

Work at Height (Amendment) Regulations

Regulatory Impact Assessment (Final Version following consultation)

Purpose And Intended Effect

Issue

The Work at Height (Amendment) Regulations WAH(A)R address the treatment of those who work at height when paid to instruct or lead one or more persons engaged in caving or climbing. The proposed Regulations complete the implementation of Directive 2001/45/EC amending Council Directive 89/665/EC.

Objectives

The Temporary Work at Height Directive (2001/45/EC) aims to reduce injuries as a result of falls from a height by addressing all aspects of work at height i.e. how work is planned, organised and managed. The WAH(A)R will implement the requirements of the Directive with respect to Adventure Activity providers involved in paid instructing or leading of climbing and caving activities.

Risk Assessment

The Adventure Activity sector has a good reputation for risk management and follows good practice. The existing standards within the Adventure Activities sector have been tried and tested successively for several decades and have been endorsed internationally.

The following data from RIDDOR shows that there were no fatal injuries and a very small number of any of the types of injury.

Falls from a Height (process code: 0822) Adventure Activities – 2004/05f

	High Fall	Low Fall	Height not known	Total
Non fatal major injuries	2 ¹	3	-	5
Over 3 day injuries	3	1	1	5
Members of the Public ²	3	10	3	16
Total	8	14	4	26

The Regulation will address the risks of the following additional factors:

A (potentially) expanding sector. Some risk would emerge from a growing economic activity in the sector. If, for example, the sector would grow in the future a rate of 5% per year (extremely high rate of growth) some activities may become more risky. This could be caused by increased competition that may lead to a reduction in the standards of existing or new firms. This would imply that new and existing firms would not apply the existing self-regulation.

Consultation

The consultation attracted 40 formal responses together with a further 22 letters and emails in support of the response made by the Adventure Activities Industry Advisory Committee. A report on the outcome of the consultation is published on HSE's website. None of these responses changed the assumptions or costings contained in the original consultation. A small

¹ Note only these two accidents to workers involved climbing or caving and ropes.

² For information only. Not covered by the Work at Height Regulations

simplification to the drafting of amending regulation Schedule 5 Part 3 has been recommended following a comment made during the consultation.

Options

Three options were considered for taking forward the implementation of the Temporary Work at Height Directive with respect to paid instructing or leading of climbing and caving activities from the present status quo.

Option (a)

Implement these duties through the Work at Height Regulations 2005. These Regulations are goal setting and were framed with the intention of covering all industries and sectors including those involved here. This sector had in principle accepted that it could comply with these Regulations and HSE had sought to reassure it that the draft Regulations would be enforced with reference to the industries national governing body guidelines and good practice. Despite this there remained some unanswered questions over whether certain climbing techniques unique to the adventure activities sector would comply with the Regulations.

Option (b)

Introduce separate Regulations to implement the provisions of the Directive with respect to these activities. These Regulations would only apply to the instruction and leadership of climbing and caving for sport and/or leisure. For other work at height activities, such as routine maintenance in adventure activity centre premises the duty holder would be covered by the main Work at Height Regulations. The Regulations would transpose relevant requirements from the main work at height Regulations and the Directive but would, with respect to the duties in the Directive, allow employers affected to demonstrate alternative means of compliance. This approach would meet the request of the Adventure Activities sector for sensitive treatment and implement the Directive. However it would also add unnecessary burdens to business because of the need to refer to two sets of Regulations.

Option (c)

Amend the Work at Height Regulations to allow adventure activity duty holders, through alternative means, to be able to maintain an equivalent level of safety to the requirements of the Directive when using two ropes for access. This approach resolves the uncertainty over the unique way in which the adventure activity sector use ropes for access, and it acknowledges the important role of the national governing bodies in developing and maintaining safety standards.

The recommended option is option (c) since this would allow for the completion of implementation of this Directive while acknowledging the sector's particular circumstances.

Scenarios

The HSC expressed concern about the risk of potential erosion of standards for which three scenarios have been developed to support the analysis:

Scenario 1.- Under this scenario, the size of the sector remains unchanged (i.e. there is no economic growth in this sector) over the appraisal period and the industry conforms to “best practice” safety standards that coincide with the Regulations.

