

Briefing: Proposed work at height regulations

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Fortunately, over the past six years there has been a downward trend in the number of accidents resulting from falls from height. This briefing looks at the proposed Work at Height Regulations which, if approved, will mean the introduction of a completely new set of all-industry Regulations and the removal from the existing sets of UK Regulations all present references to working at height provisions. The new Regulations would also incorporate new law not required by the Directive at all. From this scenario, the question arises as to whether this is the most effective way forward or indeed whether a minimum of change to the existing industry regulations is all that is required. The proposals remain open for comment until April 2004.

1. BACKGROUND

Falls, of one kind or another, have been a cause of death and injury at work since records began, and the latest reported accidents¹ show that there were, in 2002/03 (all industries), 49 fatal accidents and 3880 non-fatal accidents as a result of falls. There has been a downward trend in these accidents over the past six years.

From the advent of health and safety legislation specifically for the construction industry in the early twentieth century there has always been some detailed provision in place to address this specific hazard of working at height. Although the ideal is to eliminate hazards where this can be done, eliminating working at height during virtually any construction work activity is just not possible; it is one of those residual hazards that we have to 'live with' and manage as effectively as we can. Over the generations, many strategies have been worked out by those in industry to identify the risks of falls and the devising and implementing of measures to reduce the likelihood and consequences of falls. It follows that if you cannot eliminate the hazard, then neither can you completely eliminate the risk of falls occurring.

The construction accident record tells its own story in that consistently over half of all reported accidents to the Health and Safety Executive (HSE) are attributed to 'falls'—which could include falls from elevated levels; falls through open holes or openings; falls off edges of floors and roofs; falls through fragile materials; falls into pits, shafts or excavations; and falls on the level as a consequence of slipping, tripping or stumbling. Although falls are often recorded as the 'cause' of the injuries

resulting in a reportable accident, the truth is that the fall may only be the *primary* or immediate cause of the injury, and there may be a number of underlying or root causes to which attention needs to be given. Rigorous 'root cause analysis' of accidents does not often take place.

On a large construction site the potential for falls of one kind or another is huge given the diverse nature of work activities that can take place and the vast variety of temporary workplaces that need to be conceived and constructed—often for only short periods of time. The present principal legislative requirement on construction sites is contained in regulation 6(1) of the Construction (Health, Safety and Welfare) Regulations 1996,² and is stated as follows

Suitable and sufficient steps shall be taken to prevent, so far as is reasonably practicable, any person falling.

This one-sentence requirement, which applies to all construction work wherever it might be performed, has much to commend it, and in particular the following points.

- (a) This duty is within construction-industry-specific Regulations.
- (b) These Regulations place duties on 'every employer' and 'every self-employed person' and 'every person who controls the way in which any construction work is carried out'.
- (c) The object of the law could not be clearer—the *prevention of falls*.
- (d) The use of the terms 'suitable and sufficient' gives employers and others the flexibility of coming to the right solution in the right place, once they have analysed the safety requirements of any work that has to be undertaken at height.
- (e) The inclusion of the term 'so far as is reasonably practicable' does recognise that absolute safety is unobtainable and that there has to be a proportionality about the practical measures that should be in place.

2. EU DIRECTIVES

In addition to the UK's long-standing Health and Safety at Work etc. Act 1974, there have been two European Directives with a major influence on the way hazards and risks are managed in construction work, namely the Framework Directive of 1989³ and the Temporary and Mobile Construction Sites Directive of 1992. Between them they gave rise to the UK Management of Health

and Safety at Work Regulations 1999, the Construction (Design and Management) Regulations 1994 (presently under revision) and the Construction (Health, Safety and Welfare) Regulations 1996 which are quoted above. The new Directive, called the Temporary Work at Height Directive, is aimed at all work in any industry, not just construction work, and is dated 27 June 2001.⁴ In terms of the preparation and amendment of legislation, HSE is the UK government department charged with

- (a) taking part in the drafting of the text of the proposed Directive
- (b) advising Ministers on the final text of the proposed Directive
- (c) examining the text of the adopted Directive to see what is already in UK legislation and which parts of the Directive are not presently part of UK legislation
- (d) preparing proposals for the amendment of existing UK legislation and/or the creation of new UK legislation to implement the 'missing' parts of the Directive
- (e) preparing proposed UK legislative changes and incorporating them in a Consultation Document for public comment
- (f) receiving and considering the comments received and advising Ministers on the final text the Health and Safety Commission/Health and Safety Executive (HSC/E) considers appropriate.

