HSC
Health & Safety Commission

Proposal for Work at Height (Amendment) Regulations

This consultative document is issued by the Health and Safety Commission in compliance with its duty to consult, under section 50(3) of the Health and Safety at Work etc. Act 1974, bodies which appear to be appropriate before submitting proposals for the making of Regulations.

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to reach there no later than 31 October 2006

The Commission tries to make its consultation procedure as thorough and open as possible. Responses to this consultative document will be lodged with the Health and Safety Executive's Information Centres after the close of the consultation period where they can be inspected by members of the public or be copied to them on payment of the appropriate fee to cover costs.

Responses to this consultative document are invited on the basis that anyone submitting them agrees to their response being dealt with in this way. Responses, or part of them, will be withheld from the Information Centres only at the express request of the person making them. In such cases, a note will be put in the index to the responses identifying those who have commented and have asked that their views, or part of them, be treated as confidential.

Many business e-mail systems now automatically append a paragraph stating the message is confidential. If you are responding to this CD by e-mail and you are content for your responses to be made publicly available, please make clear in the body of your response that you do not wish any standard confidentiality statement to apply.

CONSULTATIVE DOCUMENT

Further single copies of this document may be obtained from HSE Books – see back cover

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SUMMARY OF DOCUMENT

This Consultative Document (CD) sets out the Health and Safety Commission's (HSC) proposals for Regulations amending the Work at Height Regulations 2005 regarding their application to those who work at height providing instruction or leadership to one or more person engaged in caving or climbing by way of sport, recreation, team building or similar activities in Great Britain.

The key elements of the HSC's approach to the Regulations are:

- To ensure that those who work at height as climbing or caving instructors and their employers are part of the same legislative framework as all other sectors;
- To ensure that the Regulations are practical and support the sector's existing good practice;
- To complete the implementation of the Temporary Work at Height Directive (TWAHD) (2001/45/EC);

This consultation proposes an amendment to the Work at Height Regulations 2005 (SI 2005, No 735) (WAHR) to extend the scope of the Regulations to include climbing and caving instructors. It is intended to publish guidance that will assist those affected by the changes to understand what they have to do and to show how existing good National Governing Body (NGB) practices are compatible with the Regulations. This draft guidance, reflecting the proposal in this CD has been agreed with representatives of the climbing and caving sectors. Any changes to the Regulations that arise from this consultation that need to be carried forward into the guidance will also be agreed with the sectors' representatives.

The HSC intends that these Regulations achieve the objectives of practicality and proportionality. If they do not, or if there are problems of practical application that have not been identified so far by consultation with representatives of the climbing and caving sectors, we would like to hear from you.

Included in the CD are a number of questions, on which we seek your comments. These questions include:

- Your views on the overall 'equivalent level of safety' approach, whether the case has been made for using it in this instance and whether the approach has wider application for health and safety law;
- Detailed questions on when and how paid instructors use two ropes when climbing and caving; and
- Whether the revision proposed to the Regulations about when single ropes can be used when climbing and caving has clarified the potential for misunderstanding

You can access the electronic version of the questionnaire via the HSE website or request a copy of the questionnaire via e-mail. This, along with other forms of electronic responses, will facilitate analysis. Further details on how to respond are set out in **Annex G**. In whatever way you choose to reply, however, your comments should reach us by **31 October 2006**.

All responses will be acknowledged and a summary of the main issues raised will be produced once the consultation period has been completed.

INTRODUCTION

This CD sets out HSC's proposals for amending WAHR so that they cover the activities of those who work at height teaching or leading climbing or caving activities in Great Britain. ***The proposed amendment will not affect climbing or caving by individuals or groups as a personal leisure pursuit.*** The Regulations will be called the Work at Height (Amendment) Regulations (WAH(A)R). The original Regulations, together with the proposed new draft Regulations are at **Annex A**. The HSC would value your opinions and comments on the proposal.

The HSC's approach

The consultation on the original proposals for WAHR took place between December 2003 and the beginning of April 2004. As a result of representations made at that time, workers providing instruction or leadership to one or more persons engaged in caving or climbing by way of sport, recreation, team building or similar activities were not included in the Regulations. These proposals complete the implementation of the TWAHD in Great Britain. The key elements of our approach to resolving this have been:

- To ensure consistency in the standard of health and safety protection for all who work at height;

- To consider a separate regulation for those working at height instructing or leading climbing and caving activities;

- To recognise that the climbing and caving sectors have a good record of health and safety at work, reflecting the existing good standards and practices set by the relevant NGBs[1]

- To recognise that these workers are covered by the Directive and there is a need to provide for this in UK law.

[1] MLTUK is the co-ordinating body for all mountain training schemes in the UK, overseeing the training and assessment of around six thousand leaders, instructors and guides. The British Caving Association is the Governing body for Underground Exploration in the United Kingdom.

BACKGROUND

The WAHR implement the 2nd Amending Directive (2001/45/EC) to the Use of Work Equipment Directive (89/655/EEC) (UWED). The 2nd amending Directive has become known as the Temporary Work at Heights Directive (TWAHD); the full text is attached at **Annex D**. The original UWED was implemented in Great Britain by the Provision and Use of Work Equipment Regulations 1992 (PUWER). The first amending Directive (AUWED) was implemented in GB by PUWER 98 and the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER). These Regulations already apply to the climbing and caving sectors.

The European Council of Ministers adopted the TWAHD on 14 June 2001, and a reference was published in the *Official Journal of the European Communities* on 19 July 2001. Member States were required to implement the requirements of the Directive into national law by 19 July 2004. To allow for proper consideration of stakeholder concerns, two consultation exercises were undertaken and as a result, WAHR only became law on 6 April 2005.

TWAHD sets out minimum requirements for the selection and use of work equipment for all work at height – the European Commission has made it absolutely clear that it has the same scope of application as the Framework Directive, and therefore it applies to all sectors of activity where temporary work at height is carried out including climbing or caving.

WAHR, in implementing the TWAHD, employs a systematic approach to the selection of equipment, giving collective protection measures (such as guard rails) priority over personal protection measures (such as harnesses). We accept that in the context of climbing and caving it is not reasonably practicable for instructors to avoid work at height, nor is reasonably practicable for them to use many of the measures in the Regulations such as scaffolds. It is also important to understand that many of the requirements of the WAHR are not new and reflect existing good practice in the climbing and caving sectors, e.g. the requirement for competence and planning.

In developing our proposals, we have made reference to the concept of "an equivalent level of safety". This concept arises from AUWED Article 4 paragraph 3, reproduced at **Annex E**. This allows Member States, following consultation with both sides of industry, and with due allowance for national legislation and/or practice, to establish procedures whereby a level of safety may be attained corresponding to the objectives indicated by the provisions of Annex II of UWED. This includes the TWAHD.

We have included the draft guidance that will accompany the Regulations in this CD (**Annex B**) for information as it forms an important part of the whole proposal. This guidance has been developed in close consultation with the representatives of the sector and regulatory changes arising out of this current consultation exercise will be agreed with them.

What would we like you to do?

While interested individuals are welcome to respond directly to this consultation, the representatives of the NGBs (MLTUK, BCA) have indicated that they will be preparing and providing a collective response from their constituencies to this consultation.

Please let us have your comments by **31 October 2006.** We have made an electronic version of the questionnaire available on the HSE website or you can e-mail us to request a copy of it. Alternatively, there is a copy of the questionnaire at the end of this document

for you to fill in by hand (**Annex F**). **We would encourage you to use the electronic form if at all possible (either via the HSE website or by requesting an e-mail copy of it).** Comments in electronic format, for example in an e-mail or as a MS Word document, would also be acceptable. This will allow us to analyse your responses as accurately and as quickly as possible. However, do not worry if you cannot reply electronically – we are also happy to accept written comments posted to us in the traditional way using the form at the end of this document.

By whatever means you reply, please do not be constrained by the questionnaire; we would also welcome any comments you wish to make, in whatever format. For example, you may have queries on the cost and benefits set out in the Regulatory Impact Assessment (see **Annex C**). **Please remember that it would be helpful if you could structure any comments so that it is clear which provisions of the Regulations or part of the Guidance you are commenting on.**

We will acknowledge all responses, and give full consideration to the substance of arguments in the development of proposals; we may also contact you again if, for example, we have a query. It may not, be possible to respond to each of you individually however, we will respond with a summary of the main questions raised and the proposed changes/solutions.

OUTLINE OF THE PROPOSAL AND ACCOMPANYING GUIDANCE

This section sets out the background to the proposal we are consulting on and on which we are seeking your views. **The full questionnaire (Annex F) contains space for you to add any other comments you may wish to make.**

The proposed amendments will not alter the existing situation where WAHR apply only to those who are at work and do not apply to anyone who is climbing for their personal pleasure. Nor do they apply to someone who is instructing a friend in climbing or to a club member who is leading a caving expedition for other members. This amendment does not change the existing situation whereby the WAHR already apply in full to those who are instructing others who are themselves at work and are learning climbing skills as a part of their other work activity e.g. members of the emergency services.

Overview of amendments

The amending Regulations remove the existing exemption for climbing and caving instruction and the associated definitions from Regulation 3. Consequent amendments to the drafting of the remaining parts of Regulation 3 are made. The provisions for climbing and caving are brought together in a new Regulation 14A. This Regulation makes provision as to what is to be sufficient compliance by climbing and caving duty holders with certain provisions in WAHR involving use of two ropes. It introduces an equivalent level of safety approach for compliance purposes. Duty holders should take account of the nature of the activity and all the circumstances in deciding what they need to do. The definition for climbing and caving is derived from the Adventure Activities Licensing Regulations 2004, a definition that is familiar to the industry.

Detail of amendments

Amending Regulation 3 will amend the application of WAHR Regulation 3(4) by removing the existing exemption for 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. The definitions of “caving” and “climbing” are deleted (they are reintroduced in a more appropriate place later). There are three consequent drafting changes to the remaining parts of Regulation 3(4) and (6) of WAHR to take account of the deletion of Regulation 3(4)(d) of WAHR.

WAH(A)R Regulation 4 inserts a new special provision in relation to climbing and caving into WAHR as new Regulation 14A, which applies only to those persons at work who are providing 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.

Regulation 14A(2) makes provision for employers to ‘maintain an equivalent level of safety’ to that of the existing WAHR provisions on rope access and positioning (WAHR Schedule 5 Part 3, paragraph 1) when using two ropes. In deciding whether an equivalent level of safety is maintained, the employer will, pursuant to regulation 14A(3) need to take account of the nature of the activity and all the circumstances. We believe this equivalent level of safety can be achieved by following the existing good practices found in the climbing and caving worlds but this is a question we are seeking views on.

We believe that most duty holders will carry out the majority of their work under the provisions of WAHR schedule 5, part 3, paragraph 3 – i.e. using a single rope and that there are only a very small number of activities where two ropes are likely to be used. We do not consider the use of doubled rope abseils or twin ropes to be two-rope use as envisaged by these Regulations.

In **Annex F** you will find a number of questions being asked about two rope working where we particularly welcome your views.

Regulation 14A(4) reintroduces the definitions of climbing and caving that were previously included in WAHR Regulation 3(6) in a more appropriate place.

