

The Construction (Head Protection) Regulations 1989

OC 404/20

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Fully Open

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Author unit/section

Construction Division Policy Unit

To

All HSE Construction Inspectors

See also

OC 282/27

Introduction

1. This OC gives details of the Construction (Head Protection) Regulations 1989 (CHPR) which came into force on 30 March 1990. It should be read in conjunction with HSE publication "Construction (Head Protection) Regulations 1989 Guidance on Regulations."

Relationship between CHPR and the Personal Protective Equipment at Work Regulations 1992 (PPEWR)

2. PPEWR provides for the selection, provision, use and maintenance of personal protective equipment at work. PPEWR applies generally to workplaces, but is disapplied in certain circumstances by virtue of regulation 3(2) where other more specific legislation applies. This includes the situation where CHPR requires the provision of head protection and Inspectors should not seek to use PPEWR in relation to the provision of head protection on construction sites. PPEWR will apply, however, to other PPE in the context of construction sites.

General

3. The Regulations require that everyone, except turban-wearing Sikhs (see paragraphs 35 -38), engaged in construction work should be provided with (or in the case of the self-employed, provide their own) and wear suitable head protection whenever there is a foreseeable risk of injury to the head. To achieve this objective, the Regulations place duties on employers, on persons in control of others, on individual employees and on self-employed persons
4. The primary duty under the Regulations is on employers and persons in control of others to ensure, so far as is reasonably practicable, that suitable head protection is worn if there is a foreseeable risk of head injury other than by falling. Only when

Inspectors are completely satisfied that this responsibility has been discharged should they consider proceeding against individual employees or self-employed persons for failure to wear head protection.

Regulation 1 - citation, commencement and interpretation

Suitable head protection

5. 'Suitable head protection' means head protection which is designed to provide protection against a foreseeable risk of injury to the head;
 - fits the wearer after any necessary adjustment; and
 - is suitable for the work or activity on which the wearer may be engaged.
6. Before choosing head protection, an employer or self-employed person should make an assessment to determine whether it is suitable.
7. Any new head protection bought should be CE-marked to indicate compliance with regulations 8 and 12 of the Personal Protective Equipment Regulations 2002. In most cases head protection meeting the relevant British Standards (BS EN 397:1995 "Industrial safety helmets" or BS EN 812:1998 "Industrial bump caps") will comply with the Regulations. Other specialist head protection may also be suitable for certain work, for example, climbing helmets for rope access work. Such head protection should also meet recognised standards. Please consult STSU Safety Unit if in doubt. Policy responsibility for the Construction (Head Protection) Regulations 1989 rests with Construction Division's Policy Unit.

Regulation 2 - application of the regulations

“Building operations and works of engineering construction”

8. The Regulations apply to construction work within the meaning of regulation 2(1) of the Construction (Design and Management) Regulations 2007

Regulation 3 - provision, maintenance and replacement of suitable head protection

Level of provision

9. Every employer must provide those they employ on construction work with suitable head protection regardless of whether they will be exposed to a risk of head injury. "Provide" does not necessarily mean that the head protection must be given directly to the employee, but it must at least be readily available.
10. Self-employed persons must provide themselves with suitable head protection in exactly the same circumstances and shall maintain and replace whenever necessary.

Provision for visitors to a construction site

11. Other people who visit a construction site who are engaged in construction work such as surveyors, designers, etc., will require head protection to be provided by their own employers.

12. The Regulations do not require provision of suitable head protection for visitors to a site who are not engaged in construction work, such as prospective house purchasers, and those delivering mail or catering supplies. The general HSW Act duties continue to apply to these people.

Maintenance and replacement

13. Head protection must be maintained in good condition by the employer or self-employed person. It should be stored in a safe place and
- be checked for signs of damage or deterioration;
 - have defective parts replaced; and
 - have the sweat-band regularly cleaned or replaced.
14. Head protection should normally be replaced at intervals recommended by the manufacturer. It will need replacing if
- the harness is damaged and cannot be replaced;
 - the shell is damaged or it is suspected that its shock absorption or penetration resistance has deteriorated.

Regulation 4 - ensuring suitable head protection is worn

Duties on employers and those in control of construction workers

15. The Regulations place duties on employers and those in control over people undertaking construction work to ensure suitable head protection is worn by those people unless there is no foreseeable risk of injury to the head other than by falling. Head protection for use in construction work will not usually provide significant protection against the consequences of its wearer falling.
16. In construction work, head protection may prevent or reduce the risk of head injury caused by
- falling or swinging objects - such as materials, tools or crane hooks;
 - striking the head against something - particularly if there is limited headroom.
17. Those who have duties to ensure head protection is worn should
- identify when and where head protection should be worn;
 - inform site personnel of where and when head protection should be worn;
 - provide adequate supervision to ensure head protection is being worn;
 - encourage and, where necessary, enforce the wearing of head protection.