Scenario 2. – Under this scenario, there is a substantial economic growth (5% per year) in the sector over the appraisal period and existing as well as new firms conform to “best practice” safety standards that coincide with the Regulations.

Scenario 3. – Under this scenario, there is also substantial economic growth in the sector over the appraisal period, but the industry would not be fully complying with current “best practice” safety standards.

This implies the assumption that some of the new entrants or existing firms do not comply with best practice in the industry because they are interested in short-term profits.

Under this scenario, there is risk that some firms work to less than the “best” safety standards.

Background Information and Assumptions

Information on the costs of the proposed Work at Height (Amendment) Regulations has been obtained from representatives of the industry and HSE’s field enforcement team.

All the costs to businesses are opportunity costs reflected by lost output as a result of carrying out new duties. It is assumed that the value of this lost output is equal to the time spent carrying out the new duties multiplied by the average wage (adding 30% for non-wage labour costs including superannuation and employers’ National Insurance contributions).

Both costs and benefits have been discounted in line with Treasury guidance. Costs have been discounted at a rate of 3.5%. Health and safety benefits have been updated by 2%, then discounted at 3.5%, giving an effective discount rate of 1.5%. Costs and benefits are calculated over a period of ten years and expressed in present value terms.

To estimate the cost and benefits of the proposed Regulations it has been assumed that there will be full compliance.

The cost-benefit analysis compares the preferred option to the “status quo”.

BENEFITS

Health And Safety Benefits

Option (c)

Scenario 1 . – Under the assumption of no economic growth of the sector and full compliance with the current best practice and the Regulations as proposed under option (c) there will be no additional benefits from the proposed regulation.

Scenario 2. - Under the assumption of economic growth of the sector and full compliance there are again no additional benefits from the regulation as proposed under option (c) as it upholds the existing best practice.

Scenario 3 .- Under the assumption that there will not be full compliance, the regulation as proposed under option (c) is expected to have safety benefits by reducing the risk of injuries to employees and clients of this industry. The cost of a major injury (human cost and medical treatment)³ are estimated to amount to £22,000. There are currently (under full compliance) 2 non-fatal major injuries (from high fall) occurring in this sector costing society £44,000 per annum. We do not suggest fully quantifying the benefits of the regulation under scenario 3 as we have no evidence for the future growth rate in this sector.

COSTS

Business Sectors Affected

The proposed Regulations will affect the Adventure Activity sector solely. The Adventure Activity sector consists of an estimated 2,000 centres and it is assumed that one senior instructor in each centre will be affected. We believe there will be a number of self employed instructors operating in Great Britain who will also be affected by these Regulations but we have no way of knowing how many there are. As part of this consultation we sought information to inform the finalisation of this RIA.

Option (c)

Scenario 1 – Under the assumption of no economic growth the costs are as follows:

³ Economic Analysis Unit, Appraisal Values. These values include human suffering, medical treatment as well as economic costs.

Total Costs to Businesses

It has been assumed that arrangements are already in place at adventure activity centres and among self employed instructors for assessing new and existing risks involving rope activities as required by the Management of Health and Safety at Work Regulations. This has been estimated to take an average of one day in all centres every year.

The only cost associated with the new Regulations is from assessing that an equivalent level of safety to that of the main Work at Height Regulations exists. This will require a review of the risk assessments whenever there is a significant change to an activity. It has been assumed that it takes on average one day each year for all assessments.

The cost of assessing equivalence is assumed to involve a senior Instructor earning an average of £15 per hour (equivalent to a wage of £20,000 and including non-wage labour costs).

The cost to adventure activity businesses of complying with the proposed Regulations is estimated to be £240,000 per annum. It amounts to £120 per annum per business based on an estimated 2,000 businesses.

The present value cost of the Regulation is £2.0 million over the appraisal period.

The growth assumed in scenario 2 and 3 would increase this present value, but due to lack of information on the potential growth rate we have not estimated this growth in costs.

Costs To A Typical Business

While the industry is made up of heterogeneous businesses an average business has been used to evaluate costs. The cost of the Regulations to each business (or here a typical centre) is estimated to be £120 per annum.

