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HEALTH AND SAFETY COMMISSION

CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)

REPORT ON THE EVIDENCE-BASED REVIEW OF THE DECISION NOT TO INCLUDE THE '2 METRE RULE' IN THE WORK AT HEIGHT REGULATIONS

A Paper by John Holland (Falls from Height Team)

Cleared by: Elizabeth Gibby, Director, Injuries Reduction Programme

Summary

This paper informs CONIAC of the outcome of HSE's evidence-based review, summarises the evidence, and reports the unanimous recommendation of the '2 Metre Rule' Stakeholder Group not to re-introduce the '2 Metre Rule'. Detailed evidence is Annexed and will be presented at the meeting. CONIAC is asked to agree a view for HSC's consideration when it addresses this matter in January.

Issue

- 1 This paper reports on the outcome of the HSE's recent evidence-based review of the decision not to subsume the '2 Metre Rule' into the Work at Height Regulations 2005 (WAHR), which came into force on 6 April 2005. The paper provides the opportunity for CONIAC to consider the evidence and agree a view for consideration when this issue is brought before the HSC in January 2007.

Timing

1. Routine

Recommendation

2. That CONIAC:
 - considers the outcome of the review, which will be presented at its meeting on 23 November and is summarised here (detail can be found in the Annexes);
 - notes the unanimous recommendation of the Stakeholder Group not to re-introduce the '2 Metre Rule'; and
 - agrees a view for consideration by the HSC when it addresses this issue at its meeting in January.

Background

3. The HSC's public consultations on proposals to implement the Temporary Work at Height Directive identified finely balanced, but opposing arguments over whether to retain the well established '2 Metre Rule' in the Construction Sector or move to applying risk-based principles to work at all heights across all employment sectors. Following a challenging deliberation, the HSC agreed to a goal-setting approach to the new Work at Height Regulations – a decision supported by Ministers. Consequently, this meant the revocation of a number of existing regulations included the '2 Metre Rule'¹ applying in the Construction Industry.
4. However, recognising the strength of views, and fears voiced by the trade unions and others that revocation would bring a diminution in safety standards, the then Health and Safety Minister, Jane Kennedy agreed with the HSC that the decision on the '2 Metre Rule' should be reviewed by Winter 2006.
5. Although the WAHR have only been in force for just over 18 months, the extension of these regulations to cover adventure activities, provides an early opportunity to review the impact of the WAHR on the Construction industry, and the decision on the '2 Metre Rule'.

Review

6. Work started in February 2006 with an invitation to those organisations known to have an interest in this issue to join a Stakeholder Group. The Group's membership, agreed terms of reference, and the outcome of its own survey work are at **Annex A**.
7. This evidence was considered alongside other HSE sources of evidence:
 - An analysis of the accident figures (see **Annex B**);
 - An evaluation of the WAHR one year on (see **Annex C**); and
 - Feedback from HSE's Construction Inspectors in the field (see **Annex D**).

HSE has also commissioned research into the awareness of risks of low falls and its relationship with company safety culture, attitudes and behaviour at industry, organisational, and individual levels. This research is currently at an early stage and expected to be completed around December 2007.

Evidence

8. The Stakeholder Group met on 27 October to consider the evidence. Although the sample sizes were small, the Group agreed that the weight of the evidence clearly showed that:
 - There was a high degree of awareness of the WAHR and the revocation of the '2 Metre Rule';

¹ Commonly referred to as the '2 Metre Rule', the term refers to regulations that had been in place since 1948, most recently in the Construction Health, Safety and Welfare Regulations 1996. This was revoked by the Work at Height Regulations 2005, which came into force on 6th April 2005.

- 59% of employers responding to the Group's own survey reported that the introduction of the WAHR had changed the way they managed risks from low falls;
- This was characterised by more positive attitudes and behaviour, better planning and training, and the application of better work practices;
- Evidence from the independent evaluation of the WAHR, found that there was an increased demand for safer access equipment (excluding ladders). This exceeded the growth predictions of the manufacturers/suppliers of access equipment;
- This evidence was confirmed by responses from employers to the evaluation of the WAHR, who reported changes in the way that work was managed, including the application of new equipment and the revision of risk assessments; changes observed by inspectors and by members of the Stakeholder Group; and
- HSE's Construction Division had strongly advocated a goal-setting approach and believes that this has not undermined safety standards above 2 Metres, while providing a catalyst for bringing vast improvements in controlling risks below 2 Metres with the introduction of new, safer equipment.