Regulation 14A(5) amends paragraph 1 of Part 3 of Schedule 5 of WAHR to reassure those in the sector who had perceived an ambiguity in the original drafting. This makes it clear that, subject to a risk assessment and the taking of appropriate measures, a rope access or positioning system may comprise of a single rope. Where a single rope is used, the requirements of Schedule 5 Part 3 paragraph 1 relating to two ropes do not apply.

To assist duty holders in complying with WAHR, we have prepared draft guidance, with the full co-operation and assistance of Adventure Activities Industry Advisory Committee Working Group on Work at Heights (AAIACWG) and the Adventure Activities Licensing Authority (AALA). This guidance is reproduced at **Annex B**.

The sector's case for why it is unable to comply with the WAHR and how the Amendment Regulations address these concerns

The AAIAC-WG, representing sector interests in these Regulations, was invited to set out their case for why the sector is unable to comply with the existing Regulations and why different Regulations are necessary. Their position is reproduced here along with our response explaining how we believe our proposal addresses these concerns.

- *The Regulations have no benefit to our industry*

It is certainly the case that the climbing and caving community already has a good health and safety record. We believe that these Regulations support the industries own standards and provide a safety net against future erosion. By including climbing and caving within WAHR, duty holders in the sector will have a single legislative framework in which to operate as opposed to the current situation where there is a different framework for adventure activities compared to all other work at height.

- *HSE asked all consultees whether they thought anyone should be exempt from the Regulations and therefore raised the expectation that this was, in some way, possible.*

During the original consultation on WAHR, that ended in April 2004 there was public and media concern and misunderstandings about what TWAHD and WAHR, would require. This was compounded by nature of the exemption clause in the draft Regulations that the original consultation showed to have been too widely drafted. This gave rise in a number of sectors, including among climbers and cavers, to expectations of a general exemption that could not be realised because of the need to implement the European Directive on all

work activity at height. We are sorry for raising false expectations and lessons have been learned as a result.

- *Legal advice is that the WAHR are 'unnecessarily stifling' and that working climbers could be excepted from parts of the Regulations.*

Our advice is that an exemption from those parts of the Regulations that do not implement TWAHD requirements (or other Directives) may be possible but the Regulations would still need to apply in any case when they are relevant.

- *Separate Regulations help ensure that health and safety inspectors have to find adventure activity experts for advice and cannot ask, for example, a tree surgeon or a rope access worker what their industries would do.*

We would expect all inspectors to follow the HSC Enforcement Policy Statement but we are happy to support work to ensure that the enforcement of these Regulations is proportionate, transparent and evidence based. We would expect any HSE or Local Authority inspector to seek expertise from appropriately qualified or experienced persons, we would not expect a tree surgeon to comment on the measures taken during climbing a rock face. We hope that the guidance is sufficiently clear in setting out the standards that are expected and all enforcement officers will be expected to take it into account when making any decisions. We will ensure that the guidance is brought to the attention of both HSE and LA enforcement staffs.

- *We work at height for the sake of it and it is in the public interest that we do so. This sets us apart from other industries. This is then amplified by the public perception that we are all a little crazy, while the injured construction worker is just a little unlucky. We are cornered within the Regulations since our standard way of operating is in your view the worst-case scenario.*

We do not consider your way of operating to be a worst-case scenario. We fully accept that as part of teaching others about managing risk in climbing and caving those undergoing training must understand the risks and learn to use the correct skills. We also accept that it is not reasonably practicable for you to take many of the measures specified in WAHR. However, we know that every injury to a worker has consequences that affect not only the individual but also their family, friends and the wider community. We wish to minimise these affects by providing the protection of the law to all workers, equally – while not undermining the sector's good practices.

- *The Regulations are too prescriptive and we fundamentally disagree with the principle that two ropes or two anchor points will make a significant difference to our sector's safety record.*

We have noted your view and have proposed amendments that will allow the continued use of a single rope as currently practiced and we recognise that where you do use two ropes, these are used differently from the way set out in WAHR. Schedule 5 to WAHR implements TWAHD requirements and UK government policy is to implement Directive provisions. The amendments will allow you to use two ropes in accordance with your existing good practices. To ensure this is clear, officials have worked closely with AAIAC-WG in developing the proposal and the guidance. We believe that the way the amending Regulations are drafted makes clear that the sector's preferred ways of working are permissible and clearly allow use of a single rope.

Amending WAHR to include working climbers and cavers is a simpler approach than separate Regulations, which was considered and rejected. This approach meets the principles of better regulation by avoiding making a completely separate set of Regulations that would reproduce significant parts of the existing Regulations.

REGULATORY IMPACT ASSESSMENT

A Regulatory Impact Assessment has been prepared for this proposal and this is reproduced at **Annex C**.

QUESTIONNAIRE

We have brought together all the questions in **Annex F** to which we would particularly like your answers. Please do not feel constrained by these. Space is provided in the questionnaire for you to make any other views you have known.

Detailed instructions on completing the questionnaire are provided and you can respond either by post or electronically.

Returning your response to us:

In this consultation exercise, we would much prefer your responses in electronic format. This will make the analysis of all responses more accurate and responsive, and also allow us to process all returns in a shorter time period. However, we do not wish to constrain people, and are aware that some may not have access to a computer, and so responses in any format will be gratefully received. Nonetheless, the preferred methods of response are:

- Electronically using the separately provided electronic questionnaire either on the HSE website or requesting a copy of it by e-mailing us; or
- In writing by filling in the hard copy of the questionnaire at the end of this Consultation Document and posting it back to us.

IF YOU ARE UNSATISFIED WITH THE WAY THIS CONSULTATION HAS BEEN RUN

If you are not satisfied with the way in which this consultation exercise has been conducted you can complain by contacting:

Ian Greenwood,
Programme Manager, Falls from Height,
Health and Safety Executive,
8NW Rose Court,
2 Southwark Bridge,
London,
SE1 9HS.

Tel: **0207 717 6983**
E-mail: **ian.greenwood@hse.gsi.gov.uk**

We aim to reply to all complaints within 10 working days. If you are not satisfied with the outcome of your complaint, you can raise the matter with the Chief Executive of HSE - Geoffrey Podger, at the same address. You can also write to ask your MP to take up the case with us. Your MP may refer the matter to the Parliamentary Commissioner for Administration (the Ombudsman) who will investigate your complaint.

STATUTORY INSTRUMENTS

2005 No. 735

HEALTH AND SAFETY

The Work at Height Regulations 2005

Made	*16th March 2005*
Laid before Parliament	*16th March 2005*
Coming into force	*6th April 2005*

ARRANGEMENT OF REGULATIONS

1. Citation and commencement

2. Interpretation

3. Application

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9. Fragile surfaces

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12. Inspection of work equipment

13. Inspection of places of work at height

14. Duties of persons at work

15. Exemption by the Health and Safety Executive

16. Exemption for the armed forces

17. Amendment of the Provision and Use of Work Equipment Regulations 1998

18. Repeal of section 24 of the Factories Act 1961

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SCHEDULE 1 REQUIREMENTS FOR EXISTING PLACES OF WORK AND MEANS OF ACCESS OR EGRESS AT HEIGHT

SCHEDULE 2 REQUIREMENTS FOR GUARD-RAILS, TOE-BOARDS, BARRIERS AND SIMILAR COLLECTIVE MEANS OF PROTECTION

SCHEDULE 3 REQUIREMENTS FOR WORKING PLATFORMS

PART 1 REQUIREMENTS FOR ALL WORKING PLATFORMS

PART 2 ADDITIONAL REQUIREMENTS FOR SCAFFOLDING

SCHEDULE 4 REQUIREMENTS FOR COLLECTIVE SAFEGUARDS FOR ARRESTING FALLS

SCHEDULE 5 REQUIREMENTS FOR PERSONAL FALL PROTECTION SYSTEMS

PART 1 REQUIREMENTS FOR ALL PERSONAL FALL PROTECTION SYSTEMS

PART 2 ADDITIONAL REQUIREMENTS FOR WORK POSITIONING SYSTEMS

PART 3 ADDITIONAL REQUIREMENTS FOR ROPE ACCESS AND POSITIONING TECHNIQUES

PART 4 ADDITIONAL REQUIREMENTS FOR FALL ARREST SYSTEMS

PART 5 ADDITIONAL REQUIREMENTS FOR WORK RESTRAINT SYSTEMS

SCHEDULE 6 REQUIREMENTS FOR LADDERS

SCHEDULE 7 PARTICULARS TO BE INCLUDED IN A REPORT OF INSPECTION

SCHEDULE 8 REVOCATION OF INSTRUMENTS

The Secretary of State, in the exercise of the powers conferred on him by sections 15(1), (2), (3)(a), (5)(b), (6)(a) and 82(3)(a) of, and paragraphs 1(1), (2) and (3), 9, 11, 14, 15(1) and 16 of Schedule 3 to, the Health and Safety at Work etc. Act 1974 ("the 1974 Act") and for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act, after the carrying out by the said Commission of consultations in accordance with section 50(3) of that Act, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Work at Height Regulations 2005 and shall come into force on 6th April 2005.

Interpretation

2. - (1) In these Regulations, unless the context otherwise requires -

"the 1974 Act" means the Health and Safety at Work etc. Act 1974;

"access" and "egress" include ascent and descent;

"construction work" has the meaning assigned to it by Regulation 2(1) of the Construction (Health, Safety and Welfare) Regulations 1996;

"fragile surface" means a surface which would be liable to fail if any reasonably foreseeable loading were to be applied to it;

"ladder" includes a fixed ladder and a stepladder;

"line" includes rope, chain or webbing;

"the Management Regulations" means the Management of Health and Safety at Work Regulations 1999;

"personal fall protection system" means -

(a) a fall prevention, work restraint, work positioning, fall arrest or rescue system, other than a system in which the only safeguards are collective safeguards; or

(b) rope access and positioning techniques;

"suitable" means suitable in any respect which it is reasonably foreseeable will affect the safety of any person;

"work at height" means -

(a) work in any place, including a place at or below ground level;

(b) obtaining access to or egress from such place while at work, except by a staircase in a permanent workplace, where, if measures required by these Regulations were not taken, a person could fall a distance liable to cause personal injury;

"work equipment" means any machinery, appliance, apparatus, tool or installation for use at work (whether exclusively or not) and includes anything to which Regulation 8 and Schedules 2 to 6 apply;

"working platform" -

(a) means any platform used as a place of work or as a means of access to or egress from a place of work;

(b) includes any scaffold, suspended scaffold, cradle, mobile platform, trestle, gangway, gantry and stairway which is so used.

(2) Any reference in these Regulations to the keeping of a report or copy of a report or plan shall include reference to its being kept in a form -

(a) in which it is capable of being reproduced as a printed copy when required;

(b) which is secure from loss or unauthorised interference.

Application

3. - (1) These Regulations shall apply -

(a) in Great Britain; and

(b) outside Great Britain as sections 1 to 59 and 80 to 82 of the 1974 Act apply by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2001.

(2) The requirements imposed by these Regulations on an employer shall apply in relation to work -

(a) by an employee of his; or

(b) by any other person under his control, to the extent of his control.

(3) The requirements imposed by these Regulations on an employer shall also apply to -

(a) a self-employed person, in relation to work -

(i) by him; or

(ii) by a person under his control, to the extent of his control; and

(b) to any person other than a self-employed person, in relation to work by a person under his control, to the extent of his control.

