

Health and Safety Executive Board		HSE/ 12 / 72	
Meeting Date:	26 September 2012	FOI Status:	Open
Type of Paper:	Above the line	Exemptions:	
TRIM Reference:	2012/361966		

## Review of the Work at Height Regulations 2005 and associated guidance

### Purpose of the paper

1. To update the Board on the findings from HSE's review of the Work at Height Regulations 2005 (WAHR) and associated guidance and to agree proposals to produce simplified clearer guidance rather than make changes to WAHR.

### Background

2. Falls from height remain one of the biggest causes of workplace fatalities. In 2011-12 there were 40 fatal falls (provisional figures), 25 of which occurred in construction.
3. The WAHR implement EU law and consolidate the vast majority of earlier GB work at height legislation into a single set of cross-cutting, goal setting regulations. They apply to all work at height activities across all sectors (approximately 10.5 million jobs and just over a million business enterprises). Previously, GB industry-specific legislative requirements to control work at height were included in construction, shipbuilding, docks and offshore regulations.
4. During his independent review Professor Löfstedt received a number of submissions expressing concerns with the way the WAHR are applied. His consequent recommendation for HSE was that; *'The Work at Height Regulations 2005 and the associated guidance should be reviewed by April 2013 to ensure that they do not lead to people going beyond what is either proportionate or beyond what the legislation was originally intended to cover'* and that *'any changes to the regulations should not result in an increased risk to employees or others'*.
5. Since the introduction of WAHR in 2005, HSE has produced 32 guidance publications primarily focused on aspects of working at height, as the preference at the time was for a range of sector specific guidance rather than a supporting ACoP. HSE expect its total number of publications to significantly reduce following completion of this review (details included in list at **Annex 1**).

### Review of WAHR findings and issues identified

6. In carrying out its review of WAHR and associated guidance, HSE has sought views from a wide and diverse range of businesses and other stakeholders including trade associations and worker representatives.

7. HSE has examined correspondence, press articles, accident trends and statistics, available research and enforcement data. We have also put questions to EU member states relating to their transposition of the Temporary Work at Height Directive 2001/45/EC (TWAHD). We have carried out interviews with HSE and Local Authority Enforcement Officers to seek their views on the practical application of and compliance with WAHR by duty holders and others.
8. Both Professor Löfstedt's review and the Red Tape Challenge (RTC) have provided opportunities for businesses and stakeholders to comment on WAHR. The RTC exercise concluded that HSE should review WAHR.
9. The Professor's report referenced an independent evaluation in 2007 that suggested only a small number of managers were able to correctly define work at height and few understood the regulatory requirements at that time.
10. The (Löfstedt) call for evidence attracted a total of 67 replies, of which 7% suggested further simplification of WAHR and 4% contended that WAHR went beyond what the original directive intended. However, 13% of respondents also specifically mentioned WAHR as regulations that have had a positive impact on health and safety outcomes.
11. The main concerns came from large retailers, the Institute of Directors (IoD) and the Federation of Small Businesses (FSB). They mentioned issues such as: the guidance being primarily aimed at construction; that WAHR inhibited activities such as window cleaning and basic maintenance by being too bureaucratic; the inclusion of stepladders as opposed to just traditional ladders going beyond the directive; and fear of litigation leading to excessive measures in the workplace.
12. Since 2005 there have been many examples of misleading press reporting and poor advice on this topic. More recently cases of 'over-zealous' application of WAHR have been addressed by the Myth Buster Challenge Panel.
13. In addition, there is anecdotal evidence of sub contractors finding that they are banned from using ladders on sites and premises. Some sub contractors claim they have to produce proof of ladder training as part of the conditions being laid down by the main contractor.
14. Evidence gathered from regulators suggests that it is micro/small businesses in the main that struggle to comply with the WAHR, with the 'hierarchy' (regulation 6) being cited as the regulation causing them most difficulty. As well as concerns among SMEs and self-employed, there are also issues for those working in construction (small sites), retail and warehousing, factories/manufacturing and tyre and exhaust workshops.
15. The National Federation of Roofing Contractors (NFRC), the National Federation of Builders (NFB) and the Painters and Decorators Association (PDA) all share the regulators' view that it is misinterpretation of the requirements and not the Regulations themselves that leads some of their members to go beyond what is necessary to comply. They also call for

improved communication of the requirements for the self-employed, and micro and small businesses.

