applies—

(a) leaves his undertaking; or

(b) if obtained from the undertaking of another person, is used in his undertaking,

unless it is accompanied by physical evidence that the last inspection required to be carried out under this regulation has been carried out.

(6) Every employer shall ensure that the result of an inspection under this regulation is recorded and, subject to paragraph (8), kept until the next inspection under this regulation is recorded.

(7) A person carrying out an inspection of work equipment to which paragraph (4) applies shall—

(a) before the end of the working period within which the inspection is completed, prepare a report containing the particulars set out in Schedule 7; and

⁽⁷⁾ S.I.1998/2307, to which there are amendments not relevant to these Regulations.

(8) within 24 hours of completing the inspection, provide the report or a copy thereof to the person on whose behalf the inspection was carried out. An employer receiving a report or copy under paragraph (7) shall keep the report or a copy thereof—

- (a) at the site where the inspection was carried out until the construction work is completed; and
- (b) thereafter at an office of his for 3 months.

(9) Where a thorough examination has been made of lifting equipment under regulation 9 of LOLER—

- (a) it shall for the purposes of this regulation, other than paragraphs (7) and (8), be treated as an inspection of the lifting equipment; and
- (b) the making under regulation 10 of LOLER of a report of such examination shall for the purposes of paragraph (6) of this regulation be treated as the recording of the inspection.

(10) In this regulation—

- (a) “construction work” has the meaning assigned to it by regulation 2(1) of the Construction (Health, Safety and Welfare) Regulations 1996⁽⁸⁾;
- (b) “inspection”, subject to paragraph (9)—
 - (i) means such visual or more rigorous inspection by a competent person as is appropriate for safety purposes;
 - (ii) includes any testing appropriate for those purposes,and related expressions shall be construed accordingly.

Inspection of places of work at height

13. Every employer shall so far as is reasonably practicable ensure that the surface and every parapet, permanent rail or other such fall protection measure of every place of work at height are checked on each occasion before the place is used.

⁽⁸⁾ S.I.1996/1592, to which there are amendments not relevant to these Regulations.

Duties of persons at work

14.—(1) Every person shall, where working under the control of another person, report to that person any activity or defect relating to work at height which he knows is likely to endanger the safety of himself or another person.

(2) Every person shall use any work equipment or safety device provided to him for work at height by his employer, or by a person under whose control he works, in accordance with—

- (a) any training in the use of the work equipment or device concerned which have been received by him; and
- (b) the instructions respecting that use which have been provided to him by that employer or person in compliance with the requirements and prohibitions imposed upon that employer or person by or under the relevant statutory provisions.

Exemption by the Health and Safety Executive

15.—(1) Subject to paragraph (2), the Health and Safety Executive (“the Executive”) may, by a certificate in writing, exempt—

- (a) any person or class of persons;
- (b) any premises or class of premises;
- (c) any work equipment; or
- (d) any work activity,

from the requirements imposed by paragraph 3(a) and (c) of Schedule 2, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing.

(2) The Executive shall not grant any such exemption unless, having regard to the circumstances of the case and in particular to—

- (a) the conditions, if any, which it proposes to attach to the exemption; and
- (b) any other requirements imposed by or under any enactments which apply to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.

Exemption for the armed forces

16.—(1) Subject to paragraph (2), the Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt any person or class of persons from any requirement or prohibition imposed by these Regulations in respect of activities carried out in the interests of national security, and any such exemption may be granted subject to conditions and may be revoked by the Secretary of State by a certificate in writing at any time.

(2) The Secretary of State shall not grant any such exemption unless he is satisfied that the health and safety of the employees concerned are ensured as far as possible in the light of the objectives of these Regulations.

Amendment of the Provision and Use of Work Equipment Regulations 1998

17. There shall be added to regulation 6(5) of the Provision and Use of Work Equipment Regulations 1998⁽⁹⁾ the following sub-paragraph—

“(f) work equipment to which regulation 12 of the Work at Height Regulations 2005 applies”.