9 Because of relative timings, the Stakeholder Group was not able to consider this evidence alongside accident statistics for 2005/06 – the first year that the WAHR have been in force. The Group considered that the statistics were crucial to their recommendation. It agreed that subject to a reduction in both 'high' and 'low' falls in 2005/06, it unanimously agreed that it would not recommend the reintroduction of the '2 Metre Rule'. The 2005/06 statistics were launched on 2 November and show a 23% reduction in all 'high' falls and an 8% reduction in all 'low' falls across all sectors, including Construction, compared with figures for 2004/05 (see **Annex B**). (For the Construction Sector the corresponding figures are reduced by 20% and 9% respectively).

Financial/Resource Implications for HSE

10 There are no resource implications for HSE if the HSC does not reverse its original decision.

Consultation

11 The Review was led by the Fall from Height Team with the support of HSE's Construction Programme. It was taken forward in consultation with those organisations representing the Construction Sector, Trades Unions, and the access industry (see **Annex A**).

Presentation

12 The results of the analysis of the evidence, the recommendations of the Stakeholder Group and the views of CONIAC will be reflected in a position paper to be prepared for HSC for its meeting in January 2007.

Action

13 Taking account of the evidence, and the recommendation of the Stakeholder Group, Members are asked to agree a view for consideration by the HSC when it addresses this issue at its meeting in January.

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2 Metre Rule Stakeholder Group: Membership and Terms of Reference

Membership

Mr John Holland	Chairman, HSE
Mr Richard Ash	Engineering Construction Industry Association
Ms Shelley Atkinson-Frost	Construction Confederation
Ms Carole Bonner	UCATT
Mr Jonathan Capper	Industrial Rope Access Trade Association
Mr David Chapman/ Mr Robin James	National Access and Scaffolding Confederation
Mr Dennis Hands	CITB Construction Skills
Ms Justine Lee	HSE Construction Division
Ms Sian Lewis	The House Builders Federation (HBF)
Mr Mike Long	National Federation of Roofing Contractors
Mr Rob Miguel	AMICUS
Mr Kevin Mouatt	SGB, NASC & FASET
Ms Susan Murray	TGWU
Ms Suzannah Nichol	National Specialist Construction Contractors
Mr Peter O'Connell	Federation of Master Builders
Mr Gren Presland	IOSH
Mr Philip Russell	Federation of Master Builders
Mr Pete Walker	British Constructional Steelworks Association Ltd (BCSA)
Mr Tim Whiteman	International Powered Access Federation (IPAF)
Mr Ian Greenwood	HSE, Policy Advisor
Ms Gloria Birchall	HSE, Secretary

Terms of Reference

The Stakeholder Group is established to engage with organisations representing the Construction Industry and other interested parties on the impact of the “2 Metre Rule”.

In particular to:

- access the practical knowledge and experience of representatives of the Construction Industry and those working at height.
- share existing evidence and encourage industry research/surveys in support of the review.
- disseminate information about the review and encourage wider industry participation in providing evidence for consideration in the review.
- help develop the paper for the HSC on the outcome of the review.

Results of Stakeholder Group Questionnaires

1. The Stakeholder Group drawn from all organisations known to have an interest in the 2 Metre Rule, met on 13th April 2006. Between them Member organisations represent over 150,000 organisations /individuals. The Group agreed to check for existing evidence/data held by their own organisations and to facilitate a wider search through their memberships. Questionnaires for employers and for employees (including safety representatives) were prepared in consultation with the Group and disseminated to their Members over the summer.
2. The following organisations participated in the review by surveying their members:
 - British Constructional Steelworks Association Ltd (BCSA)
 - Construction Confederation
 - Federation of Master Builders
 - National Access and Scaffolding Confederation
 - National Specialist Construction Contractors
3. In total just 370 completed questionnaires were received: 313 from employers and 57 from employees, of which 3 were from safety representatives. The results of the questionnaires were analysed for HSE by the Health & Safety Laboratory (HSL).

