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HEALTH AND SAFETY COMMISSION

Work at Height Regulations and Adventure Activity Providers

A Paper by Ian Greenwood and Robert Vaughan (HTPD3)

Advisor(s): Elizabeth Gibby

Cleared by Jane Willis on

Issue

1. Whether to recommend to the Minister any exemption for adventure activity providers from the Work at Height Regulations (WAHR)

Timing

2. In the course of business

Recommendation →

3. ←

Background

4. HSC's regulatory objective for the WAHR has been one set of goal setting regulations applying across all sectors to all workers.

5. However, the adventure activity sector has campaigned against its inclusion in the WAHR. Some 450 organisations and individuals responded to the WAHR consultation opposing the sector's inclusion and pressing for exclusion/exemption. Their argument has two parts: firstly claiming that they could not comply with these regulations; and when that faltered, contesting as a matter of principle that these regulations should not apply to them. In support of this argument they contend:

- The regulations implement the Temporary Work at Heights Directive (TWAHD) - an 'industrial Directive' not intended for them (which EC officials firmly dispute); and

- Their own standards and good safety record in work at height matters makes the application of the WAHR unnecessary and damaging to their business ('regulation for regulation sake').

6. The sector can comply with the regulations; and in our judgement it is unlikely that it needs to do more to comply. HSE officials met sector representatives at the end of March to discuss the draft WAHR. Following that discussion a joint statement was issued and published on HSE's website and on the website of the British Mountaineering Council. This confirmed that in all but one relatively minor instance (fragile surfaces) the sector could comply with the WAHR. *The issue of fragile surfaces has been addressed in the revised Regulations.* On the basis of this agreement HSE drafted, in agreement with sector representatives, an enforcement protocol further reassuring the sector that its own standards and guidance would form the basis for inspection under the WAHR. We have offered to run some 'public' inspector training seminars for HSE and LA inspectors at activity centres so that there is transparency about the process and direct involvement (if they wish) of sector representatives.

7. The TWAHD applies to workers in the adventure activity sector. →



8. The safety record argument is supported by the published statistics. There were only 5 major and 2 over-3-day reportable injuries to workers in the activity adventure sector involving falls from a height in 2002/03. There are estimates of some 5,000 workers in the sector who provide more than a million trainee days annually (although not all of these will work at height).

9. Since the sector's campaign began, HSE has acknowledged the good safety record that is underpinned generally by good quality standards and competence accreditation schemes. However, it is important to understand that the sector is not homogeneous and competences and standards may vary:

- National Governing Bodies (NGBs). There are a number of different NGBs e.g. for climbing and caving whose standards can cover work at height issues in all the main activities currently offered by adventure activity providers. However, on matters of detail different operating environments can lead to differences in safety standards between NGBs (e.g. mats beneath 'bouldering' walls). Nevertheless, NGB standards are graduated in terms of environment and competence level and their representatives maintain that even the basic standard will give practitioners enough competence to comply with the WAHR.
- The Adventure Activity Licensing Scheme. This scheme, and the inspectorate that administers the scheme, was established after the tragedy at Lyme Bay. Some 1,000+ adventure activity providers are licensed and inspected by the scheme which mainly covers commercial providers catering for the under 18s. Those meeting licence standards are likely to comply with the WAHR.
- Others. There exists a group of other providers, who are workers, who are long-standing sports climbers and cavers and so claim competence based on experience. We have no way of assessing the size of this population or their claim to competence.

10. The campaign against these Regulations has had the positive effect of uniting what were disparate, and sometimes warring, factions within the sector, to discuss risks in working at heights. The downside has been that this has diverted staff from proactive work on the policy and priority programme to deal with reactive business. →

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Consultation

14. Internal to HSE.

Presentation

15. If an exemption is recommended, further consultation will be necessary. This will add to the timescale for implementation and may encourage others to seek similar treatment.

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19. ←

Environmental Implications

20. None

Other Implications

21. None that we are aware of.

Action

22. HSC to consider the recommendation at paragraph 3 and whether it wishes to seek a meeting with the Minister before tendering formal advice.