Repeal of section 24 of the Factories Act 1961

18. Section 24 of the Factories Act 1961⁽¹⁰⁾ is repealed.

Revocation of instruments

19. The instruments specified in column 1 of Schedule 8 are revoked to the extent specified in column 3 of that Schedule.

Signed by authority of the Secretary of State

2005

Name
Minister of State,
Department for Work and Pensions

⁽⁹⁾ S.I. 1998/2306, to which there are amendments not relevant to these Regulations.

⁽¹⁰⁾ 1961 c.34.

**REQUIREMENTS FOR EXISTING PLACES OF WORK AND MEANS OF
ACCESS OR EGRESS AT HEIGHT**

Every existing place of work or means of access or egress at height shall—

- (a) be stable and of sufficient strength and rigidity for the purpose for which it is intended to be or is being used;
- (b) where applicable, rest on a stable, sufficiently strong surface;
- (c) be of sufficient dimensions to permit the safe passage of persons and the safe use of any plant or materials required to be used and to provide a safe working area having regard to the work to be carried out there;
- (d) possess suitable and sufficient edge protection;
- (e) possess a surface which has no gap—
 - (i) through which a person could fall;
 - (ii) through which any material or object could fall and injure a person; or
 - (iii) giving rise to other risk of injury to any person, unless measures have been taken to protect persons against such risk;
- (f) be so constructed and used, and maintained in such condition, as to prevent, so far as is reasonably practicable—
 - (i) the risk of slipping or tripping; or
 - (ii) any person being caught between it and any adjacent structure;
- (g) where it has moving parts, be prevented by appropriate devices from moving inadvertently during work at height.

REQUIREMENTS FOR GUARD-RAILS, TOE-BOARDS, BARRIERS AND SIMILAR MEANS OF PROTECTION

1. Unless the context otherwise requires, any reference in this Schedule to means of protection is to a guard-rail, toe-board, barrier or similar means of protection.

2. Means of protection shall—

- (a) be of sufficient dimensions, of sufficient strength and rigidity for the purposes for which they are being used, and otherwise suitable;
- (b) be so placed, secured and used as to ensure, so far as is reasonably practicable, that they do not become accidentally displaced; and
- (c) be so placed as to prevent, so far as is practicable, the fall of any person, or of any material or object, from any place of work.

3. In relation to work at height involved in construction work to which the Construction (Health, Safety and Welfare) Regulations 1996 apply—

- (a) the top guard-rail or other similar means of protection shall be at least 950 millimetres or, in the case such means of protection already fixed at the coming into force of these Regulations, at least 910 millimetres above the edge from which any person is liable to fall;
- (b) toe-boards shall be suitable and sufficient to prevent the fall of any person, or any material or object, from any place of work; and
- (c) any intermediate guard-rail or similar means of protection shall be positioned so that any gap between it and other means of protection does not exceed 470 millimetres.

4. Any structure or part of a structure which supports means of protection or to which means of protection are attached shall be of sufficient strength and suitable for the purpose of such support or attachment.

5.—(1) Subject to sub-paragraph (2), there shall not be a lateral opening in means of protection save at a point of access to a ladder or stairway where an opening is necessary.

(2) Means of protection shall be removed only for the time and to the extent necessary to gain access or egress or for the performance of a particular task and shall be replaced as soon as practicable.

(3) The task shall not be performed while means of protection are removed unless effective compensatory safety measures are in place.

REQUIREMENTS FOR WORKING PLATFORMS

PART 1

REQUIREMENTS FOR ALL WORKING PLATFORMS

Interpretation

1. In this Schedule, “supporting structure” means any structure used for the purpose of supporting a working platform and includes any plant used for that purpose.

Condition of surfaces

2. Any surface upon which any supporting structure rests shall be stable, of sufficient strength and of suitable composition safely to support the supporting structure, the working platform and any loading intended to be placed on the working platform.

