

**EXPLANATORY MEMORANDUM TO
THE WORK AT HEIGHT (AMENDMENT) REGULATIONS 2007**

2007 No. 114

1. This explanatory memorandum has been prepared by the Health and Safety Executive on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 These Regulations amend the Work at Height Regulations 2005 (S.I. 2005/735) (“the principal Regulations”) so as to apply those Regulations to persons whose work concerns the provision of instruction or leadership to one or more persons in connection with their engagement in caving or climbing by way of sport, recreation, team building or similar activities (“caving and climbing work”).

3. **Matters of special interest to the Joint Committee on Statutory Instruments and the Merits Committee**

3.1 None.

4. **Legislative background**

4.1 These Regulations are made under the Health and Safety at Work etc Act 1974. They amend the principal Regulations by omitting the disapplication for caving and climbing work. In doing so, they make further provision as respects Great Britain for implementing European Directive 2001/45/EC on preventing accidents involving temporary work at height.

4.2 A transposition note is appended to this memorandum at Annex A. It is an amended version of the one prepared for the principal Regulations, reflecting the change made by these Regulations.

4.3 The Health and Safety Executive for Northern Ireland undertook a similar consultation exercise to apply the Work at Height Regulations (Northern Ireland) 2005 (SR 2005 No 279) to persons whose work concerns the provision of instruction or leadership to one or more persons in connection with their engagement in caving or climbing by way of sport, recreation, team building or similar activities (“caving and climbing work”). It plans to present amending regulations to the Northern Ireland Assembly during 2007.

4.4 Gibraltar transposed Directive 2001/EC/45 into the law of Gibraltar by making the Factories (Work at Heights) Regulations 2006. No disapplication was made for caving and climbing activities, thus achieving full implementation in 2006.

5. **Extent**

5.1 These Regulations apply to Great Britain.

6. **European Convention on Human Rights**

6.1 In the view of Lord McKenzie of Luton, Parliamentary Under-Secretary of State for Work and Pensions, the provisions of the Regulations are compatible with the Convention rights.

7. **Policy background**

Policy

7.1 Following a consultation exercise carried out by the Health and Safety Commission (“HSC”) between December 2003 and April 2004 in relation to the preparation of the principal Regulations, the Health and Safety Executive (“HSE”) received substantive requests from the adventure activity sector for an exemption from those Regulations in relation to caving and climbing work. This issue had contributed to a delay in the implementation of Directive 2001/45/EC. It was not possible to exempt this work from the provisions of that Directive. The HSC decided to consult and provide for this sector separately at a later date in order that the principal Regulations could be made for the benefit of other workers without additional delay.

Consultation

7.2 The HSC undertook a consultation exercise between August 2006 and October 2006 with the adventure activity sector on draft amending Regulations to apply the principal Regulations to caving and climbing work. These Regulations also make a minor change to the principal Regulations in relation to the use of either one rope or two.

7.3 The consultation document was sent to more than 500 groups and individuals from the adventure activities sector that had previously responded to the consultation begun in December 2003 for the principal Regulations. The most recent consultation exercise produced 41 formal responses and a further 22 letters and e-mails in support of the response submitted on behalf of the Adventure Activities Industry Advisory Committee, which supported the sector’s existing good practice and shared HSC’s aim of ensuring that the regulations are practical. A summary of the consultation findings is attached to this memorandum at Annex B. Overall, there was general support for what the HSC was trying to achieve.

7.4 The consultation raised two main issues:

- the test for an equivalent level of safety; and
- use of one rope or two.

Equivalent level of safety

7.5 These Regulations introduce a new regulation which allows duty holders involved in caving and climbing work to use alternative means to maintain an equivalent level of safety to that already provided in the principal Regulations in connection with rope access and work positioning, when using two ropes. The natural environment in which cavers and climbers move is never constant and, because of this, requires them to adopt a flexible approach to ensure that the techniques applied are the most appropriate to the given situation. This equivalent level of safety can be achieved by following the existing good practices found in the caving and climbing activity sector. Incident rates in the adventure activities industry sector are comparable with the improving safety standards among industrial rope access workers as reported by the International Industrial Rope Access Trade Association (“IRATA”). The opportunity to compare the safety performance of these two groups of workers provides an important check and balance in the issue of “equivalent safety”. Work already done by HSE confirmed that this approach provides a sensible way of resolving the sectors previous concerns.