(4) Regulations 4 to 16 of these Regulations shall not apply to or in relation to -

(a) the master and crew of a ship, or to the employer of such persons, in respect of the normal ship-board activities of a ship's crew which -

(i) are carried out solely by the crew under the direction of the master; and

(ii) are not liable to expose persons at work other than the master and crew to a risk to their safety;

(b) a place specified in Regulation 7(6) of the Docks Regulations 1988 where persons are engaged in dock operations;

(c) a place specified in Regulation 5(3) of the Loading and Unloading of Fishing Vessels Regulations 1988 where persons are engaged in fish loading processes; or

(d) 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.

(5) Regulation 11 of these Regulations shall not apply to an installation while Regulation 12 of the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996 apply to it.

(6) In this Regulation -

(a) "caving" includes the exploration of parts of mines which are no longer worked;

(b) "climbing" includes traversing, abseiling or scrambling over natural terrain or man-made structures;

(c) "ship" includes every description of vessel used in navigation, other than a ship which forms part of Her Majesty's Navy.

Organisation and planning

4. - (1) Every employer shall ensure that work at height is -

(a) properly planned;

(b) appropriately supervised; and

(c) carried out in a manner which is so far as is reasonably practicable safe,

and that its planning includes the selection of work equipment in accordance with Regulation 7.

(2) Reference in paragraph (1) to planning of work includes planning for emergencies and rescue.

(3) Every employer shall ensure that work at height is carried out only when the weather conditions do not jeopardise the health or safety of persons involved in the work.

(4) Paragraph (3) shall not apply where members of the police, fire, ambulance or other emergency services are acting in an emergency.

Competence

5. Every employer shall ensure that no person engages in any activity, including organisation, planning and supervision, in relation to work at height or work equipment for use in such work unless he is competent to do so or, if being trained, is being supervised by a competent person.

Avoidance of risks from work at height

6. - (1) In identifying the measures required by this Regulation, every employer shall take account of a risk assessment under Regulation 3 of the Management Regulations.

(2) Every employer shall ensure that work is not carried out at height where it is reasonably practicable to carry out the work safely otherwise than at height.

(3) Where work is carried out at height, every employer shall take suitable and sufficient measures to prevent, so far as is reasonably practicable, any person falling a distance liable to cause personal injury.

(4) The measures required by paragraph (3) shall include -

(a) his ensuring that the work is carried out -

(i) from an existing place of work; or

(ii) (in the case of obtaining access or egress) using an existing means,

which complies with Schedule 1, where it is reasonably practicable to carry it out safely and under appropriate ergonomic conditions; and

(b) where it is not reasonably practicable for the work to be carried out in accordance with sub-paragraph (a), his providing sufficient work equipment for preventing, so far as is reasonably practicable, a fall occurring.

(5) Where the measures taken under paragraph (4) do not eliminate the risk of a fall occurring, every employer shall -

(a) so far as is reasonably practicable, provide sufficient work equipment to minimise -

(i) the distance and consequences; or

(ii) where it is not reasonably practicable to minimise the distance, the consequences,

of a fall; and

(b) without prejudice to the generality of paragraph (3), provide such additional training and instruction or take

other additional suitable and sufficient measures to prevent, so far as is reasonably practicable, any person falling a distance liable to cause personal injury.

Selection of work equipment for work at height

7. - (1) Every employer, in selecting work equipment for use in work at height, shall -

(a) give collective protection measures priority over personal protection measures; and

(b) take account of -

(i) the working conditions and the risks to the safety of persons at the place where the work equipment is to be used;

(ii) in the case of work equipment for access and egress, the distance to be negotiated;

(iii) the distance and consequences of a potential fall;

(iv) the duration and frequency of use;

(v) the need for easy and timely evacuation and rescue in an emergency;

(vi) any additional risk posed by the use, installation or removal of that work equipment or by evacuation and rescue from it; and

(vii) the other provisions of these Regulations.

(2) An employer shall select work equipment for work at height which -

(a) has characteristics including dimensions which -

(i) are appropriate to the nature of the work to be performed and the foreseeable loadings; and

(ii) allow passage without risk; and

(b) is in other respects the most suitable work equipment, having regard in particular to the purposes specified in Regulation 6.

Requirements for particular work equipment

8. Every employer shall ensure that, in the case of -

(a) a guard-rail, toe-board, barrier or similar collective means of protection, Schedule 2 is complied with;

(b) a working platform -

(i) Part 1 of Schedule 3 is complied with; and

(ii) where scaffolding is provided, Part 2 of Schedule 3 is also complied with;

(c) a net, airbag or other collective safeguard for arresting falls which is not part of a personal fall protection system, Schedule 4 is complied with;

(d) a personal fall protection system, Part 1 of Schedule 5 and -

(i) in the case of a work positioning system, Part 2 of Schedule 5;

(ii) in the case of rope access and positioning techniques, Part 3 of Schedule 5;

(iii) in the case of a fall arrest system, Part 4 of Schedule 5;

(iv) in the case of a work restraint system, Part 5 of Schedule 5,

are complied with; and

(e) a ladder, Schedule 6 is complied with.

Fragile surfaces

9. - (1) Every employer shall ensure that no person at work passes across or near, or works on, from or near, a fragile surface where it is reasonably practicable to carry out work safely and under appropriate ergonomic conditions without his doing so.

(2) Where it is not reasonably practicable to carry out work safely and under appropriate ergonomic conditions without passing across or near, or working on, from or near, a fragile surface, every employer shall -

(a) ensure, so far as is reasonably practicable, that suitable and sufficient platforms, coverings, guard rails or similar means of support or protection are provided and used so that any foreseeable loading is supported by such supports or borne by such protection;

(b) where a risk of a person at work falling remains despite the measures taken under the preceding provisions of this Regulation, take suitable and sufficient measures to minimise the distances and consequences of his fall.

(3) Where any person at work may pass across or near, or work on, from or near, a fragile surface, every employer shall ensure that -

(a) prominent warning notices are so far as is reasonably practicable affixed at the approach to the place where the fragile surface is situated; or

(b) where that is not reasonably practicable, such persons are made aware of it by other means.

(4) Paragraph (3) shall not apply where members of the police, fire, ambulance or other emergency services are acting in an emergency.

Falling objects

10. - (1) Every employer shall, where necessary to prevent injury to any person, take suitable and sufficient steps to prevent, so far as is reasonably practicable, the fall of any material or object.

(2) Where it is not reasonably practicable to comply with the requirements of paragraph (1), every employer shall take suitable and sufficient steps to prevent any person being struck by any falling material or object which is liable to cause personal injury.

(3) Every employer shall ensure that no material or object is thrown or tipped from height in circumstances where it is liable to cause injury to any person.

(4) Every employer shall ensure that materials and objects are stored in such a way as to prevent risk to any person arising from the collapse, overturning or unintended movement of such materials or objects.

Danger areas

11. Without prejudice to the preceding requirements of these Regulations, every employer shall ensure that -

(a) where a workplace contains an area in which, owing to the nature of the work, there is a risk of any person at work -

(i) falling a distance; or

(ii) being struck by a falling object,

which is liable to cause personal injury, the workplace is so far as is reasonably practicable equipped with devices preventing unauthorised persons from entering such area; and

(b) such area is clearly indicated.

Inspection of work equipment

12. - (1) This Regulation applies only to work equipment to which Regulation 8 and Schedules 2 to 6 apply.

(2) Every employer shall ensure that, where the safety of work equipment depends on how it is installed or assembled, it is not used after installation or assembly in any position unless it has been inspected in that position.

(3) Every employer shall ensure that work equipment exposed to conditions causing deterioration which is liable to result in dangerous situations is inspected -

(a) at suitable intervals; and

(b) each time that exceptional circumstances which are liable to jeopardise the safety of the work equipment have occurred,

to ensure that health and safety conditions are maintained and that any deterioration can be detected and remedied in good time.

(4) Without prejudice to paragraph (2), every employer shall ensure that a working platform -

(a) used for construction work; and

(b) from which a person could fall 2 metres or more,

is not used in any position unless it has been inspected in that position or, in the case of a mobile working platform, inspected on the site, within the previous 7 days.

(5) Every employer shall ensure that no work equipment, other than lifting equipment to which the requirement in Regulation 9(4) of the Lifting Operations and Lifting Equipment Regulations 1998 ("LOLER") applies -

(a) leaves his undertaking; or

(b) if obtained from the undertaking of another person, is used in his undertaking,

unless it is accompanied by physical evidence that the last inspection required to be carried out under this Regulation has been carried out.

(6) Every employer shall ensure that the result of an inspection under this Regulation is recorded and, subject to paragraph (8), kept until the next inspection under this Regulation is recorded.

(7) A person carrying out an inspection of work equipment to which paragraph (4) applies shall -

(a) before the end of the working period within which the inspection is completed, prepare a report containing the particulars set out in Schedule 7; and

(b) within 24 hours of completing the inspection, provide the report or a copy thereof to the person on whose behalf the inspection was carried out.

(8) An employer receiving a report or copy under paragraph (7) shall keep the report or a copy thereof -

(a) at the site where the inspection was carried out until the construction work is completed; and

(b) thereafter at an office of his for 3 months.

(9) Where a thorough examination has been made of lifting equipment under Regulation 9 of LOLER -

(a) it shall for the purposes of this Regulation, other than paragraphs (7) and (8), be treated as an inspection of the lifting equipment; and

(b) the making under Regulation 10 of LOLER of a report of such examination shall for the purposes of paragraph (6) of this Regulation be treated as the recording of the inspection.

(10) In this Regulation "inspection", subject to paragraph (9) -

(a) means such visual or more rigorous inspection by a competent person as is appropriate for safety purposes;

(b) includes any testing appropriate for those purposes,

and "inspected" shall be construed accordingly.

Inspection of places of work at height

13. Every employer shall so far as is reasonably practicable ensure that the surface and every parapet, permanent rail or other such fall protection measure of every place of work at height are checked on each occasion before the place is used.

Duties of persons at work

14. - (1) Every person shall, where working under the control of another person, report to that person any activity or defect relating to work at height which he knows is likely to endanger the safety of himself or another person.

(2) Every person shall use any work equipment or safety device provided to him for work at height by his employer, or by a person under whose control he works, in accordance with -

(a) any training in the use of the work equipment or device concerned which have been received by him; and

(b) the instructions respecting that use which have been provided to him by that employer or person in compliance with the requirements and prohibitions imposed upon that employer or person by or under the relevant statutory provisions.

Exemption by the Health and Safety Executive

15. - (1) Subject to paragraph (2), the Health and Safety Executive ("the Executive") may, by a certificate in writing, exempt -

(a) any person or class of persons;

(b) any premises or class of premises;

(c) any work equipment; or

(d) any work activity,

from the requirements imposed by paragraph 3(a) and (c) of Schedule 2, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing.

(2) The Executive shall not grant any such exemption unless, having regard to the circumstances of the case and in particular to -

(a) the conditions, if any, which it proposes to attach to the exemption; and

(b) any other requirements imposed by or under any enactments which apply to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.

Exemption for the armed forces

16. - (1) Subject to paragraph (2), the Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt any person or class of persons from any requirement or prohibition imposed by these Regulations in respect of activities carried out in the interests of national security, and any such exemption may be granted subject to conditions and may be revoked by the Secretary of State by a certificate in writing at any time.