Stability of supporting structure

3. Any supporting structure shall—

- (a) be suitable and of sufficient strength and rigidity for the purpose for which it is being used;
- (b) in the case of a wheeled structure, be prevented by appropriate devices from moving inadvertently during work at height;
- (c) in other cases, be prevented from slipping by secure attachment to the bearing surface or to another structure, provision of an effective anti-slip device or by other means of equivalent effectiveness;
- (d) be stable while being erected, used and dismantled; and
- (e) when altered or modified, be so altered or modified as to ensure that it remains stable.

Stability of working platforms

4. A working platform shall—

- (a) be suitable and of sufficient strength and rigidity for the purpose or purposes for which it is intended to be used or is being used;
- (b) be so erected and used as to ensure that its components do not become accidentally displaced so as to endanger any person;

- (c) when altered or modified, be so altered or modified as to ensure that it remains stable; and
- (d) be dismantled in such a way as to prevent accidental displacement.

Safety on working platforms

5. A working platform shall—

- (a) be of sufficient dimensions to permit the safe passage of persons and the safe use of any plant or materials required to be used and to provide a safe working area having regard to the work being carried out there;
- (b) possess a suitable surface and, in particular, be so constructed that the surface of the working platform has no gap—
 - (i) through which a person could fall;
 - (ii) through which any material or object could fall and injure a person; or
 - (iii) giving rise to other risk of injury to any person, unless measures have been taken to protect persons against such risk; and
- (c) be so erected and used, and maintained in such condition, as to prevent, so far as is reasonably practicable—
 - (i) the risk of slipping or tripping; or
 - (ii) any person being caught between the working platform and any adjacent structure.

Loading

6. A working platform and any supporting structure shall not be loaded so as to give rise to a risk of collapse or to any deformation which could affect its safe use.

PART

ADDITIONAL REQUIREMENTS FOR SCAFFOLDING

Additional requirements for scaffolding

1. Strength and stability calculations for scaffolding shall be carried out unless—

- (a) a note of the calculations, covering the structural arrangements contemplated, is available; or
- (b) it is assembled in conformity with a generally recognised standard configuration.

2. Depending on the complexity of the scaffolding selected, an assembly, use and dismantling plan shall be drawn up by a competent person. This may be in the form of a standard plan, supplemented by items relating to specific details of the scaffolding in question.

3. A copy of the plan, including any instructions it may contain, shall be kept available for the use of persons concerned in the assembly, use, dismantling or alteration of scaffolding until it has been dismantled.

4. The dimensions, form and layout of scaffolding decks shall be appropriate to the nature of the work to be performed and suitable for the loads to be carried and permit work and passage in safety.

5. While a scaffold is not available for use, including during its assembly, dismantling or alteration, it shall be marked with general warning signs in accordance with the Health and Safety (Safety Signs and Signals) Regulations 1996⁽¹¹⁾ and be suitably delineated by physical means preventing access to the danger zone.

6. Scaffolding may be assembled, dismantled or significantly altered only under the supervision of a competent person and by persons who have received appropriate and specific training in the operations envisaged which addresses specific risks which the operations may entail and precautions to be taken, and more particularly in—

- (a) understanding of the plan for the assembly, dismantling or alteration of the scaffolding concerned;
- (b) safety during the assembly, dismantling or alteration of the scaffolding concerned;
- (c) measures to prevent the risk of persons, materials or objects falling;
- (d) safety measures in the event of changing weather conditions which could adversely affect the safety of the scaffolding concerned;
- (e) permissible loadings;

(2) any other risks which the assembly, dismantling or alteration of the scaffolding may entail.

⁽¹¹⁾ S.I. 1996/341.

SCHEDULE 4

Regulation 8(c)