Regulation 5 - rules and directions

Making of site rules by persons in control

18. Regulation 5 allows for the making of site rules by those in control of construction work, and for the giving of directions to workers, for the purposes of complying with the duties under regulation 4 to ensure that head protection is worn. Such rules are designed to assist in the practical enforcement of the wearing of head protection and to clarify the circumstances under which the wearing of head protection is mandated.

Regulation 6 - Wearing of suitable head protection

Duty to follow rules or directions

19. Regulations 6(1) and 6(2) require employees and self-employed persons carrying out construction work to wear suitable head protection when required to do so by their employer or the person who controls their activities on site under regulation 5.

Self-employed persons not working under the control of another person

20. Self-employed construction workers not working under the direction of someone else are required to wear head protection only where there is no foreseeable risk of head injury.
21. Inspectors will find rules made which specify the whole site as a "hard hat area". Such rules will avoid difficult demarcation problems but it is considered that in places where there is in fact no risk of injury to the head other than by falling such rules cannot create a duty under regulation 6.

Regulation 7 - Reporting the loss of, or defect in, head protection

22. Employers should make arrangements so that employees can report any loss or obvious defects on site. Any defective head protection should be replaced, or where possible repaired, before the person concerned is allowed to restart work.

Regulation 9 - Exemption certificates

23. Regulation 9 allows HSE to grant exemptions from any requirement imposed by the Regulations. To date no exemptions have been made under regulation 9.
- 24.
25. Overall authority to grant exemptions lies with 'the Executive' and all HSE Senior Civil Service staff. The authority can be further delegated by a senior civil servant in writing.

For guidance on this see:

[Procedures for authorising members, officers or servants of the Executive](#)

Procedures for dealing with applications for exemptions

26. Applications for exemptions should be processed as soon as possible by the relevant Principal Inspector. Where applications are unfounded (eg. if the Regulations do not apply to the work in question) or do not give enough information, the Inspector should write to the applicant explaining the Regulations

or seeking further information.

27. Any application from the local authority-enforced sectors should be forwarded directly to Local Authority Unit, and should not otherwise be processed by HSE.
28. In considering any application for an exemption, HSE must be satisfied that the health and safety of those affected will not be prejudiced, and that provisions imposed by European Communities in respect of improvements in health and safety at work will be satisfied. It is therefore necessary to compare the situation in which the Regulations are fully complied with against that in which the exemption certificate, including any conditions, would be in force. For example, an exemption can be made if an alternative method of head protection is provided. Even if this requirement is satisfied, HSE is not obliged to grant an exemption.
29. Applications requesting an exemption from wearing head protection will normally fall into two categories:
 - the nature of the work;
 - an individual medical condition.
30. Where there appears to be a relevant medical condition the Inspector should consult the Medical Inspector (MI) as to whether
 - the condition is temporary or permanent; and
 - whether it is reasonable to judge that the medical condition will make it difficult or impossible to wear the head protection.
31. Claims that the use of head protection is impossible or actually increases the risks in certain activities (e.g. work which requires the wearing of respiratory protective equipment (RPE) in the form of pressurised blouses or suits) need to be examined critically. In this example, for instance, it is questionable whether vulnerable forms of RPE should be used if there is a risk of head injury and/or damage to the RPE.
32. Almost all chronic medical conditions which would prevent the wearing of head protection would also make the sufferer unfit for work in construction.
33. The decision as to whether an employee should remain in their job will rest with their employer who should consider the views of the MI. Inspectors should consider action in consultation with the MI in the event of the failure of management to act.
34. The application with supporting particulars and the Inspector's recommendation should be forwarded to the Chief Inspector of Construction who should decide on the application. Advice on policy aspects may be sought from Construction Division Policy Unit if required.
35. Once a decision has been reached, the applicant should be informed in writing of the outcome as soon as possible. All exemption certificates issued must be copied to HSE Secretariat who will maintain a central register,

The Employment Act 1989 ("the Act") - Sikhs and head protection

36. Section 11(1) of the Act exempts turban-wearing Sikhs from any legal requirement to wear a safety helmet while on a construction site. Accordingly, turban-wearing Sikhs on construction sites do not have to comply with any duty under regulation 6 CHPR, nor with the general duty under HSW Act s.7 (b) to cooperate with their employer to comply with regulation 6..
37. Section 11(2) of the Act also exempts any persons from any other legal requirements related to the wearing, provision or maintenance of safety helmets by turban-wearing Sikhs on construction sites. Hence, employers and other persons in control of workers are relieved of their duties to turban-wearing Sikhs under regulations 3, 4 and 5, and of their equivalent duties under HSWA
38. Sections 11(4) to 11(6) set out the civil liability position when the above exemptions are in operation, and Section 12 protects Sikhs from racial discrimination in connection with requirements to wear safety helmets. These aspects of the Act are dealt with by the Department for Employment, not HSE.
39. The exemption does not extend to any other religious groups, nor are turban-wearing Sikhs exempt from any requirements to wear head protection other than on construction sites.

ASI headings

Construction (Head Protection) Regulations 1989
Personal Protective equipment at Work Regulations 1992
head protection
helmets
protective clothing and equipment.