7.6 However, IRATA is concerned that this approach opens the door to others wanting the same treatment, leading to a watering down of the Regulations. IRATA’s concerns over lowering standards would be legitimate if the “equivalent safety” approach was adopted in an unstructured or arbitrary way. However, in this instance there is a transparent benchmark (comparable groups) and objective evidence (comparable incident rates) to justify such an approach. Again, the new regulation is highly specific applying only to caving and climbing work and cannot be exploited by other groups of workers without the agreement of HSC and Ministers.

One rope or two

7.7 These Regulations amend paragraph 1 of Part 3 of Schedule 5 to the principal Regulations (which deals with rope access and work positioning) and clarifies when one rope, rather than two may be used. Climbing and caving is a dynamic activity that, depending on the environment, can mean ropes are used in a variety of ways and for different purposes. In “normal” rock climbing the primary purpose of the rope is to arrest a fall in the event of a climber becoming detached.

7.8 For “work positioning”, which occurs when the user is held in tension or suspension by the rope, for example to reach a particular location, the principal Regulations require two separately anchored ropes. If the risk assessment indicates that the use of the second rope would entail higher risk, a single rope may be used and appropriate measures should be taken to ensure the system does not fail. These circumstances can be accommodated within the established climbing and caving practices.

Guidance

7.9. The sector, in collaboration with HSE, has produced supporting guidance on how the adventure activities industry can comply with the

requirements of the principal Regulations as amended by these Regulations. This will be available on HSE's website www.hse.gov.uk/falls

Consolidation

7.10 HSE is not proposing to consolidate the amendment with the principal Regulations as it affects only one specific industry sector. The free brief guide to the Work at Height Regulations 2005 (INDG401) will be updated to reflect the amended regulations.

8. **Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum at Annex C.

8.2 The only cost associated with the regulations is the cost of assessing that an equivalent level of safety exists as is required by the principal Regulations. The cost to adventure activity businesses of complying with those Regulations, as amended by these, is estimated to be £240,000 per annum. It amounts to £120 per annum per business, based on an estimated 2,000 businesses.

9. **Contact**

Ian Greenwood at the Health and Safety Executive, Rose Court, 2 Southwark Bridge, London SE1 9HS, can answer any queries regarding these Regulations:

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Transposition Note

Directive 2001/45/EC of the European Parliament and of the Council (OJ No L 195, 19.7.02, p.46) amending Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)

Article or paragraph of Annex	Objectives	Implementation	Responsibility
Article			
1	Adds the text in the Annex to Annex II to Directive 89/391/EEC. Article 4.3 of that Directive requires the establishment of procedures whereby a level of safety may be obtained corresponding to the objectives indicated by the provisions of Annex II	The Work at Height Regulations 2005	The Secretary of State through new Regulations, save where otherwise stated below

Article or paragraph of Annex	Objectives	Implementation	Responsibility
2.1	<p>Member States to publish the laws, regulations and administrative provisions necessary to comply with the Directive not later than 19.7.04</p> <p>Member States to inform the European Commission thereof</p> <p>Member States can make use of a transitional period until 19.7.04</p>	<p>As above. Date not met</p> <p>Not needed</p>	<p>The Health and Safety Executive via UKREP</p> <p>No action required</p>
2.2	Measures to contain or be accompanied by a reference to the Directive	In the Explanatory Note to the Regulations	
2.3	Member States to notify the European Commission of the provisions of national law already adopted		The Health and Safety Executive
3	Date of entry into force of the Directive		No action required
4	The Directive is addressed to Member States		Action required as specified in this Table
Paragraph of Annex			
4.1.1	Requires the selection of the most suitable work equipment; that collective protective	regulations 6(3), (4)(b), (5)(a) and 7	

Article or paragraph of Annex	Objectives	Implementation	Responsibility
	<p>measures be given priority over personal protective measures; and that the work equipment have appropriate dimensions</p> <p>Requires the most appropriate means of access to be selected, according to specified factors</p>	<p>regulation 2(1) definition of “work at height” sub-paragraph (b); regulation 7</p>	
4.1.2	Restriction on the use of ladders	Schedule 6 paragraph 1	
4.1.3	<p>Restriction on the use of rope access and positioning techniques</p> <p>Provision for a seat</p>	<p>regulation 2(1) definition of “personal fall protection system” sub-paragraph (b); Schedule 5 Part 1 paragraph 1</p> <p>Schedule 5 Part 3 paragraph 2</p>	
4.1.4	<p>Appropriate measures for minimising risks to be determined; provision for suitable safeguards to prevent falls</p> <p>Collective safeguards to be interrupted at points of ladder or stairway access</p>	<p>Regulations 6(1), (3) and (4), 7(2), 8 and Schedules 3 to 5</p> <p>Schedule 2 paragraph 4(1)</p>	
4.1.5	Measures when a collective safeguard is	Schedule 2 paragraph 4(2) and (3)	