REQUIREMENTS FOR COLLECTIVE SAFEGUARDS FOR ARRESTING FALLS

1. Any reference in this Schedule to a safeguard is to a collective safeguard for arresting falls.
2. A safeguard shall be used only if—
 - (a) a risk assessment has demonstrated that the work activity can so far as is reasonably practicable be performed safely while using it and without affecting its effectiveness;
 - (b) the use of other, safer work equipment is not reasonably practicable; and
 - (c) a sufficient number of available persons have received adequate training specific to the safeguard, including rescue procedures.
3. A safeguard shall be suitable and of sufficient strength to arrest safely the fall of any person who is liable to fall.
4. A safeguard shall—
 - (a) in the case of a safeguard which is designed to be attached, be securely attached to all the required anchors, and the anchors and the means of attachment thereto shall be suitable and of sufficient strength and stability for the purpose of safely supporting the foreseeable loading in arresting any fall and during any subsequent rescue;
 - (b) in the case of an airbag, landing mat or similar safeguard, be stable; and
 - (c) in the case of a safeguard which distorts in arresting a fall, afford sufficient clearance.
5. Suitable and sufficient steps shall be taken to ensure, so far as practicable, that in the event of a fall by any person the safeguard does not itself cause injury to that person.

REQUIREMENTS FOR PERSONAL FALL PROTECTION SYSTEMS

PART 1

REQUIREMENTS FOR ALL PERSONAL FALL PROTECTION SYSTEMS

1. A personal fall protection system shall be used only if—
 - (a) a risk assessment has demonstrated that—
 - (i) the work can so far as is reasonably practicable be performed safely while using that system; and
 - (ii) the use of other, safer work equipment is not reasonably practicable; and
 - (b) the user and a sufficient number of available persons have received adequate training specific to the operations envisaged, including rescue procedures.

2. A personal fall protection system shall —
 - (a) be suitable and of sufficient strength for the purposes for which it is being used having regard to the work being carried out and any foreseeable loading;
 - (b) where necessary, fit the user;
 - (c) be correctly fitted;
 - (d) be designed to minimise injury to the user and, where necessary, be adjusted to prevent the user falling or slipping from it, should a fall occur; and
 - (e) be so designed, installed and used as to prevent unplanned or uncontrolled movement of the user.

3. A personal fall protection system designed for use with an anchor shall be securely attached to at least one anchor, and each anchor and the means of attachment thereto shall be suitable and of sufficient strength and stability for the purpose of supporting any foreseeable loading.

4. Suitable and sufficient steps shall be taken to prevent any person falling or slipping from a personal fall protection system.

PART 2

ADDITIONAL REQUIREMENTS FOR WORK POSITIONING SYSTEMS

A work positioning system shall be used only if either—

- (a) the system includes a suitable backup system for preventing or arresting a fall; and
- (b) where the system includes a line as a backup system, the user is connected to it; or
- (c) where it is not reasonably practicable to comply with sub-paragraph (a), all practicable measures are taken to ensure that the work positioning system does not fail.

PART 3

ADDITIONAL REQUIREMENTS FOR ROPE ACCESS AND POSITIONING TECHNIQUES

1. A rope access or positioning technique shall be used only if—

- (a) subject to paragraph 3, it involves a system comprising at least two separately anchored lines, of which one (“the working line”) is used as a means of access, egress and support and the other is the safety line;
- (b) the user is provided with a suitable harness and is connected by it to the working line and the safety line;
- (c) the working line is equipped with safe means of ascent and descent and has a self-locking system to prevent the user falling should he lose control of his movements; and
- (d) the safety line is equipped with a mobile fall protection system which is connected to and travels with the user of the system.

2. Taking the risk assessment into account and depending in particular on the duration of the job and the ergonomic constraints, provision must be made for a seat with appropriate accessories.

3. The system may comprise a single rope where—

- (a) a risk assessment has demonstrated that the use of a second line would entail higher risk to persons; and
- (b) appropriate measures have been taken to ensure safety.

PART 4

ADDITIONAL REQUIREMENTS FOR FALL ARREST SYSTEMS

1. A fall arrest system shall incorporate a suitable means of absorbing energy and limiting the forces applied to the user’s body.

2. A fall arrest system shall not be used in a manner—

- (a) which involves the risk of a line being cut;
- (b) where its safe use requires a clear zone (allowing for any pendulum effect), which does not afford such zone; or
- (c) which otherwise inhibits its performance or renders its use unsafe.

PART 5

ADDITIONAL REQUIREMENTS FOR WORK RESTRAINT SYSTEMS

A work restraint system shall—

- (d) be so designed that, if used correctly, it prevents the user from getting into a position in which a fall can occur; and
- (e) be used correctly.