Employers' Questionnaire

4. Of the 313 completed questionnaires analysed, over a third described themselves as involved in ‘general building/construction’, with the majority reporting that they worked in a scaffolding or general building/construction business with 10-49 employees. The main findings from this analysis was that:
 - Over 93% of the respondents reported that they were aware that the WAHR came into force on 6 April 2005.
 - Over 64% reported that they had applied the 2 Metre Rule before this time.
 - Around 78% reported that they knew that the 2 Metre Rule no longer existed.
 - Around 37% reported that they had experienced problems or additional costs arising from the removal of the 2 Metre Rule. In practice many of the supporting comments related to the general impact of the WAHR. The main focus of these

comments were: mainly additional costs of compliance and the risk of being undercut by less scrupulous businesses, practicality in some cases such as the loading/unloading of lorries. Where mentioned, the vast majority of respondents considered that the WAHR had brought safety improvements. Typical comments included:

- *“Additional costs, which have been passed onto customers. No safety issues”*
- *“Additional costs of hiring and purchasing equip. Also gaining acceptance for need of new approach. We have instructed everyone that the first stage of planning is to ensure that the work can be done safely and necessary equipment is available in good time”*
- *“Clients restrict our use of ladders to carry out inspections. Now have to use platforms, MEWPs etc”*
- *“Experience of additional costings, but these are reflected in quotes, we are happy to comply with standards & legislation but as small business, domestic clients are happy to pay the prices of those who are not willing to work safely, therefore under cutting those trying to make an honest and safe living”*
- *“More risks are taken in an effort to compete on price”*
- *“The new regs are more cumbersome than before. We are now trying to use practices that are unfamiliar to our workman & in our opinion create more hazards than existed before. The new arrangements are impractical, particularly in confined spaces. We have heard of instances where costs to the public have been so prohibitive they have chosen to attempt the work themselves with equipment not suitable, surely this is more dangerous than allowing competent trades people to use equipment they are comfortable with”*
- Over 59% (181) of respondents reported that the introduction of the WAHR had changed the way they managed risks from low falls. There was a fairly even spread of safety benefits with:
 - 137 respondents reporting a more positive attitude to managing risks;
 - 134 respondents reporting more positive behaviours actions to improve safety;
 - 139 respondents reporting applying better planning to minimise risks;
 - 94 respondents reporting arranging better training; and
 - 145 respondents reporting the application of better work practices.
- Other benefits identified by respondents include:
 - *“By doing away with the 2m rule we can now apply working practices consistently across the board - no gray areas. It has taken away an element of confusion”*
 - *“Discussions with subcontract management on requirements of WAHR, leading to increased use of small access platforms rather than ladders and stepladders”*
“Generally improves overall awareness, starting at the design stage in considering better and safer access for maintenance and general operative use of access equipment. Within the factory environment a decision to stop the use of ladders”
 - *“Increased awareness through statute”*
 - *“WAHR changes have produced a YES to all of the above but this is because the hierarchy of risk assessment requirements with fall prevention taking precedence over fall arrest and is not related to the removal*
 - *“Yes, It is safe because we don't / can't do it any more - no risk of falling if you wont take the work on”*
- A very small percentage of respondents 3.1% reported that the introduction of the WAHR had provided opportunities for savings.
- Employers were also provided with the opportunity to offer other comments. Many of these reinforced earlier themes, and there were a wide range of opposite views from:
 - *“It has improved my organisation's safety practices in that I have started using better equipment for sub 2 meter high work, but I still need to do more”*
 - *“The converse is true WAHR is a positive step forward in improving safety in the workplace. The regulations are easy to understand and most importantly raise the profile of the risks associated with WAH - at any height. The introduction of alternative safer access (podiums etc) can only convey to the taskforce that safety is in everybody's interest and that it will be taken seriously by all”*

- *“By adopting the requirements of the WAHR wholeheartedly and promoting them, not only with our workforce but also with our clients, we have found no problems, only advantages” to*
- *“How can savings be made when there is so much red tape and other legislation to consider? I have reported bad sites to the HSE, and the answer that I have been given was what do you want us to do? Unless the legislation is policed properly those who are complying with it are losing out to those who are cutting corners. But that doesn't pay for the time required for estimating and complying with the laws?”*
- *“It is very impractical, inefficient and more costly in a maintenance & domestic refurbishment/restoration/alteration situation, where the working platform is often well below / not above 2m”*
- *“The new rule has had no effect on our business as we had voluntarily adopted this practice 2 years ago”*