(2) The Secretary of State shall not grant any such exemption unless he is satisfied that the health and safety of the employees concerned are ensured as far as possible in the light of the objectives of these Regulations.

Amendment of the Provision and Use of Work Equipment Regulations 1998

17. There shall be added to Regulation 6(5) of the Provision and Use of Work Equipment Regulations 1998 the following sub-paragraph -

" (f) work equipment to which Regulation 12 of the Work at Height Regulations 2005 applies".

Repeal of section 24 of the Factories Act 1961

18 Section 24 of the Factories Act 1961 is repealed.

Revocation of instruments

19 The instruments specified in column 1 of Schedule 8 are revoked to the extent specified in column 3 of that Schedule.

Signed by authority of the Secretary of State

Jane Kennedy
Minister of State, Department for Work and Pensions

16th March 2005

SCHEDULE 1

Regulation 6(4)(a)

REQUIREMENTS FOR EXISTING PLACES OF WORK AND MEANS OF ACCESS OR EGRESS AT HEIGHT

Every existing place of work or means of access or egress at height shall -

(a) be stable and of sufficient strength and rigidity for the purpose for which it is intended to be or is being used;

(b) where applicable, rest on a stable, sufficiently strong surface;

(c) be of sufficient dimensions to permit the safe passage of persons and the safe use of any plant or materials required to be used and to provide a safe working area having regard to the work to be carried out there;

(d) possess suitable and sufficient means for preventing a fall;

(e) possess a surface which has no gap -

(i) through which a person could fall;

(ii) through which any material or object could fall and injure a person; or

(iii) giving rise to other risk of injury to any person, unless measures have been taken to protect persons against such risk;

(f) be so constructed and used, and maintained in such condition, as to prevent, so far as is reasonably practicable -

(i) the risk of slipping or tripping; or

(ii) any person being caught between it and any adjacent structure;

(g) where it has moving parts, be prevented by appropriate devices from moving inadvertently during work at height.

SCHEDULE 2

Regulation 8(a)

REQUIREMENTS FOR GUARD-RAILS, TOE-BOARDS, BARRIERS AND SIMILAR COLLECTIVE MEANS OF PROTECTION

1. Unless the context otherwise requires, any reference in this Schedule to means of protection is to a guard-rail, toe-board, barrier or similar collective means of protection.

2. Means of protection shall -

(a) be of sufficient dimensions, of sufficient strength and rigidity for the purposes for which they are being used, and otherwise suitable;

(b) be so placed, secured and used as to ensure, so far as is reasonably practicable, that they do not become accidentally displaced; and

(c) be so placed as to prevent, so far as is practicable, the fall of any person, or of any material or object, from any place of work.

3. In relation to work at height involved in construction work -

(a) the top guard-rail or other similar means of protection shall be at least 950 millimetres or, in the case of such means of protection already fixed at the coming into force of these Regulations, at least 910 millimetres above the edge from which any person is liable to fall;

(b) toe-boards shall be suitable and sufficient to prevent the fall of any person, or any material or object, from any place of work; and

(c) any intermediate guard-rail or similar means of protection shall be positioned so that any gap between it and other means of protection does not exceed 470 millimetres.

4. Any structure or part of a structure which supports means of protection or to which means of protection are attached shall be of sufficient strength and suitable for the purpose of such support or attachment.

5. - (1) Subject to sub-paragraph (2), there shall not be a lateral opening in means of protection save at a point of access to a ladder or stairway where an opening is necessary.

(2) Means of protection shall be removed only for the time and to the extent necessary to gain access or egress or for the performance of a particular task and shall be replaced as soon as practicable.

(3) The task shall not be performed while means of protection are removed unless effective compensatory safety measures are in place.

SCHEDULE 3

Regulation 8(b)

REQUIREMENTS FOR WORKING PLATFORMS

PART 1

REQUIREMENTS FOR ALL WORKING PLATFORMS

Interpretation

1. In this Schedule, "supporting structure" means any structure used for the purpose of supporting a working platform and includes any plant used for that purpose.

Condition of surfaces

2. Any surface upon which any supporting structure rests shall be stable, of sufficient strength and of suitable composition safely to support the supporting structure, the working platform and any loading intended to be placed on the working platform.

Stability of supporting structure

3. Any supporting structure shall -

(a) be suitable and of sufficient strength and rigidity for the purpose for which it is being used;

(b) in the case of a wheeled structure, be prevented by appropriate devices from moving inadvertently during work at height;

(c) in other cases, be prevented from slipping by secure attachment to the bearing surface or to another structure, provision of an effective anti-slip device or by other means of equivalent effectiveness;

(d) be stable while being erected, used and dismantled; and

(e) when altered or modified, be so altered or modified as to ensure that it remains stable.

Stability of working platforms

4. A working platform shall -

(a) be suitable and of sufficient strength and rigidity for the purpose or purposes for which it is intended to be used or is being used;

(b) be so erected and used as to ensure that its components do not become accidentally displaced so as to endanger any person;

(c) when altered or modified, be so altered or modified as to ensure that it remains stable; and

(d) be dismantled in such a way as to prevent accidental displacement.

Safety on working platforms

5. A working platform shall -

(a) be of sufficient dimensions to permit the safe passage of persons and the safe use of any plant or materials required to be used and to provide a safe working area having regard to the work being carried out there;

(b) possess a suitable surface and, in particular, be so constructed that the surface of the working platform has no gap -

(i) through which a person could fall;

(ii) through which any material or object could fall and injure a person; or

(iii) giving rise to other risk of injury to any person, unless measures have been taken to protect persons against such risk; and

(c) be so erected and used, and maintained in such condition, as to prevent, so far as is reasonably practicable -

(i) the risk of slipping or tripping; or

(ii) any person being caught between the working platform and any adjacent structure.

Loading

6. A working platform and any supporting structure shall not be loaded so as to give rise to a risk of collapse or to any deformation which could affect its safe use.

PART 2

ADDITIONAL REQUIREMENTS FOR SCAFFOLDING

Additional requirements for scaffolding

7. Strength and stability calculations for scaffolding shall be carried out unless -

(a) a note of the calculations, covering the structural arrangements contemplated, is available; or

(b) it is assembled in conformity with a generally recognised standard configuration.

8. Depending on the complexity of the scaffolding selected, an assembly, use and dismantling plan shall be drawn up by a competent person. This may be in the form of a standard plan, supplemented by items relating to specific details of the scaffolding in question.

9. A copy of the plan, including any instructions it may contain, shall be kept available for the use of persons concerned in the assembly, use, dismantling or alteration of scaffolding until it has been dismantled.

10. The dimensions, form and layout of scaffolding decks shall be appropriate to the nature of the work to be performed and suitable for the loads to be carried and permit work and passage in safety.

11. While a scaffold is not available for use, including during its assembly, dismantling or alteration, it shall be marked with general warning signs in accordance with the Health and Safety (Safety Signs and Signals) Regulations 1996 and be suitably delineated by physical means preventing access to the danger zone.

12. Scaffolding may be assembled, dismantled or significantly altered only under the supervision of a competent person and by persons who have received appropriate and specific training in the operations envisaged which addresses specific risks which the operations may entail and precautions to be taken, and more particularly in -

(a) understanding of the plan for the assembly, dismantling or alteration of the scaffolding concerned;

(b) safety during the assembly, dismantling or alteration of the scaffolding concerned;

(c) measures to prevent the risk of persons, materials or objects falling;

(d) safety measures in the event of changing weather conditions which could adversely affect the safety of the scaffolding concerned;

(e) permissible loadings;

(f) any other risks which the assembly, dismantling or alteration of the scaffolding may entail.

SCHEDULE 4

Regulation 8(c)

REQUIREMENTS FOR COLLECTIVE SAFEGUARDS FOR ARRESTING FALLS

1. Any reference in this Schedule to a safeguard is to a collective safeguard for arresting falls.

2. A safeguard shall be used only if -

(a) a risk assessment has demonstrated that the work activity can so far as is reasonably practicable be performed safely while using it and without affecting its effectiveness;

(b) the use of other, safer work equipment is not reasonably practicable; and

(c) a sufficient number of available persons have received adequate training specific to the safeguard, including rescue procedures.

3. A safeguard shall be suitable and of sufficient strength to arrest safely the fall of any person who is liable to fall.

4. A safeguard shall -

(a) in the case of a safeguard which is designed to be attached, be securely attached to all the required anchors, and the anchors and the means of attachment thereto shall be suitable and of sufficient strength and stability for the purpose of safely supporting the foreseeable loading in arresting any fall and during any subsequent rescue;

(b) in the case of an airbag, landing mat or similar safeguard, be stable; and

(c) in the case of a safeguard which distorts in arresting a fall, afford sufficient clearance.

5. Suitable and sufficient steps shall be taken to ensure, so far as practicable, that in the event of a fall by any person the safeguard does not itself cause injury to that person.

SCHEDULE 5

Regulation 8(d)

REQUIREMENTS FOR PERSONAL FALL PROTECTION SYSTEMS

PART 1

REQUIREMENTS FOR ALL PERSONAL FALL PROTECTION SYSTEMS

1. A personal fall protection system shall be used only if -

(a) a risk assessment has demonstrated that -

(i) the work can so far as is reasonably practicable be performed safely while using that system; and

(ii) the use of other, safer work equipment is not reasonably practicable; and

(b) the user and a sufficient number of available persons have received adequate training specific to the operations envisaged, including rescue procedures.

2. A personal fall protection system shall -

(a) be suitable and of sufficient strength for the purposes for which it is being used having regard to the work being carried out and any foreseeable loading;

(b) where necessary, fit the user;

(c) be correctly fitted;

(d) be designed to minimise injury to the user and, where necessary, be adjusted to prevent the user falling or slipping from it, should a fall occur; and

(e) be so designed, installed and used as to prevent unplanned or uncontrolled movement of the user.

3. A personal fall protection system designed for use with an anchor shall be securely attached to at least one anchor, and each anchor and the means of attachment thereto shall be suitable and of sufficient strength and stability for the purpose of supporting any foreseeable loading.

4. Suitable and sufficient steps shall be taken to prevent any person falling or slipping from a personal fall protection system.

PART 2

ADDITIONAL REQUIREMENTS FOR WORK POSITIONING SYSTEMS

A work positioning system shall be used only if either -

(a) the system includes a suitable backup system for preventing or arresting a fall; and

(b) where the system includes a line as a backup system, the user is connected to it; or

(c) where it is not reasonably practicable to comply with sub-paragraph (a), all practicable measures are taken to ensure that the work positioning system does not fail.

PART 3

ADDITIONAL REQUIREMENTS FOR ROPE ACCESS AND POSITIONING TECHNIQUES

1. A rope access or positioning technique shall be used only if -

(a) subject to paragraph 3, it involves a system comprising at least two separately anchored lines, of which one ("the working line") is used as a means of access, egress and support and the other is the safety line;

(b) the user is provided with a suitable harness and is connected by it to the working line and the safety line;

(c) the working line is equipped with safe means of ascent and descent and has a self-locking system to prevent the user falling should he lose control of his movements; and

(d) the safety line is equipped with a mobile fall protection system which is connected to and travels with the user of the system.