The present value cost of the proposed Regulations for this average business is £1,000 over the appraisal period.

Costs To HSE

The cost to HSE is some £56,000, which includes development of the Regulations and guidance, consultation and briefing of HSE and LA inspectors. The ongoing enforcement cost is minimal, as the Regulations require the Adventure Activity sector to incorporate in their risk assessment the measures necessary to achieve an equivalent level of safety to that of the Directive and any proactive inspection activity would already include a review of such risk assessments.

Environmental Impact

No environmental impacts are expected from these proposals.

Equity And Fairness

Those employed in the adventure activities sector will have a disproportionate burden and cost placed upon them compared to all the other industries that will be covered under the main Work at Height Regulations. The adventure activity sector representatives have been made aware of this and are content to bear the burden imposed.

It is expected that the impact of the proposed Regulations will be both reasonable and proportional for all key societal groups (i.e. disability, racial) and company turnover. Rural areas hold the majority of the sector affected so will be disproportionately affected by these Regulations.

Small firms impact test

There are no costs likely to arise from this Directive that would represent an unreasonable, or disproportionate, burden on small and medium sized businesses. This is because the cost that a small firm is likely to incur is the cost of determining equivalence and is likely to be directly related to the number of activities offered and so related to the size of the firm.

Competition Assessment

The proposed Work at Height (Amendment) Regulations will cover all companies in just one sector within the UK. The Regulation will directly affect the firm's costs and could change cost structures; this could lead to higher prices for consumers. In this connection we sought evidence from the sector on the state of competition for climbing and caving courses within Europe or more widely.

Comparison Of Costs And Benefits

The present value cost of the proposed Regulations has been estimated at £2 million over the appraisal period. It is not possible to fully quantify the benefits for the proposed Regulations. However, it is likely that there are safety benefits from the introduction of the regulation under scenario 3. We are not able to quantify these benefits but the costs are likely to be higher than the benefits. Overall there may be reason to assume that the benefits justify the costs under scenario 3.⁴

Uncertainties

To a large extent the final cost of the proposed Regulations will depend on a reliable estimate of the number of self-employed instructors, the time taken to assess equivalence by all workers and the wage of the person involved. Averages have been assumed for each and the growth rate in the industry. Should the familiarisation phase (time taken by managers to read the regulation) involved be greater than assumed here the cost will be greater; the costs are sensitive so that by doubling the time the cost will double, other things being equal.

Under a higher growth rate in this industry we can expect the benefits as described under scenario 3 to rise.

⁴ Under Cabinet Office guidance the RIA has to show that the benefits justify the costs, which does not mean that benefits are higher than costs.

Enforcement And Sanctions

Responding to queries raised, investigating accidents and incidents and routine checks by inspectors will identify non-compliance, where appropriate enforcement action may be taken in accordance with the HSC Enforcement Policy Statement.

The Health and Safety at Work Act 1974, section 33 (as amended) sets out the offences and maximum penalties under health and safety legislation.

Implementation and Delivery Plan

The regulations are intended to come into effect at the next common commencement date 6 April 2007 and will be enforced by HSE and Local Authority Inspectors. This will complete the implementation of the Temporary Work at Height Directive 2001/45/EC. Prior to commencement HSE plans to hold, in collaboration with sector representatives, regional briefing sessions for HSE and LA inspectors to explain this regulatory change. Once in place these regulations will become part of the general portfolio of health and safety regulations to be enforced in a proportionate way in line with Health and Safety Commission's (HSC's) enforcement policy statement.

Arrangements For Monitoring And Evaluation

The main Work at Height Regulations will be subject to formal review by the EC after 4 years. These Regulations will be included in that review and will be monitored by HSE and existing industry/HSE liaison bodies.

Summary And Recommendation

Overall there may be reason to assume that the benefits justify the costs under scenario 3.⁵

⁵ Under Cabinet Office guidance the RIA has to show that the benefits justify the costs, which does not mean that benefits are higher than costs.

Ministerial Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed:

Date:

Contact: Ian Greenwood

HSE Falls from Height Programme.

Floor 8, North Wing, Rose Court, London, SE1 9HS

e-mail ian.greenwood@hse.gsi.gov.uk