Employees' Questionnaire

5. Of the 57 completed questionnaires analysed, the majority worked for organisations of 200+ employees and described their work activity as utility contracting (although less than half the respondents completed this question). The main findings from this analysis showed that:
 - Around 68% (38) of the respondents reported that they were aware that the WAHR came into force on 6 April 2005.
 - Around 41% (21) of the respondents reported that work below head height (2 metres had changed in the last year.
 - Of those that responded 78% (39) reported that their employer had not experienced any problems or costs arising from the removal of the 2 Metre Rule. Where new problems or costs had been identified the most significant comment was:
 - *“Costs increased due to the hire of extra working platforms / scaffold towers to replace work on ladders. The purchase of guard / hand rails to be fitted to tressel / plank systems. Tests appear to indicate a problem with design / balance issues. To comply with new lower tressel working height regs”*
 - Asked if guard-rails were ever not fitted to platforms were the fall-height was less than 2 metres, 58% of respondents reported that guard rails were never not fitted and 35% reported that still happens now.
 - Asked if they thought that the introduction of the WAHR had brought safety benefits 31 respondents reported a more positive attitude to managing risks, while 28 respondents reported more positive behaviours/actions to improve safety, 27 reported evidence of better planning, 23 more or better training, and 24 the application of better work practices. One respondent offered the following illustrative safety benefit:
 - *“My employers having enforced WAHR on a recent large building project prompted sub contractor firms to purchase and provide single person work towers for their workforce thus increasing safe working practice”*

An Analysis of the Accident Figures

1. One of the main concerns of those advocating the continuation of the 2 Metre Rule was that its revocation would lead to a fall in safety standards above two metres, where arguably the risks are greater, without improving protection below two metres.
2. The latest figures for the same fatal and major injury categories used for the PSA Targets are shown below. Importantly, the figures for 2005/06 for 'All Falls' and 'Construction' both show appreciable reductions compared with the previous year.

Fatal injuries to workers & Major injuries to employees

		Agent other than ladder					% change
		2001/02	2002/03	2003/04	2004/05	2005/06p	04/05 to 05/06
Programme falls	High fall	353	251	241	263	194	-26%
	Low/unspecified	1198	1066	1098	1036	941	-9%
	Any height	1551	1317	1339	1299	1135	-13%
Construction	High fall	342	311	275	248	200	-19%
	Low/unspecified	454	392	412	354	315	-11%
	Any height	796	703	687	602	515	-14%
WPT falls	High fall	51	53	49	55	57	4%
	Low/unspecified	529	591	671	700	624	-11%
	Any height	580	644	720	755	681	-10%
All falls	High fall	746	615	565	566	451	-20%
	Low/unspecified	2181	2049	2181	2090	1880	-10%
	Any height	2927	2664	2746	2656	2331	-12%
		Ladder agent					% change
		2001/02	2002/03	2003/04	2004/05	2005/06p	04/05 to 05/06
Programme falls	High fall	217	197	181	191	127	-34%
	Low/unspecified	516	502	576	527	513	-3%
	Any height	733	699	757	718	640	-11%
Construction	High fall	160	209	151	153	121	-21%
	Low/unspecified	315	338	310	325	305	-6%
	Any height	475	547	461	478	426	-11%
All falls	High fall	377	406	332	344	248	-28%
	Low/unspecified	831	840	886	852	818	-4%
	Any height	1208	1246	1218	1196	1066	-11%
		All					% change
		2001/02	2002/03	2003/04	2004/05	2005/06p	04/05 to 05/06
Programme falls	High fall	570	448	422	454	321	-29%
	Low/unspecified	1714	1568	1674	1563	1454	-7%
	Any height	2284	2016	2096	2017	1775	-12%
Construction	High fall	502	520	426	401	321	-20%
	Low/unspecified	769	730	722	679	620	-9%
	Any height	1271	1250	1148	1080	941	-13%
WPT falls	High fall	51	53	49	55	57	4%
	Low/unspecified	529	591	671	700	624	-11%
	Any height	580	644	720	755	681	-10%
All falls	High fall	1123	1021	897	910	699	-23%
	Low/unspecified	3012	2889	3067	2942	2698	-8%
	Any height	4135	3910	3964	3852	3397	-12%