2. Taking the risk assessment into account and depending in particular on the duration of the job and the ergonomic constraints, provision must be made for a seat with appropriate accessories.

3. The system may comprise a single rope where -

(a) a risk assessment has demonstrated that the use of a second line would entail higher risk to persons; and

(b) appropriate measures have been taken to ensure safety.

PART 4

ADDITIONAL REQUIREMENTS FOR FALL ARREST SYSTEMS

1. A fall arrest system shall incorporate a suitable means of absorbing energy and limiting the forces applied to the user's body.

2. A fall arrest system shall not be used in a manner -

(a) which involves the risk of a line being cut;

(b) where its safe use requires a clear zone (allowing for any pendulum effect), which does not afford such zone; or

(c) which otherwise inhibits its performance or renders its use unsafe.

PART 5

ADDITIONAL REQUIREMENTS FOR WORK RESTRAINT SYSTEMS

A work restraint system shall -

(a) be so designed that, if used correctly, it prevents the user from getting into a position in which a fall can occur; and

(b) be used correctly.

SCHEDULE 6

Regulation 8(e)

REQUIREMENTS FOR LADDERS

1. Every employer shall ensure that a ladder is used for work at height only if a risk assessment under Regulation 3 of the Management Regulations has demonstrated that the use of more suitable work equipment is not justified because of the low risk and -

(a) the short duration of use; or

(b) existing features on site which he cannot alter.

2. Any surface upon which a ladder rests shall be stable, firm, of sufficient strength and of suitable composition safely to support the ladder so that its rungs or steps remain horizontal, and any loading intended to be placed on it.

3. A ladder shall be so positioned as to ensure its stability during use.

4. A suspended ladder shall be attached in a secure manner and so that, with the exception of a flexible ladder, it cannot be displaced and swinging is prevented.

5. A portable ladder shall be prevented from slipping during use by -

(a) securing the stiles at or near their upper or lower ends;

(b) an effective anti-slip or other effective stability device; or

(c) any other arrangement of equivalent effectiveness.

6. A ladder used for access shall be long enough to protrude sufficiently above the place of landing to which it provides access, unless other measures have been taken to ensure a firm handhold.

7. No interlocking or extension ladder shall be used unless its sections are prevented from moving relative to each other while in use.

8. A mobile ladder shall be prevented from moving before it is stepped on.

9. Where a ladder or run of ladders rises a vertical distance of 9 metres or more above its base, there shall, where reasonably practicable, be provided at suitable intervals sufficient safe landing areas or rest platforms.

10. Every ladder shall be used in such a way that -

(a) a secure handhold and secure support are always available to the user; and

(b) the user can maintain a safe handhold when carrying a load unless, in the case of a step ladder, the maintenance of a handhold is not practicable when a load is carried, and a risk assessment under Regulation 3 of the Management Regulations has demonstrated that the use of a stepladder is justified because of -

(i) the low risk; and

(ii) the short duration of use.

SCHEDULE 7

Regulation 12(7)

PARTICULARS TO BE INCLUDED IN A REPORT OF INSPECTION

1. The name and address of the person for whom the inspection was carried out.

2. The location of the work equipment inspected.

3. A description of the work equipment inspected.

4. The date and time of the inspection.

5. Details of any matter identified that could give rise to a risk to the health or safety of any person.

6. Details of any action taken as a result of any matter identified in paragraph 5.

7. Details of any further action considered necessary.

8. The name and position of the person making the report.

SCHEDULE 8

Regulation 19

REVOCATION OF INSTRUMENTS

(1)	(2)	(3)
Description of instrument	Reference	Extent of revocation
The Shipbuilding and Ship-repairing Regulations 1960	S.I. 1960/1932, amended by S.I. 1983/644 and 1998/2307	Regulations 7 to 10 and 12 to 30
The Docks, Shipbuilding etc. (Metrication) Regulations 1983	S.I. 1983/644	In the Schedule the entries relating to Regulations 9(1)(a) to 26(1) of the Shipbuilding and Ship-repairing Regulations 1960
The Docks Regulations 1988	S.I. 1988/1655	Regulation 7(4) and (5); in Regulation 7(6) the words "and (c) any other place not being a quay or jetty where any person working or passing might fall a distance of more than 2 metres"
The Loading and Unloading of Fishing Vessels Regulations 1988	S.I. 1988/1656	In Regulation 5(3) the words "and (c) any other place not being a quay where any person working or passing might fall a distance of more than two metres"
The Workplace (Health, Safety and Welfare) Regulations 1992	S.I. 1992/3004	Regulation 13(1) to (4)

The Construction (Health, Safety and Welfare) Regulations 1996	S.I.1996/1592	In Regulation 2(1), the definitions of "fragile material", "personal suspension equipment" and "working platform"; Regulations 6 to 8; in Regulation 29(2) the word "scaffold" in both instances; Regulation 30(5) and (6)(a); Schedules 1 to 5; and the entry first mentioned in columns 1 and 2 of Schedule 7

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations impose health and safety requirements with respect to work at height, with certain exceptions including by instructors or leaders in recreational climbing and caving.

2. These Regulations give effect as respects Great Britain to Directive 2001/45/EC of the European Parliament and of the Council (OJ No L195, 19.7.2001, p.46), amending Council Directive 89/655/EEC (OJ No L393, 30.12.89, p.13) concerning the minimum safety and health requirements for the use of work equipment by workers at work. They contain additional provisions, including provisions which replace Regulations giving effect to certain provisions of Council Directives 89/391/EEC (OJ No L393, 30.12.89, p.1) concerning the minimum safety and health requirements for the workplace and 92/57/EEC (OJ No L245, 26.8.92, p.6) on the implementation of minimum health and safety requirements at temporary or mobile construction sites.

3. The Regulations -

(a) impose duties relating to the organising and planning of work at height (Regulation 4);

(b) require that persons at work be competent, or supervised by competent persons (Regulation 5);

(c) prescribe steps to be taken to avoid risk from work at height (Regulation 6 and Schedule 1);

(d) impose duties relating to the selection of work equipment (Regulation 7);

(e) impose duties in relation to particular work equipment (Regulation 8 and Schedules 2 to 6);

(f) impose duties for the avoidance of risks from fragile surfaces, falling objects and danger areas (Regulations 9 to 11);

(g) require the inspection of certain work equipment and of places of work at height (Regulations 12 and 13 and Schedule 7);

(h) impose duties on persons at work (Regulation 14);

(i) provide for exemptions from certain provisions (Regulations 15 and 16); and

(j) amend, repeal or revoke certain enactments (Regulations 17 to19 and Schedule 8).

4. A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the Health and Safety Executive, Safety Economics Unit, Rose Court, 2 Southwark Bridge, London SE1 9HS. A Transposition Note in relation to the implementation of the Directives can be obtained from the Health and Safety, International Branch at the same address. Copies of both these documents have been placed in the Library of each House of Parliament.

ANNEX A2

The draft Regulations in full:

S T A T U T O R Y I N S T R U M E N T S

2006 No.

HEALTH AND SAFETY

The Work at Height (Amendment) Regulations 2006

Made - - - -	****2006*
Laid before Parliament	****2006*
Coming into force - -	***2006*

The Secretary of State, in exercise of the powers conferred upon him by sections 15(1), (4)(a) and 82(3)(a) of the Health and Safety at Work etc. Act 1974([2]) and for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act, after the carrying out by the said Commission of consultations in accordance with section 50(3) of that Act, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Work at Height (Amendment) Regulations 2006 and shall come into force on 2006.

Amendment of the Work at Height Regulations 2005

2. The Work at Height Regulations 2005([3]) are amended in accordance with the following provisions of these Regulations.

3. In Regulation 3 (application) —

(a) in paragraph (4) —

(i) at the end of sub-paragraph (b), insert "or"; and

(ii) omit sub-paragraph (d) and the word "or" preceding it; and

(b) in paragraph (6), omit sub-paragraphs (a) and (b).

4. After Regulation 14 (duties of persons at work), insert —

([2]) 1974 c.37. Sections 15 and 50 were amended by the Employment Protection Act 1975 (c.71) Schedule 15, paragraphs 6 and 16 respectively. The general purposes of Part I of the 1974 Act were extended by section 1(1) of the Offshore Safety Act 1992 (c.15). Section 51A was inserted by section 1, and sections 52 and 53 were amended by sections 2 and 6 respectively, of the Police (Health and Safety) Act 1997 (c.42).

([3]) S.I. 2005/735.

“Special provision in relation to caving and climbing

14A.—(1) Paragraph (2) applies in relation to the application of these Regulations to work concerning 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.

(2) Where this paragraph applies, it shall be sufficient compliance by an employer, self-employed person or other person with Regulation 8(d)(ii), so far as it relates to paragraph 1 in Part 3 of Schedule 5, and with that paragraph in that Part, if, by alternative means to any requirement of those provisions, he maintains in relation to a person at such work as is referred to in paragraph (1) a level of safety equivalent to that required by those provisions.

(3) For the purposes of paragraph (2), in determining whether an equivalent level of safety is maintained, regard shall be had to —

(a) the nature of the activity; and

(b) all the circumstances.

(4) In this Regulation —

(a) “caving” includes the exploration of parts of mines which are no longer worked; and

(b) “climbing” means climbing, traversing, abseiling or scrambling over natural terrain or man-made structures.”.

5. In paragraph 1 of Part 3 of Schedule 5 —

(a) at the beginning, insert “Subject to paragraph 3,”; and

(b) in sub-paragraph (a), omit “subject to paragraph 3”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations amend the Work at Height Regulations 2005 (S.I. 2005/735) (“the principal Regulations”) which give effect as respects Great Britain to Directive 2001/45/EC of the European Parliament and of the Council (OJ No L195, 19.7.2001, p.46), amending Council Directive 89/655/EEC (OJ No L393, 30.12.89, p.13) concerning the minimum safety and health requirements for the use of work equipment by workers at work.

2. These Regulations omit the disapplication in Regulation 3(4)(d) of the principal Regulations in relation to work concerning 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 (Regulation 3). These Regulations also make provision as to what is to be sufficient compliance with certain requirements under the principal Regulations as they apply to such work (Regulation 4).

ANNEX B

Falls from Height

Guidance on the application of the Work at Height Regulations 2005 to persons instructing climbing and caving

This advice provides a practical guide to the interpretation and applications of the Work at Height Regulations 2005 (WAHR) when people are instructing or leading at height in the adventure activities sector. Although the terms climbing and caving are used through out the guidance, activities such as canyoning and ropes or challenge courses, where there is work at height, are also covered. The term instructor is used to cover all those whose work is covered by this guidance. The term provider is used to cover all those who are duty holders under WAHR. This guidance does not apply to work at height that does not form part of an adventure activity e.g. maintenance of activity centre buildings or equipment. This guidance will be of use to both those enforcing the Regulations and to those who work themselves or manage workers in the adventure activities sector.

FOREWORD

To be inserted after the end of consultation.

INTRODUCTION

1. The Work at Height Regulations 2005 (WAHR) came in to effect on 6 April 2005. They were amended by the Work at Height (Amendment) Regulations 200_. The original Regulations applied to all work at height except for those workers leading or instructing climbing or caving in the adventure activities industry. The amended Regulations remove the exemption for adventure activities.