The 2001 Directive itself is relatively short, with only four administrative 'Articles' and an Annex. It is the five-page Annex that contains the detail, and this is grouped under four headings as follows.

- (a) General provisions.
- (b) Specific provisions regarding the use of ladders.
- (c) Specific provisions regarding the use of scaffolding.
- (d) Specific provisions regarding the use of rope access and positioning techniques.

There are no definitions, schedules, parts, codes of practice, or guidance in the Directive or its Annex.

3. THE UK PROPOSALS

The proposal from HSC/E is for a completely new set of all-industry Regulations⁵ and the removal from the existing sets of UK Regulations all present references to working at height provisions. This includes deletions from the existing Construction (Health, Safety and Welfare) Regulations 1996 and from the Construction (Design and Management) (CDM) Regulations 1994. For the construction industry the net effect will be that the one-sentence 1996 regulation quoted above would be replaced by 19 new regulations plus five parts, eight schedules and a 50-page all-industry guidance document.

It is a matter of debate as to what extent legislation, by itself, finally results in the better on-site management of risk and thus helps to lower accident rates. In considering such matters, employers might ask themselves the following questions.

- Do I really perceive this legislation to be necessary?
- Can I see that the new legislation has the potential to make a significant difference?

- Can I fully understand what I will have to do, and can I integrate any changes I need to make into my business procedures and practices?
- Is it apparent to me that benefits will arise directly from complying with the new legislation?
- Are the burdens imposed by the new Regulations significantly greater than the likely benefits?

A line-by-line analysis of the proposed new Regulations is beyond the scope of this briefing, but in essence the new Directive both repeats and adds detail to the Temporary or Mobile Construction Sites Directive of 1992⁶ (see Clause 5 of Section II of Part B of this 1992 Directive). This is the first and best reason for concluding that such changes as are needed should be to existing UK construction legislation. The second good reason is that the CDM Regulations already place duties on those who design places of work and on principal contractors

- to have and implement a construction phase health and safety plan
- to make site rules which the contractor can enforce on other subcontractors and on every employee
- to ensure cooperation between all contractors.

The new proposed UK Regulations place duties on employers which, in the construction industry context, are more difficult to manage on site. Further, to confuse matters, the text of the new Regulations also duplicates law already extant in the Health and Safety at Work etc. Act 1974; the 1999 Management Regulations and the Provision and Use of Work Equipment Regulations. Furthermore, the new proposed UK Regulations incorporate new law not required by the Directive at all—and this includes parts or all of regulations 2, 4–6, and 8–16, and Schedules 2, 4, 5 and 6. Unfortunately, the crucial definition of 'work at height' in the proposed Regulations (if one is needed) is obscure and looks misworded and/or misprinted.

4. CONCLUSION

It is difficult to avoid the conclusion that the most effective way forward is not as proposed, but to leave the existing 1996 Construction Regulations as they are, and to add the minimum amount of required extra detail—which could be as little as only two new regulations and one new Schedule.

HSE is listening to comments from the industry and anyone else until April 2004. Time is indeed short to try to achieve a better end-product.

REFERENCES

1. HEALTH AND SAFETY COMMISSION. *Delivering Health and Safety in Great Britain, Health and Safety Targets—How are we Doing?* HSE Books, Sudbury, 2003, MISC633.
2. *Construction (Health, Safety and Welfare) Regulations 1996*. HMSO, London, 1996, SI 1996, No. 1592.
3. European Council Directive of 12 June 1989 (89/391/EEC) on the introduction of measures to encourage improvements in the safety and health of workers at work.
4. European Council Directive of 27 June 2001 (amending Council Directive of 89/655/EEC)—the 'Temporary Work at Height Directive'.

5. HEALTH AND SAFETY COMMISSION. *Proposals for Work at Height Regulations—Consultative Document*. HSE Books, Sudbury, 2003, CD 192.
6. European Council Directive of 24 June 1992 (92/57/EEC) on the implementation of the minimum safety and health requirements at temporary or mobile construction sites.

Please email, fax or post your discussion contributions to the secretary by 1 September 2004: email: kathleen.hollow@ice.org.uk; fax: +44 (0)20 7799 1325; or post to Kathleen Hollow, Journals Department, Institution of Civil Engineers, 1–7 Great George Street, London SW1P 3AA.