An evaluation of the Work at Height Regulations one year on

1. HSE has commissioned independent, qualitative research to assess the impact of the Work at Height Regulations 2005 (WAHR), and whether awareness and appreciation of risks, attitudes and behaviours had changed. The researchers (Systems Concepts Ltd) also sought evidence of changes in demands and supply of access and safety equipment and the costs and benefits to business. The methodology consisted of two 'snapshot' surveys: one in March/April 2005 providing a baseline, and a second survey between March and June 2006. Interviewees were drawn from employers/managers, employees, TU safety representatives, manufacturers/ suppliers of equipment and HSE inspectors. Specific questions related to the 2 Metre Rule.
2. Although the sample was comparatively small² and the WAHR had only been in force for a year, the study indicated that they were already making an impact in a number of areas. Many manufacturers/suppliers reported that demands for a range of access equipment such as work platforms (excluding ladders) had increased, exceeding their growth predictions.
3. The demand was reflected in responses of employers that reported changes in the way work at height was managed, such as application of new equipment and the revision of risk assessments; a change observed by inspectors.
4. The findings on the 2 Metre Rule showed that the vast majority of employers were aware of the 2 Metre Rule, and its revocation. Over half of the employers interviewed reported changes to the way work at height was managed as a result of the revocation of the 2 Metre Rule, reporting "...that the removal of the 2 Metre Rule had had a positive impact (most noticeably in the Construction and Steeplejack Sectors), commenting that it made work at height safer". However, inspectors were not generally confident that dutyholders were aware or understood what the removal of the 2 Metre Rule meant in practice. While there was some evidence of the application of a risk-based approach to low work at height even before the WAHR came into force, inspectors had also observed instances where there had been no change in the way work was managed above and below 2 Metres, with many still not using any controls for work below 2 Metres. (It should be noted that this survey work was carried out prior to HSE's 'Height Aware' Campaign which early evaluation has shown was successful in raising recognition of the risks from low falls).
5. There was a mixed response from employees, with some reporting that the revocation of the 2 Metre Rule had had little effect in practice, while others reported that their employers had introduced new control measures to make work below two metres safer. Thus indicating an awareness of the changes in the law and a better appreciation of the need to manage risks at low heights.

² 224 telephone interviews + 25 face-to-face interviews at Stage 1 followed by 150 telephone interviews + 45 face-to-face interviews at Stage 2.

6. The researchers own observations while visiting sites to conduct interviews were that the revocation of the 2 Metre Rule had made a significant impact in the building maintenance sector with changes in working practices below 2 Metres; evidenced by the reduction in the use of ladders and an increase in the use of tower scaffolds and work platforms. HSE intends to publish the report in due course.

Feedback from HSE's Construction Division and Inspectors in the field

1. An important consideration for the HSC in agreeing, in January 2005 to a goal-setting approach to the new Work at Height Regulations, was the view of HSE's Construction Division, given its policy and operational/enforcement role.
2. HSE's Construction Division strongly advocated a goal-setting approach, based on risk assessment that is sensible, pragmatic, and providing the flexibility to accommodate technical change and stimulate innovation. Importantly, the Construction Division saw risk assessment as key to raising safety expectations and the culture of the industry.
3. It was firmly of the view that rigid, prescriptive rules, such as the 2 Metre Rule hinder innovation such as the use of podium steps. Moreover, the operational experience of HSE inspectors was that the 2 Metre Rule, had led to confusion, often misinterpreted to mean that risk management was not needed unless the work was being undertaken above 2 metres where a hierarchy of controls should be applied.
4. Low falls are a major cause of deaths and major injuries in the Construction Industry and the Construction Division argues that significant reductions in the number of low falls is the only way the falls contribution to the PSA Target will be met.
5. The view of the Construction Division has not changed over the last 18 months. Indeed, the Construction Division believes that the Construction Industry has a good understanding of the requirements of the WAHR and are fully aware that there is no longer a 2 Metre Rule. In essence, the WAHR maintain the same standard of protection above 2 Metres, and inspectors have detected no undermining of this standard, but there have been vast improvements in the applying controls to risks below 2 metres. The WAHR have facilitated the use of new, safer equipment which is now widely available, aiding compliance, and it appears that large employers are making a step change in their approach to the management of falls below 2 metres, and this is starting to cascade down to smaller employers. Inspectors report that Dutyholders are being much more proactive in assessing contractors' risk assessments and are insisting on the selection hierarchy being followed rather than a ladder being accepted as a default option. Construction Division argue that this would not have happened had the 2 Metre Rule not been revoked.
6. Construction Division believe that the confusion over whether ladders were banned probably started because many major contractors, in a bid to control and manage the use of ladders on their sites, effectively banned ladders on their own sites unless prior authorisation from site management had been obtained. This confusion was fuelled by stories in the media. HSE has responded robustly, stating that ladders are not banned, and has worked extremely hard with the industry to guide those that do not understand the hierarchy for

equipment selection. Although the robust actions of some major contractors may have done a lot to create this myth, it does illustrate their proactive approach to the WAHR, which should be applauded.

7. Importantly, the view of operational inspectors is that the WAHR principles of risk assessment and the access equipment selection hierarchy have aided confident enforcement, where this proves necessary.