2. The exemption of the adventure activities workers was not sustainable in the long term and since the implementation of WAHR, there has been a lengthy but productive dialogue with representatives of the climbing and caving communities on possible ways of resolving this issue. The providers and workers in this sector would be directly affected by any change and there were significant concerns about the possible impact of the Regulations on the existing good practices of the sector. HSE carried out a small-scale pilot study to see how the sector could comply with WAHR and it concluded that existing good practice was likely to be sufficient to comply with WAHR. The report can be found at (http://www.hse.gov.uk/falls/aapilot.htm).

3. The discussions between HSE and the sector have explored the issues and the ways in which the sector can demonstrate that its existing good standards and practices are in harmony with the aims and requirements of WAHR.

4. These Regulations do not prevent or restrict sporting activities and they do not apply to private individuals taking part in an adventure activity, even if they are receiving instruction. It is the considered view of HSE that an adventure activity provider, employing competent instructors, following the clearly established good practices of sports National Governing Bodies (NGBs), including Mountain Leader

Training UK, and the British Caving Association, will normally be doing enough to comply with WAHR and they should not require to do anything more, particularly if they already hold a licence issued by the Adventure Activities Licensing Authority (AALA).

5. This guidance has been written in close consultation with the Adventure Activities Industry Advisory Committee Working Group on Work at Height (membership is shown at Annex 2). It explains how WAHR should be interpreted in relation to adventure activities. It will be of use to enforcers when determining whether or not a duty holder has discharged their duty. Many of the providers in the sector are small or medium sized enterprises and this guidance will be of assistance to them in meeting their legal duties in the least burdensome way.

BACKGROUND

6. For many of those working in the adventure activities sector, work at height is clearly an unavoidable part of their work and there is often no reasonably practicable alternative.

7. The activities of climbing and caving instruction have a historically good safety record with very few reportable accidents happening.

8. The techniques and good practices promulgated by the NGBs have evolved over a considerable time, sometimes decades and have been subject to an extensive process of trial, review and evaluation. Critical to this process is determining that the practice is safe in use. Only after this process does a technique become accepted as good practice. HSE is satisfied that by working in accordance with established activity good practice, instructors and their employers in climbing and caving and will normally be able to comply with the requirements of the Work at Height Regulations.

GUIDANCE ON REGULATIONS

9. This guidance provides information on the interpretation of each of the Regulations in WAHR and how they relate to work at height in the adventure activities industry. Provider, a term in common use in the sector, is used in this guidance to mean someone who provides adventure activities and who has duties under WAHR. This may be an organisation, an employer or a self- employed person.

Regulation 2 - Interpretation

10. Fragile surface – in the context of this guidance, surfaces such as scree slopes, ice covered water and snow cornices would be fragile surfaces.

11. Personal fall protection system – commonly the rope(s), protection (anchor points, bolts, etc.), hardware (karabiners etc.) and harnesses used in climbing and caving function together as a fall protection system rather than as a means of access or positioning, as generally it is the rock that is climbed, not the rope. There are, however, times when the same system will function as a positioning system, for example when abseiling down a pitch or being lowered into a cave.

12. Working platform – in adventure activities, this is considered to be any man made platform used as a place of work or a means of access or egress to a place of work. It is not considered to include natural ledges or similar.

Regulation 3 - Application

13. The Regulations apply to all those working at height in adventure activities. The test for work and working is the same as for any other statutory provision. The Regulations do not apply to those who are not at work, e.g. members of the public pursuing caving for their own pleasure. The Regulations do not apply to voluntary rescue teams and the imperative of saving life should not be interfered with.

Regulation 4 – Organisation and Planning

14. The good organisation and planning of activities, including for emergencies, is a strong feature of this sector. Providers will use many and varied ways of planning activities and providing that there is evidence of proper planning, then there is no need to be prescriptive about the system used. Changes to the plan may be needed during the course of a session for example due to difficulties on the ground or due to weather changes.

15. Providers are free to determine the appropriate level of supervision of work at height. Supervision may range from planned joint working with an experienced colleague for a newly qualified instructor, to occasional monitoring for more experienced individuals. There may be other equally appropriate and effective methods of supervision.

16. It is recognised that it is essential for a winter climbing course to take place in winter, when snow or ice conditions are to be expected or for caving instructors to experience the full range of environmental conditions. Competent people will be able to select technical and personal protective equipment and clothing appropriate for the expected weather conditions and those working in such conditions will have a sufficient level of ability, experience and competence to enable them to make appropriate judgements relating to the weather. See competence below. Due account should be taken of the weather conditions to avoid jeopardising health and safety

17. The Regulations make reference to planning for emergencies and rescue as part of the overall planning process. Providers may include this in their risk assessment, operating procedures, in a separate emergency procedures document or by reference to the appropriate sections from the relevant NGB syllabus. In this sector, instructors will be trained and assessed as competent to deal with emergencies and to effect rescue within the scope of their operations. If an instructor is unable to deal with the situation quickly and effectively themselves, they should raise the alarm by making contact with their base or with the emergency services. In many cases, instructors will be operating distant from a base with a client group. There is no expectation that the clients will be trained to effect rescue and it will be sufficient that someone in the group knows what to do if the instructor becomes incapacitated. Further information can be found in L77.

18. Summary - there is clear evidence that all work at height is properly planned, appropriately supervised and carried out in a manner, which is so far as is reasonably practicable safe.

Regulation 5 – Competence

19. There are four ways to demonstrate competence in this sector – NGB qualifications, equivalent qualifications, in-house training and competence through experience. Further detail on possible means of demonstrating competence are given in the HSE publication “Guidance to the Licensing Authority on the Adventure Activities Licensing Regulations 1996” (L77- HSE Books).

20. Those who have obtained appropriate NGB instruction or leadership qualifications will have undergone a structured programme of training and assessment. They will also have demonstrated that they have appropriate personal experience of their discipline in a wide variety of situations. There may a requirement for an ongoing continuing professional development or revalidation of qualifications. Such training and assessment is often far more rigorous than that found in traditional industries where work at height is carried out. Although NGB qualifications may not explicitly include formal training in risk assessment in their syllabi, an understanding of the principles of risk assessment and an ability to practise it is an integral part of training, assessment and subsequent day-to-day work practices. Holders of the specified qualifications will be technically competent to take charge of, and responsibility for the safety of, themselves and a group of participants during an activity session at a particular hazard level in a wide range of circumstances. Details of what are considered to be appropriate NGB qualifications can be found at annex 2. See also Regulation 6 below.

21. Possession of NGB qualifications is only one way of demonstrating competence and other qualifications are acceptable providing they are accepted by the relevant NGB as setting equivalent levels of competence for the particular activity e.g. qualifications awarded by bodies in European or other nations.

22. Many providers train staff on an in-house scheme, which can be a stand-alone system or may supplement a NGB qualification. Such schemes are common and include instructing an abseiling session on a dedicated abseiling tower or instructing groups in specified gorges. Where in-house training, rather than an externally assessed qualification, is the means by which the level of competence specified is assured, the training syllabus should be specified by, and the competence of trained staff assessed by, someone qualified to fulfil these roles for the equivalent national qualification.

23. There are many individuals working in the outdoors who are highly competent and experienced but who do not hold any NGB qualification (or none may exist). Evidence that their competence has been assessed by someone qualified to fulfil this role for the equivalent national qualification would generally be suitable. Where the provider has a licence issued by the Adventure Activities Licensing Authority (AALA), the suitability and competence of workers in this category will have been considered as part of the licensing process.

24. For some activities such as combined water and rock activities (canyoning, sea level traversing) or ropes or challenge courses, which may involve work at height and for which there is no NGB, both caving and climbing qualifications could be appropriate. If a provider holds a licence issued by AALA, then the qualifications and competencies of the staff will have been assessed as part of the licensing process.

25. Summary - there is clear evidence that all persons involved in work at height are competent.

Regulation 6 – Avoidance of risks from work at height

26. It is not reasonably practicable for those instructing climbing or caving to avoid work at height – indeed it is their raison d'etre. The accepted good practices in climbing and caving and the equipment used, have evolved so as to limit the height of a fall and to mitigate the consequences. There is not considered to be any conflict with the duty under this Regulation.

27. Providers are still required to take account of their general risk assessment under the Management Regulations irrespective of the above. Many providers will follow the pattern of generic risk assessment, site-specific risk assessment (where required) and dynamic risk assessment.

28. Generic risk assessment – this is required of all providers and would equate to the risk assessment already required by the Management Regulations. If the general risk assessment already adequately covers working at height then there is no need to repeat it. Depending on how a particular provider operates, then they may choose to incorporate the risk assessment in to their operating procedures or other similar document or system. This is quite acceptable as long as there is a suitable and sufficient assessment of the risks. The HSE publication "*Adventure activities centres: five steps to risk assessment*" (Guidance booklet, HSE Books 1999 ISBN 0 7176 2463 3) sets out one model that duty holders may wish to choose to follow but they are at liberty to adopt any other approach as long as it is suitable and sufficient.

29. Site-specific risk assessment – this may or may not be required depending on the site used. If a site does not have any particular risks associated with it over and above those normally expected then a site-specific risk assessment is unlikely to be needed. If there is something out of the ordinary about a venue when compared to the generic risk assessment, then a site-specific assessment should be carried out, for example a sea level traverse will have the risks normally associated with climbing on rock present but there is a need to take account of the effects of tides – this would be the site-specific risk assessment. The findings may be recorded separately or as part of the operating procedures.

30. Dynamic risk assessment - it is acknowledged that in the climbing and caving work situation, where environmental conditions can rapidly change, where incapacity can occur or where technical problems can arise (e.g. entanglement in a rope) it is not possible for a risk assessment to anticipate every possible situation that may arise

and so a significant element of dynamic risk assessment by the instructor will always be a feature, particularly in respect of the techniques and equipment utilised in any given set of circumstances. Any attempt at trying to assess every conceivable set of circumstances is likely to result in a document that is of very little practical use. This is why it is important for the instructor to be competent for the activity and the environment.

31. Small providers are common in this sector and they may not even have to have a written record of the risk assessment.

32. Summary – the following principles should be evident in the duty holder's risk assessment or operating procedures etc.

- Avoid the need to work at height - work at height should be avoided where it is reasonably practicable and appropriate to carry out the work safely otherwise than at height, for example it is often possible for an instructor to remain at ground level when instructing much of a simple top roped climbing session whereas an instructor teaching lead climbing will have to work at height.

- Where work at height cannot be avoided and in very many situations it will not be possible or appropriate to avoid it - prevent so far as is reasonably practicable any person falling a distance liable to cause personal injury by using either an existing place of work or by using work equipment to prevent a fall.

- Where falls cannot be prevented - provide work equipment to minimise the distance and consequences of a fall.

- Where the risk of a fall remains - provide additional training or take other additional suitable and sufficient measures to prevent a fall so far as is reasonably practicable.

Regulation 7 – Selection of work equipment

33. Equipment designed for climbing and caving activities and meeting appropriate standards will be suitable as work equipment in this context. Appropriate standards are in the EN series or those published by the UIAA (Union International des Associations d'Alpinisme). UIAA marked equipment is still common due to the long service life of some items. It is also possible that equipment originating in industrial settings e.g. travellers on a high ropes course may be encountered. As long as these are used and maintained in accordance with the manufacturer's instructions, then this is acceptable.