16. The National Association Scaffolding Contractors (NASC) suggested the WAHR go further than the Directive, calling for the term 'competent' to be replaced with 'qualified'.

## **Argument**

17. The WAHR were highly controversial at the time they were being introduced. HSE allowed for full consideration of stakeholder concerns with WAHR prior to their introduction by undertaking a number of consultation exercises over a four year period.
18. Some requirements within the WAHR are not covered by the TWAHD but derive from pre HSWA legislation. These generally offer additional protection and maintain standards and the extensive, industry wide consultations provided support for the decision to enshrine these requirements in law at the time.
19. Evidence now gathered suggests that over the last seven years WAHR have now largely 'bedded-in' and there are many examples of good practice, particularly in high risk industries such as construction (e.g. demolition and steel erection).
20. Injuries due to falls have been declining steadily since 2005 across all industry sectors except for water, sewerage, waste and remediation (a relatively new industry grouping which reports fewer than 100 fall injuries per year). In the period from 2005/06 (introduction of WAHR) up to 2010/11: fatal falls reduced by 25%; major falls injuries by 12%; and over 3 day fall injuries by 20%.
21. The WAHR are one of the most enforced set of health and safety regulations with 16,771 notices served since 2005, of which 12186 (72%) were in construction (mostly smaller sites employing less than 25 workers), which suggests a lack of compliance rather than over compliance in certain areas. In discussions with regulatory inspectors, they saw the need for better guidance for SMEs and stronger enforcement. No suggestions were made for changes to the WAHR themselves.
22. Post publication of Professor Löfstedt's report, many organisations, including the Access Industry Forum (AIF), Institute of Occupational Safety (IOSH), trade unions and British Safety Council (BSC) have provided commentary or further evidence to reinforce the need for the protection the WAHR offer.

## **Conclusion**

23. HSE has concluded that where problems remain with the application of WAHR they arise from misinterpretation of the requirements of Regulations, rather than from the Regulations themselves. This misinterpretation leads some to 'go beyond' legal requirements, while others, such as contractors and insurers, appear to be demanding a greater level of compliance than strictly necessary in order, we think, to reduce the risk of civil litigation.

24. HSE's review found no compelling evidence to support regulatory change. In addition, any proposals to change the WAHR would come at a significant cost to business, would be highly controversial with some stakeholders and might significantly increase risks at work, given the apparently positive impact of these regulations on injury rates.

## **Recommendations**

25. From the findings of its review, it is recommended that HSE:

- makes no changes to the WAHR;
- works collaboratively with stakeholders, businesses, particularly micro/ SME's (building trades, retail and warehousing) and employee representatives through workshops and an online e-community site to:
  - simplify existing work at height guidance to promote better understanding of the WAHR (particularly the "hierarchy" regulation 6) to help ensure businesses adopt proportionate controls for work at height; and
  - produce new example risk assessments covering work at different heights and particularly for low work on simple tasks involving the use of ladders/stepladders;
- uses structured online questionnaires to test the usefulness of the revised guidance and gather evidence for the forthcoming UK report on the review of Directives to the EU.

## **Action**

26. The Board is invited to agree the recommendations with a view to HSE engaging business and stakeholders in autumn 2012 and launching new guidance in April 2013.

## **Paper Clearance**

27. Cleared by Jane Willis (SMT/CCID), input provided by TSol, Economic and Social Analysis Unit and Better Regulation Team.