Council Directive 89/654/EEC (OJ No L393, 30.12.89, p.1) concerning the minimum safety and health requirements for the workplace (first individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)

Provision of Directive	Objectives	Implementation	Responsibility
Annex 1 paragraph 12.5	Devices to prevent unauthorised entry into danger areas	Regulation 11(a)	The Secretary of State
Annex 1 paragraph 12.5; Annex II paragraph 10	Danger areas to be clearly indicated	Regulation 11(b) (replacing regulation 13(4) of the Workplace (Health, Safety and Welfare) regulations 1992/3004, revoked by regulation 19 and Schedule 8)	

Council Directive 92/57/EEC (OJ No L245, 26.8.92, p.6) on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)

Provision of Directive	Objective	Implementation	responsibility
Annex IV Part B Section II:			Secretary of State
paragraph 4	Prevention of falling objects	regulation 10; in relation to collective measures, regulation 4 of and Schedule 1(h) to the Management of Health and Safety at Work Regulations 1999/3242	
paragraph 5.1	Prevention of falls by means of solid cradles from a height	regulations 6(2), 7(2) and 8(a) and (b), Schedule 2 and Schedule 3 Part 1	
paragraph 5.2	Use of appropriate equipment or collective devices or suitable access	regulation 2(1), definition of "work equipment", regulations 7 and 8 and Schedules 2 to 6	
paragraph 6.2	Proper design etc.of scaffolding	Schedule 3 Part 2	

Draft Work at Height (Amendment) Regulations – Consultation Findings

Summary

The majority of respondents support the proposed amendment.

Background to the Consultation

The consultation on the draft proposals for The Work at Height Regulations (WAHR), took place between December 2003 and the beginning of April 2004. As a result of the representations made at that time, workers providing instruction or leadership to one or more person engaged in caving or climbing by way of sport, recreation, team building or similar activities were not included in the 2005 regulations.

This consultation, which took place between August and October 2006, proposed an amendment to the rope access and position provisions and extend the scope of the Regulations to include paid climbing and caving instructors.

HSE sent information about the consultation to more than 500 organisations and individuals from the adventure activities sector who responded to the 2003/04 consultation exercise or expressed an interest in this issue. The consultation was announced by a press release and the details, including an electronic reply form were available on HSE's website.

Total Responses

41 formal responses were received, plus a further 22 letters and emails endorsing the consultation response from John Cousins on behalf of the Adventure Activities Industry Advisory Committee (AAIAC). 32 of the total replies were from representative organisations and the rest from individuals. 36 replies were received from organisations and individuals from the adventure activities sector.

Of the 41 respondents; 29 said that they were a member of a National Governing Body (NGB) and 31 said they were a member of a Professional Association (e.g. IOSH).

Of those responding from the adventure activity sector 33 respondents said that the Consultation Document identified and addressed the key issues very well or well. Only 2 respondents from the adventure actives sector said that they didn't feel that issues were identified and addressed very well.

Most respondents (16) found out about the consultation from HSE's consultation letter, the second most popular route was the MTLUK/BMC website (7).

Of the 41 respondents, 23 were content for their personal details to be released, 13 requested their details to remain confidential and 5 respondents didn't state either way.

The majority of respondents support the proposed amendments and many commended the considerable time and effort HSE have put into finding a workable resolution to outstanding issues from the 2005 WAHR:

"I'm glad the results seems to have been a triumph for common sense"

"We are very grateful to the HSE and HSC for the considerable effort that they have directed towards the adventure activity sector in the latter stages of this process. We have found it very beneficial to have consistent liaison officers between the sector and HSE ... We would also like to thank Lord Hunt and Bill Callaghan for their continued interest in the adventure activity industry and note that the most positive aspect of this exercise from our point of view has been the opportunity to raise understanding of the very good practice that exists in this little known corner of industry."

Analysis of Detailed Responses

Q1) Are you persuaded by the evidence that, when using two ropes working climbers and cavers following their sector's best practice can deliver a level of safety equivalent to that of those using industrial rope access techniques?

	AA Sector	Other sectors	Total
Yes	29	2	31
No	7	2	9
Not Stated	0	1	1

Based on the results, it is evident that respondents from the adventure activities sector generally agree that working climbers and cavers following their sector's best practice can deliver a level of safety equivalent to that of those using industrial rope access techniques.

The emerging theme from those within the adventure activities sector concludes:

- (a) The natural environment in which they work is never constant and because of this it requires them to adopt a flexible approach to ensure that the techniques applied are the most appropriate to the given situation.
- (b) That they value the term "equivalent level of safety" and wish to avoid the need for prescriptive legislation and specified techniques, which

can be inappropriate to a given situation and counterproductive in terms of safety.