34. Summary – there is evidence that work equipment is selected with reference the working conditions, the place of work, the distance and consequences of a potential fall, the duration and frequency of use, the need for easy and timely rescue in an emergency and any additional risk posed by the use of the equipment.

Regulation 8 – Requirements for particular work equipment

35. These provisions refer to the requirements for guardrails and toeboards, working platforms, collective safeguards, fall arrest systems, personal fall protection

systems, etc. Some of these, e.g. provision of guardrails, will not generally be relevant or appropriate to work in the natural environment. They might be appropriate in built structures such as platforms at the top of abseil towers or on ropes courses where it might be reasonable to expect some guardrails to be provided on platforms depending on the circumstances. The requirements relating to the selection of personal fall protection systems will however be relevant. See detailed guidance on the schedules below.

Regulation 9 – Fragile surfaces

36. Fragile surfaces are commonly encountered in the more advanced adventure activities working environment, e.g. snow bridges or ice covered rock faces. It is clearly not practicable to protect or cover these in the way the Regulations envisage for example for a roof light. Nor is it either practicable or desirable to place signs at such sites.

37. The training of instructors to work in these environments is such that they are aware of when such conditions may be expected to occur, what precautions to take and techniques to use to minimise the risk or consequences of a fall. It may be possible in some circumstances to avoid such areas but in other circumstances there may be no option but to cross such a fragile surface. These situations are covered during the training and assessment of instructors and documented in training and assessment syllabi.

38. Summary - there is evidence of a system to manage risks from fragile surfaces, so far as is reasonably practicable using the principles of avoidance of risk, fall prevention or fall mitigation.

Regulation 10 – Falling objects

39. In climbing activities, items that may fall such as tools are normally secured to the user by a lanyard (although this presents an additional hazard in the event of a tumbling fall e.g. a winter climber using an ice axe may choose not to use a lanyard as this mitigates the risk of impalement). There is always a risk of an item such as a karabiner being dropped or a loose stone dislodged. It is expected that all participants in climbing and caving will use helmets as protection against falling objects.

40. Summary – there is evidence of a system to prevent falling objects, so far as is reasonably practicable. There is evidence of suitable and sufficient steps being taken to prevent persons being struck by falling objects.

Regulation 11 – Danger areas

41. In adventure activities in the natural environment, it is often not practicable or acceptable to mark danger areas and compliance with this regulation may be achieved by the giving of clear information or instructions. However in the grounds of a centre, it may be quite practicable to fence off a ropes course or take other measures to prevent access

42. Summary – there is evidence of a system that ensures workers have clear information or instructions about danger areas.

Regulation 12 – Inspection of work equipment

43. The duties under this regulation are essentially the same as those under PUWER and LOLER and the normal good practises and procedures of the sector for the inspection of equipment are an appropriate way of meeting these duties. This approach has been accepted by HSE in the past and is the approach accepted by AALA as part of its inspection of providers. It is the norm for equipment used in adventure activities to be inspected either before or after use, commonly this occurs at a stores at an outdoor centre but other practices may be acceptable. It should be possible for duty holders to demonstrate that these inspections are taking place – there should be some form of record. Climbing equipment should generally not be subjected to testing which could cause damage to the item that may place a subsequent user at risk.

44. Where items of protection are put in place during a climb or a belay is established it will always be checked before a load is put on it. This check need not be recorded.

45. Summary - there is evidence of a system for appropriate inspection of equipment.

Regulation 13 – Inspection of places of work at height

46. It is considered that good practice as envisaged by NGB practices is sufficient compliance with this Regulation in the natural environment. Where man made structures or actively managed natural sites are used, then a formal system of inspection may be required.

47. Summary - there should be evidence that places of work at height and any permanently installed fall protection measures are subject to appropriate checks.

Regulation 14 – Duties of persons at work

48. There is a requirement for workers to report activities or defects relating to work at height that may endanger the safety of themselves or other persons. This duty will commonly be discharged as part of the routine daily staff meetings that are common in the adventure activities sector. Other arrangements for the reporting of information may be acceptable.

49. Summary - there should be evidence of a system for the reporting of defects or activities that may affect safety of work at height. Workers are required to use equipment in accordance with their training and instruction.

Schedules 1,2 & 3

50. These schedules will not generally apply to adventure activities in the natural environment, however they may be appropriate for items such as abseil towers.

Schedule 4 – Requirements for collective safeguards

51. Collective safeguards (e.g. air bags) are not generally used in adventure activities.

Schedule 5 – Requirements for personal fall protection systems

Part 1

The normal accepted good practices of the relevant NGBs are compatible with this part. At the time of writing, the relevant NGBs are considered to be MLTUK and BCA.

Part 2

52. Climbing and caving where the rock is being ascended or descended is not work positioning. Following normal accepted good practices of the relevant NGBs regarding ascent or descent on ropes is compatible with this part.

Part 3

53. Note – Paragraph 1 of Schedule 5 Part 3 **only** applies when a decision has been made to use two ropes. It does not *automatically* require the use of two ropes. The normal accepted good practices of the relevant NGBs are compatible with this part when two ropes are used.

54. It is expected that the norm will be the use of a single rope as permitted by paragraph 3 of Part 3 or schedule 5. If a single rope is used, then no duty under paragraph 1 of schedule 5 arises. The NGBs and interested parties in adventure activities have gone to great lengths to demonstrate that the use of single ropes, which is very common, is as safe and often safer than the prescribed two-rope system in paragraph 1 of part 3 of schedule 5. This demonstration has been accepted by HSE. This does not remove the need for a provider to carry out a suitable and sufficient risk assessment of their own particular activities but they can legitimately cite good practice as set out by NGBs as an element of their risk control measures. Climbing and caving where the rock is being ascended or descended is not rope access or positioning, as it is the rock that is being moved on, not the rope.

Part 4

55. The dynamic ropes used in climbing and caving for fall protection will generally fulfil the function of a shock absorber.

Part 5

56. A belay may in some circumstances be intended to prevent the belayer moving into a position of danger and would therefore be a work restraint, if being used by a person at work. Good climbing and caving practice is compatible with this part.

57. Summary - there is clear evidence that personal fall protection systems are only used by appropriately trained persons, are of suitable and sufficient strength, fit the

user and are appropriately adjusted to prevent the user falling or slipping from it. The system is to be appropriately anchored.

Schedule 6 – Ladders

58. Ladders are not often used in adventure activities and where they are, they are often flexible wire based ones used in caving.

ADVENTURE ACTIVITIES LICENSING AUTHORITY

59. It is likely that any provider of adventure activities involving work at height who holds a valid AALA licence is likely to be following good practice that is compatible with these Regulations. Their safety management arrangements, risk assessments, the competences of staff etc. will have been considered as a part of the licensing process.

ACKNOWLEDGEMENTS

The kind assistance of John Cousins, Chair of the AAIAC working group on work at height, Tom Redfern of the ACI and Marcus Bailie of AALA in the writing of this guidance is gratefully appreciated.

Annex 1

Matrices of NGB qualifications and environments for caving and climbing are shown below. It should be noted that the names of NGB qualifications occasionally change and in cases of doubt, then reference should be made to the relevant NGB. Where there is no NGB for a sport, such as ropes courses or canyoning, then HSE has accepted that climbing or caving qualifications can be appropriate. Any duty holder should be able to explain what they consider appropriate for their particular operation and operating environment.

Caving

Hazard level	Group instructor/leader	Technical expert
Cave/mine systems with pitches over 18 m	Cave Instructor Certificate (CIC) holder	CIC holder
Cave/mine systems with pitches less than 18 m	As above, or Local Cave Mine Leader Assessment (LCMLA) Level 2	As above
Cave/mine system without pitches	As above, or LCMLA Level 1	As above
Show cave/tourist mines – adventure trips beyond public areas with made-up lit paths	As above, depending on level of activity	As above

Climbing

Hazard level	Group instructor/leader	Technical expert
Winter climbing	Mountaineering Instructor Certificate (MIC) or British Mountain Guides (BMG) Carnet holder or Aspirant Guide	MIC or BMG Carnet holder
Rock climbing – multipitch	As above or Mountaineering Instructor Award (Summer) (MIA)	As above or MIA
Ghyll scrambling, gorge walking or sea level traversing	As above or in-house assessed depending on level of activity	As above
Rock climbing – single pitch	As above or Single Pitch Award (SPA) or Rock Climbing Leader (N Ireland)	As above
Other climbing, abseiling or scrambling on man-made structures or natural features	As above or in-house assessed, depending on level of activity	As above

Notes

‘Winter’ means when winter conditions, including snow and ice, prevail or are forecast. This cannot be defined by a portion of the year. Summer means any conditions not covered under ‘winter’.

Annex 2

Membership of AAIAC WG -
John Cousins (Mountain Leader Training UK)
Tom Redfern (British Caving Association / Association of Caving Instructors)
Marcus Bailie / Anne Salisbury (Adventure Activity Licensing Authority)
Charlotte Edward (Central Council of Physical Recreation)
Doug Jones (Mountain Leader Training UK)
Simon Waring (Outward Bound Trust)
Brian Lamb (Institute of Outdoor Learning)
Ian Hey / Jon Garside (British Mountaineering Council)
Anne Vowles (Association of Mountaineering Instructors)

Appendix 1 Further reading

Guidance to the Licensing Authority on the Adventure Activities Licensing Regulations 1996. L77 HSE Books 1996 ISBN 0-7176-1160-4

Management of health and safety at work. Management of Health and Safety at Work Regulations 1999. Approved Code of Practice and guidance L21 (Second edition) HSE Books 2000 ISBN 0 7176 2488 9

Personal protective equipment at work (Second edition). Personal Protective Equipment at Work Regulations 1992. Guidance on Regulations 1992 (as amended) L25 (Second edition) HSE Books 2005 ISBN 0 7176 6139 3

Adventure activities centres: five steps to risk assessment Guidance booklet HSE Books 1999 ISBN 0 7176 2463 3

Safe use of work equipment. Provision and Use of Work Equipment Regulations 1998. Approved Code of Practice and guidance L22 (Second edition) HSE Books 1998 ISBN 0 7176 1626 6

Appendix 2 Useful Sources of information

HSE website falls section - http://www.hse.gov.uk/falls/

Guidance on various topics related to licensing has been compiled by the licensing authority and is available on their website; www.aala.org.uk

British Caving Association - http://british-caving.org.uk/

Mountain Leader Training UK - http://www.mltuk.org/

ANNEX C

Work at Height (Amendment) Regulations

Regulatory Impact Assessment (Partial)

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[4]	3	-	5
Over 3 day injuries	3	1	1	5
Members of the Public[5]	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.

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.

[4] Note only these two accidents to workers involved climbing or caving and ropes.
[5] For information only. Not covered by the Work at Height Regulations

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)[6] 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.

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

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 would welcome information to inform the finalisation of this RIA.

Option (c)

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

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.

Impact On Small And Medium Sized Businesses

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 would welcome 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.[7]

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, ceteris paribus.

[7] 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.

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

Consultation

Consultees will be invited to contribute views/comments to the RIA.

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.

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.

Summary And Recommendation

Overall there may be reason to assume that the benefits justify the costs under scenario 3.[8]

Ministerial Declaration

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

Contact: Ian Greenwood

HSE Falls from Height Programme.