## Annex 1- HSE Work at Height guidance for review\*

SECTOR / TOPIC	HSE Work at Height publications by title:	SERIES NUMBER	Proposals
AGRICULTURE	Tree work accidents: An analysis of fatal and serious injuries	INDG278	Withdraw - Info out of date. Use web to provide current info - work complete
AGRICULTURE	Why fall for it? Preventing falls in agriculture. Welsh version	INDG369W/EREV1	Withdraw - Duplication with other work at height guidance - move other guidance to web and update case studies and withdraw when web changes made
AGRICULTURE	Tree climbing operations	AFAG401REV1	Merge or Industry owned decision required-- AFAG308,401,402 and 403 merged into one single document
AGRICULTURE	Mobile elevating platforms tree work	AFAG403	Merge or Industry owned decision required-- AFAG308,401,402 and 403 merged into one single document
AGRICULTURE	Aerial tree rescue	AFAG402	Merge or Industry owned decision required-- AFAG308,401,402 and 403 merged into one single document
AGRICULTURE	Why fall for it? Preventing falls in agriculture	INDG369	Withdraw - Duplication with other work at height guidance - move other guidance to web and update case studies and withdraw when web changes made
AGRICULTURE	Tree work accidents: An analysis of fatal and serious injuries. Welsh version	INDG278W	Withdraw - Info out of date. Use web to provide current info - work complete
CONSTRUCTION	Preventing falls from boom-type mobile elevating work platforms	MISC614	Reviewed and currently considering withdrawal as much of the information is duplicated in CIS58. It is important to retain the remaining information relating to personal fall-protection, but this may be better located on a page on the falls section of the HSE website. This information would also benefit from being made more succinct.
CONSTRUCTION	Health and safety in roof work	HSG33	New revised publication due Autumn 2012
DOCKS	Safe working on top of containers on board ships	DIS7	Withdrawn – relevant information put on website
ENTERTAINMENT	Working at heights in the broadcasting and entertainment industries	ETIS6	Review complete - retain as it is

SECTOR / TOPIC	HSE Work at Height publications by title:	SERIES NUMBER	Proposals
EQUIPMENT	Thorough examination and testing of lifts: Simple guidance for lift owners	INDG339Rev1	Under review - light touch revision only proposed.
EQUIPMENT	Safety in window cleaning using portable ladders	MISC613	Under review
EQUIPMENT	Inspecting fall arrest equipment made from webbing or rope	INDG367	Contains information which helps clarify the regulatory requirements. Retain but with some minor editorial changes may be necessary.
EQUIPMENT	Safety in window cleaning using rope access techniques	MISC612	Under review
EQUIPMENT	Safety in window cleaning using suspended and powered access equipment	MISC611	Under review
EQUIPMENT	Using access equipment safely in building maintenance	MISC816	Review not started
FOOD	Preventing falls from height in the food and drink industries	FIS30	Withdraw once updates made to HSE Food website
GENERAL	Top tips for ladder and stepladder safety	INDG405	Retain - review once 402/3 amendments completed (see below) – light touch revision only.
GENERAL	The Work at Height Regulations 2005 (as amended): A brief guide	INDG401REV1	Revise - Consultation with business and stakeholders in the autumn
GENERAL	Safe use of ladders and stepladders: An employers' guide	INDG402	Revise - Consultation with business and stakeholders in the autumn

SECTOR / TOPIC	HSE Work at Height publications by title:	SERIES NUMBER	Proposals
GENERAL	A toolbox talk on leaning ladder and stepladder safety	INDG403	Revise - Consultation with business and stakeholders in the autumn
GENERAL	Working on roofs campaign version	MISC818b	Review not started
GENERAL	Height Safe	Leaflet	Withdrawn- out of date
WORKPLACE TRANSPORT	Drive away bad backs: Advice for mobile machine operators and drivers	INDG404	Under review
WORKPLACE TRANSPORT	Preventing falls from vehicles: Advice for workers	INDG413	Review not started
WORKPLACE TRANSPORT	Preventing falls from vehicles: Advice for workers. Polish version	INDG413PL	Review not started
WORKPLACE TRANSPORT	Preventing falls from vehicles: Advice for workers. Welsh version	INDG413W	Review not started
WORKPLACE TRANSPORT	Managing work to avoid falls from vehicles	WPT05	Withdraw/archive- campaign materials
WORKPLACE TRANSPORT	Preventing slips, trips and falls from vehicles: The basics	WPT01	Withdraw/archive- campaign materials
WORKPLACE TRANSPORT	Selecting the right footwear to avoid falls from vehicles	WPT04	Withdraw/archive-campaign materials
WORKPLACE TRANSPORT	Selecting flooring materials to avoid falls from vehicles	WPT03	Withdraw/archive- campaign materials

\* Web pages and other web based materials & tools will be refreshed completion of guidance review as appropriate (note- not all listed in above Annex).