SCHEDULE 6

Regulation 8(e)

REQUIREMENTS FOR LADDERS

1. Every employer shall ensure that a ladder is used for work at height only if a risk assessment under regulation 3 of the Management Regulations has demonstrated that the use of more suitable work equipment is not justified because of the low risk and—

- (a) the short duration of use; or
- (b) existing features on site which he cannot alter.

2. Any surface upon which a ladder rests shall be stable, firm, of sufficient strength and of suitable composition safely to support the ladder so that its rungs or steps remain horizontal, and any loading intended to be placed on it.

3. A ladder shall be so positioned as to ensure its stability during use.

4. A suspended ladder shall be attached in a secure manner and so that, with the exception of a flexible ladder, it cannot be displaced and swinging is prevented.

5. A portable ladder shall be prevented from slipping during use by—

- (a) securing the stiles at or near their upper or lower ends;
- (b) an effective anti-slip or other effective stability device; or
- (c) any other arrangement of equivalent effectiveness.

6. A ladder used for access shall be long enough to protrude sufficiently above the place of landing to which it provides access, unless other measures have been taken to ensure a firm handhold.

7. No interlocking or extension ladder shall be used unless its sections are prevented from moving relative to each other while in use.

8. A mobile ladder shall be prevented from moving before it is stepped on.

9. Where a ladder or run of ladders rises a vertical distance of 9 metres or more above its base, there shall, where reasonably practicable, be provided at suitable intervals sufficient safe landing areas or rest platforms.

10. Every ladder shall be used in such a way that—

- (a) a secure handhold and secure support are always available to the user; and
- (b) the user can maintain a safe handhold when carrying a load unless, in the case of a step ladder, the maintenance of a handhold is not practicable when a load is carried, and a risk assessment under regulation 3 of the Management Regulations has demonstrated that the use of a stepladder is justified because of—
 - (i) the low risk; and
 - (ii) the short duration of use.

SCHEDULE 7

Regulation 12(7)

PARTICULARS TO BE INCLUDED IN A REPORT OF INSPECTION

1. The name and address of the person for whom the inspection was carried out.
2. The location of the work equipment inspected.
3. A description of the work equipment inspected.
4. The date and time of the inspection.
5. Details of any matter identified that could give rise to a risk to the health or safety of any person.
6. Details of any action taken as a result of any matter identified in paragraph 5.
7. Details of any further action considered necessary.
8. The name and position of the person making the report.

SCHEDULE 8

Regulation 19

REVOCATION OF INSTRUMENTS

<i>(1)</i> <i>Description of instrument</i>	<i>(2)</i> <i>Reference</i>	<i>(3)</i> <i>Extent of revocation</i>
The Shipbuilding and Ship-repairing Regulations 1960	S.I. 1960/1932, amended by S.I. 1983/644 and 1998/2307	Regulations 7 to 10 and 12 to 30
The Docks, Shipbuilding etc. (Metrication) Regulations 1983	S.I. 1983/644	In the Schedule the entries relating to regulations 9(1) and 17 to 28(c)
The Docks Regulations 1988	S.I. 1988/1655	Regulation 7(4) and (5); in regulation 7(6) the words “and (c) any other place not being a quay or jetty where any person working or passing might fall a distance of more than 2 metres”
The Loading and Unloading of Fishing Vessels Regulations 1988	S.I. 1988/1656	In regulation 5(3) the words “and (c) any other place not being a quay where any person working or passing might fall a distance of more than two metres”
The Workplace (Health, Safety and Welfare) Regulations 1992	S.I. 1992/3004	Regulation 13(1) to (4)
The Construction (Health, Safety and Welfare) Regulations 1996	S.I. 1996/1592	In regulation 2(1), the definitions of “fragile material”, “personal suspension equipment” and “working platform”; regulations 6 to 8; in regulation 29(2) the word “scaffold” in both instances; regulation 30(5) and (6)(a); Schedules 1 to 5; and the entry first mentioned in columns 1 and 2 of Schedule 7