

# Health and Safety Executive OC 404/22

Field Operations Division

To

Factory Inspectors

## CONSTRUCTION (HEAD PROTECTION) REGULATIONS 1989: EXEMPTIONS

---

This OC describes the administrative arrangements and legal background for the granting of exemptions under the Construction (Head Protection) Regulations 1989 reg.9. It should be read in conjunction with OC 404/20.

---

1 Applications will normally fall into 2 categories: those based on individual medical conditions; and those claiming that the nature of the work prevents the wearing of head protection. Experience has shown that exemptions would seldom be justified in either category, but the procedures described below should be followed in all cases.

### Legal basis

2 Regulation 9 allows HSE to issue exemption certificates in respect of any person or any activity, from any requirement of the Regulations. Exemptions may be granted subject to conditions and time limits, or revoked at any time by a further certificate. But HSE must be satisfied that the health and safety of those affected will not be prejudiced. 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 or if the extra risk of head injury can be balanced by a reduced risk of other forms of ill-health or injury. Even if this requirement is satisfied, HSE is not obliged to grant an exemption.

### Delegation of functions

3 The function of granting the exemptions previously handled by SGPD has now been delegated by HSE to members of the Executive, Director of Field Operations, regional directors of Field Operations and Head of the Local Authority Unit (LAU). A copy of the certificate of delegation signed by the Director General is given at Appendix 1.

### Operational procedures

4 Applications for exemptions within areas 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. In all other cases receipt of the application should be acknowledged as soon as possible.

5 Any application from the local authority enforced sectors should be forwarded directly to the LAU, and should not otherwise be processed at the area office.

6 Applications should then be assessed against the criteria in para 2. Claims that the use of head protection is impossible or actually increases the risks in certain activities (eg 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. Applications on medical grounds (see para 10 and 11) will normally require the applicant to be interviewed and/or examined by the Employment Medical Advisory Service.

7 The application with supporting particulars (including, where appropriate the report from the SEMA) and the inspector's recommendation should be forwarded to the regional director or, in his/her absence, the Director of Field Operations, who should decide on the application. Advice on policy aspects may be sought from FOD 2C if required.

8 Because FOD 2C has the responsibility for ensuring consistency in the use of these exemption powers, copies of all papers should be forwarded before the exemption is issued. FOD 2C will allocate a serial number and maintain a central record.

9 Once a decision has been reached, the applicant should be informed in writing as soon as possible, and the letter copied to FOD 2C. A draft letter refusing an application is provided at Appendix 2.

## Exemptions on medical grounds

10 Workers may request exemptions on medical grounds, or ask their general practitioner to do so for them. Almost all chronic medical conditions which would prevent the wearing of head protection would also make the sufferer unfit for work in construction. Any weakness of the skull resulting from surgery etc actually increases the need for head protection, and most soft tissue conditions such as sebaceous cysts can be treated surgically although neurofibromatosis (Von Recklinghausen's Disease) would be an exception.

11 Conditions that may temporarily prevent the wearing of head protection are primarily those where friction from the hat suspension may interfere with a dressing or exacerbate a skin condition. Wounds, skin grafts, shingles and some types of dermatitis or psoriasis may cause such difficulty. But even in these cases, the wearing of head protection may still be possible with careful selection of safety helmets and the use of suitable lining/cradle materials. The individual should of course be otherwise fit for construction work.

## Annotation of instructions

12 OC 404/20 - note: "See OC 404/22".

14 October 1991

(1017/FOD/1990'A')

Disc No: FOD1C\Editors\J32\19.9.91\DS\DH

(NEW DISC REF: J:\EDITORS\CA1\J32SE91.SAM)

## **ASI headings**

Construction (Head Protection) Regulations 1989: exemption certificates: hats: head protection: helmets: protective clothing and equipment.

## **APPENDIX 1**

(para 3)

## **DELEGATION OF FUNCTIONS: CONSTRUCTION (HEAD PROTECTION) REGULATIONS 1989 -**

### **NOTE BY THE DIRECTOR, SGPD (ER/90/99)**

The Executive hereby authorises each of its members and the holder for the time being of any post listed below, acting individually, to perform on behalf of the Executive its function under Regulation 9 of the Construction (Head Protection) Regulations 1989:

- (a) Director of Field Operations
- (b) Regional Director of Field Operations
- (c) Head of the Local Authority Unit

**J D RIMINGTON**

**Director General - HSE**

15 August 1990

a person authorised by the Health and Safety Executive pursuant to paragraphs 13 and 20(1) of Schedule 2 to the Health and Safety at Work etc Act 1974 to act in that behalf

APPENDIX 2

(para 9)

## **CONSTRUCTION (HEAD PROTECTION)**

## **REGULATIONS 1989:**

# **DRAFT LETTER REFUSING AN EXEMPTION ON MEDICAL GROUNDS**

Dear

## **CONSTRUCTION (HEAD PROTECTION) REGULATIONS 1989**

You wrote to the ..... Office of the HSE enclosing a letter from your doctor, and asking for an exemption from the requirement to wear a safety helmet under the above regulations. (I believe that you have since been seen by Dr.....of HSE's Employment Medical Advisory Service).

I am afraid that after careful consideration, and on the basis of the information you provided/ Dr ..... 's report, we do not think that we can grant an exemption in your case. Unless the medical risks of wearing a safety helmet are serious they are not likely to outweigh the risk of head injury if a helmet is not worn on construction sites.

A wide range of suitable safety helmets are available and I suggest you try a variety of them, to find one which is as comfortable as possible. For example, you may find helmets with comfort options such as a fabric cradle and sweat band less irritating.

I should also point out that under the Regulations, you only have to wear head protection where there is a foreseeable risk of head injury. Obviously, this is the case for most construction work, but there will be some activities and some areas of construction sites where head protection is not required. You should ask your employer or the person in control of the site whether you need to wear a helmet all the time.

(If you have tried a range of suitable helmets and your medical problem persists, then you should of course consult your doctor again. He can take the matter up with Dr..... at this address, and if necessary we can review your application.)

Yours sincerely,