- (c) They consider themselves to be generally experienced and well trained to consequently exercise good judgement in the application of any chosen safety procedure

Q1.1) If no, say why and what more evidence is needed to persuade you?

Eight respondents said they weren't persuaded by the evidence that, when using two ropes, working climbers and cavers following their sector's best practice could deliver a level of safety equivalent to that of those using industrial rope access techniques. However, based on a detailed analysis of the content of the responses received, it can only be assumed, that these respondents were either confused by the wording of this question or were referring back to the issues raised during the original WAH consultation.

As the quotes below illustrate, these respondents were concerned by the overarching issue of single vs. double ropes not about whether there was evidence of an equivalent level of safety. They have not said what the evidence HSE could provide to persuade them otherwise.

"From my own personal experience to use two ropes say when using an assisted handline on steep ground when caving would be totally impractical as it is a technique for single rope."

"In some cases carrying two ropes is dangerous and impractical"

2) Does this approach of an equivalent level of safety have a place elsewhere in health and safety?

	AA Sector	Other sectors	Total
Yes	31	1	32
No	0	1	1
Not Stated	5	3	8

Whilst 31 respondents agreed that this approach did have a place elsewhere in health and safety to this, no one put forward an example of where else this equivalent level of safety approach could be used – although one respondent pointed to the parallel between this and the approach used in ACoPs:

However, the Industrial Rope Access Trade Association (IRATA) did raise its concerns about the potential ramifications of having an “equivalent level of safety” approach as opposed to specific regulations.

“ Potentially, this approach may open flood gates to other industry sectors claiming that they have equivalent or better levels of safety, the consequence of which will be to water down the regulations. ... It will also allow the 'white van man' to have a plausible excuse for ignoring the regulations. We thought that the concept behind the regulations was to have a stand-alone set of regulations covering all aspects of work at height. This approach of 'equivalent safety' moves significantly away from this concept.”

Clearly such an approach needs to be carefully applied in an evidence-based way and not left as an open-ended option. In this instance there is the opportunity to benchmark safety performance by industrial rope access technicians with adventure activity instructors and leaders and this has showed both sectors have good safety standards and a broadly equivalent level of safety.

Q3) When would an instructor use two ropes in climbing and or caving activities?

Only those within the adventure activities sector responded to this question. Within these replies we received the following responses to instances in which an instructor would use two ropes for climbing and caving; abseiling (24 separate mentions); maintenance (2 separate mentions), and rescue (18 separate mentions).

Q4) You probably answered yes to Q1. If so can you briefly tell us how using two ropes achieves an equivalent level of safety to WAHR Schedule 5, Part 3, Paragraph 1?

31 respondents answered “Yes” to Q1, and 26 of those provided text responses to this question. However, close analysis of these text responses added nothing new to the information previously provided to us by stakeholders such as the AAIA.

Q5) Do you agree that it is sensible to deal with this in guidance rather than in the Regulations?

Of the 39 who responded to this question, all but one felt it was sensible to deal with the issue in guidance. The 38 positive responses include 4 from outside the AA sector.

Q6) Have we made it sufficiently clear that when two ropes are used for climbing and caving that the requirements to be implemented are accepted good practices for the activity?

	AA Sector	Other sectors	Total
Yes	20	3	23
No	14	2	16
Not Stated	2		2

The significant number of 'no' responses come from the lead given by the AAIAC who took issue with the phrasing of this particular question:

"If Question 6 related solely to the Consultation Document and not the questionnaire we would have replied 'yes' and if the question was reversed to say 'Have we made it sufficiently clear that when a single rope is used for climbing and caving, that the requirements to be implemented are accepted good practice for the activity' we would also have said yes."

Nevertheless a majority of those responding agreed that HSE had made the issue sufficiently clear.

Q7) Does the amendment to Schedule 5 Part 3 make clear that a single rope may be used, subject to a risk assessment?

	AA Sector	Other sectors	Total
Yes	31	4	35
No	4	1	5
Not Stated	1		1

Q8) If no, what more could be done to make this clearer?

Only 5 respondents to question 7, said that they didn't feel that the amendment to Schedule 5 Part 3 made clear that a single rope may be used, subject to a risk assessment. Nevertheless, we received a further 10 text responses to this question of which the majority said

"We believe that the work underway at present between HSE and AAIAC members is the appropriate place to develop guidance that will provide additional reassurance to the sector ..."

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: *Bill McKenzie*

Lord McKenzie of Luton

Date: *23rd January 2007*

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