

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.