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

[8] 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.

ANNEX D

Full text of the Temporary Work At Height Directive

DIRECTIVE 2001/45/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 June 2001

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)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

Having regard to the proposal from the Commission, submitted after consulting the Advisory Committee on Safety, Hygiene and Health Protection at Work,

Having regard to the Opinion of the Economic and Social Committee

After consulting the Committee of the Regions,

Acting in accordance with the procedure referred to in Article 251 of the Treaty,
Whereas:

(1) Article 137(2) of the Treaty provides that the Council may adopt, by means of Directives, minimum requirements for encouraging improvements, especially in the working environment, to ensure a better level of protection of the safety and health of workers.

(2) Pursuant to the said Article, such Directives must avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized enterprises.

(3) The improvement of occupational safety, hygiene and health is an objective which may not be subordinated to purely economic considerations.

(4) Compliance with the minimum requirements designed to ensure a better standard of health and safety in the use of work equipment provided for temporary work at a height is essential to ensure the health and safety of workers.

(5) The provisions adopted pursuant to Article 137(2) of the Treaty do not prevent any Member State from maintaining or introducing such more stringent measures for the protection of working conditions as are compatible with the Treaty.

(6) Work at a height may expose workers to particularly severe risks to their health and safety, notably to the risks of falls from a height and other serious occupational accidents, which account for a large proportion of all accidents, especially of fatal accidents.

(7) Self-employed persons and employers, where they themselves pursue an occupational activity and personally use work equipment intended for carrying out temporary work at height, may affect employees' health and safety.

(8) Council Directive 92/57/EEC of 24 June 1992 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) imposes on these categories of persons the obligations to respect inter alia Annex 4 and Annex I of Directive 89/655/EEC.

(9) Any employer who intends to have temporary work carried out at a height must select equipment affording adequate protection against the risks of falls from a height.

(10) In general collective protection measures to prevent falls offer better protection than personal protection measures. The selection and use of equipment appropriate to each specific site for preventing and eliminating risk should be accompanied by specific training and supplementary investigations where appropriate.

(11) Ladders, scaffolding and ropes are the equipment most commonly used in performing temporary work at a height and the safety and health of workers engaged in this type of work therefore depend to a significant extent on their correct use; the manner in which such equipment can most safely be used by workers must therefore be specified; adequate specific training of the workers is therefore required.

(12) This Directive is the most appropriate means of achieving the desired objectives and does not go beyond what is necessary for that purpose.

(13) This Directive is a practical contribution towards creating the social dimension of the internal market.

(14) Member States should be given the opportunity to make use of a transitional period to take account of the particular problems which SMEs have to face,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The text annexed to this Directive shall be added to Annex II to Directive 89/655/EEC.

Article 2

1. Member States shall adopt and publish the laws, Regulations and administrative provisions necessary to comply with this Directive not later than (three years from the date of publication in the Official Journal). They shall forthwith inform the Commission thereof.

   Member States shall have the right, as regards the implementation of section 4 of the Annex, to make use of a transitional period of not more than two years from the date mentioned in the first subparagraph, in order to take account of the various situations which might arise from the practical implementation of this Directive in particular by small and medium-sized enterprises.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

3. Member States shall notify the Commission of the provisions of national law which they have already adopted or adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg,

For the European Parliament
The President

For the Council
The President

_____

ANNEX

4. Provisions concerning the use of work equipment provided for temporary work at a height.

4.1. General provisions

4.1.1. If, pursuant to Article 6 of Directive 89/391/EEC and Article 3 of this Directive, temporary work at a height cannot be carried out safely and under appropriate ergonomic conditions from a suitable surface, the work equipment most suitable to ensure and maintain safe working conditions must be selected. Collective protection measures must be given priority over personal protection measures. The dimensions of the work equipment must be appropriate to the nature of the work to be performed and the foreseeable stresses and allow passage without danger.

The most appropriate means of access to temporary workplaces at a height must be selected according to the frequency of passage, the height to be negotiated and the duration of use. The choice made must permit evacuation in the event of imminent danger. Passage in either direction between a means of access and platforms, decks or gangways must not give rise to any additional risks of falling.

4.1.2. Ladders may be used as work stations for work at a height only under circumstances in which, given point 4.1.1, the use of other, safer work equipment is not justified because of the low level of risk and either the short duration of use or existing features on site that the employer cannot alter.

4.1.3. Rope access and positioning techniques may be used only under circumstances where the risk assessment indicates that the work can be performed safely and where the use of other, safer work equipment is not justified.

Taking the risk assessment into account and depending in particular on the duration of the job and the ergonomic constraints, provision must be made for a seat with appropriate accessories.

4.1.4. Depending on the type of work equipment selected on the basis of the foregoing, the appropriate measures for minimising the risks to workers inherent in this type of equipment

must be determined. If necessary, provision must be made for the installation of safeguards to prevent falls. These must be of suitable configuration and sufficient strength to prevent or arrest falls from a height and, as far as possible, to preclude injury to workers. Collective safeguards to prevent falls may be interrupted only at points of ladder or stairway access.

4.1.5. When the performance of a particular task requires a collective safeguard to prevent falls to be temporarily removed, effective compensatory safety measures must be taken. The task may not be performed until such measures have been taken. Once the particular task has been finished, either definitively or temporarily, the collective safeguards to prevent falls must be reinstalled.

4.1.6, Temporary work at a height may be carried out only when the weather conditions do not jeopardise the safety and health of workers.

4.2. Specific provisions regarding the use of ladders.

4.2.1. Ladders must be so positioned as to ensure their stability during use. Portable ladders must rest on a stable, strong, suitably-sized, immobile footing so that the rungs remain horizontal. Suspended ladders must be attached in a secure manner and, with the exception of rope ladders, so that they cannot be displaced and so that swinging is prevented.

4.2.2. The feet of portable ladders must be prevented from slipping during use by securing the stiles at or near their upper or lower ends, by any anti-slip device or by any other arrangement of equivalent effectiveness. Ladders used for access must be long enough to protrude sufficiently beyond the access platform, unless other measures have been taken to ensure a firm handhold. Interlocking ladders and extension ladders must be used so that the different sections are prevented from moving relative to one another. Mobile ladders must be prevented from moving before they are stepped on.

4.2.3. Ladders must be used in such a way that a secure handhold and secure support are available to workers at all times. In particular, if a load has to be carried by hand on a ladder, it must not preclude the maintenance of a safe handhold.

4.3. Specific provisions regarding the use of scaffolding

4.3.1. When a note of the calculations for the scaffolding selected is not available or the note does not cover the structural arrangements contemplated, strength and stability calculations must be carried out unless the scaffolding is assembled in conformity with a generally recognised standard configuration.

4.3.2. Depending on the complexity of the scaffolding chosen, an assembly, use and dismantling plan must be drawn up by a competent person. This may be in the form of a standard plan, supplemented by items relating to specific details of the scaffolding in question.

4.3.3. The bearing components of scaffolding must be prevented from slipping, whether by attachment to the bearing surface, provision of an anti-slip device or any other means of equivalent effectiveness, and the load-bearing surface must have a sufficient capacity. It

must be ensured that the scaffolding is stable. Wheeled scaffolding must be prevented by appropriate devices from moving accidentally during work at a height.

4.3.4. The dimensions, form and layout of scaffolding decks must be appropriate to the nature of the work to be performed and suitable for the loads to be carried and permit work and passage in safety. Scaffolding decks must be assembled in such a way that their components cannot move in normal use. There must be no dangerous gap between the deck components and the vertical collective safeguards to prevent falls.

4.3.5. When parts of a scaffolding are not ready for use, for example during assembly, dismantling or alteration, they must be marked with general warning signs in accordance with the national provisions transposing Directive 92/58/EEC and be suitably delimited by physical means preventing access to the danger zone.

4.3.6. Scaffolding may be assembled, dismantled or significantly altered only under the supervision of a competent person and by workers who must have received appropriate and specific training in the operations envisaged, addressing specific risks in accordance with Article 7, and more particularly in:

(a) understanding of the plan for the assembly, dismantling or alteration of the scaffolding concerned;

(b) safety during the assembly, dismantling or alteration of the scaffolding concerned;

(c) measures to prevent the risk of persons or objects falling;

(d) safety measures in the event of changing weather conditions which could adversely affect the safety of the scaffolding concerned;

(e) permissible loads;

(f) any other risks which the abovementioned assembly, dismantling or alteration operations may entail.

The person supervising and the workers concerned must have available the assembly and dismantling plan referred to in 4.3.2., including any instructions it may contain.

4.4. Specific provisions regarding the use of rope access and positioning techniques

The use of rope access and positioning techniques must comply with the following conditions:

(a) the system must comprise at least two separately anchored ropes, one as a means of access, descent and support (work rope) and the other as back-up (security rope);

(b) workers must be provided with and use an appropriate harness and be connected by it to the security rope;

(c) the work rope must be equipped with safe means of ascent and descent and have a self-locking system to prevent the user falling should he lose control of his movements. The security rope must be equipped with a mobile fall prevention system which follows the movements of the worker;

(d) the tools and other accessories to be used by a worker must be secured to the worker's harness or seat or by some other appropriate means;

(e) the work must be properly planned and supervised, so that a worker can be rescued immediately in an emergency;

(f) in accordance with Article 7, the workers concerned must receive adequate training specific to the operations envisaged, in particular rescue procedures.

In exceptional circumstances where, in view of the assessment of risks, the use of a second rope would make the work more dangerous, the use of a single rope may be permitted, provided that appropriate measures have been taken to ensure safety in accordance with national legislation and/or practice.

ANNEX E

Extract from Amended Work Equipment Directive (95/63/EC)

Article 4
Rules concerning work equipment

3. Member States shall, after consultation with both sides of industry, and with due allowance for national legislation and/or practice, establish procedures whereby a level of safety may be attained corresponding to the objectives indicated by the provisions of Annex II.

ANNEX F

How to respond and a copy of the questionnaire to fill in by hand

HOW TO RESPOND

1. We would much prefer to have your responses in electronic format. This makes it quicker and easier for us to analyse the responses accurately. However, we know that you may not have access to a computer, so responses in any format will be gratefully received. You may respond by:

- completing the questionnaire online at - http://www.hse.gov.uk/consult/condocs/cd204.htm
- downloading it and e–mailing them to us at - wah.adventure-manager@consultations.hse.gov.uk
- filling in the questionnaire below and posting it to the address quoted at the end.

2. It is very important for us to understand the reasons behind your answers, and so a free–text box is also provided for the questions. We can give more weight to responses that provide reasoned arguments and alternatives.

3 Please take the time to provide the requested background information about yourself and organisation. This information is important because it helps us to interpret and weigh responses.

4. Please let us have your comments by **31 October 2006**

WHAT WE WILL DO WITH YOUR RESPONSE

5. We will acknowledge all responses and give full consideration to the substance of arguments in the development of proposals. We may also contact you again if, for example, we have a query.

6. Your response will normally be made public, unless you request us to keep it confidential. Please note the advice about confidentiality of responses and standard confidentiality e–mail statements given on the front cover.

7. A summary of the responses, and the text of non-confidential ones, omitting addresses, etc., will be posted on our website (http://www.hse.gov.uk/consult/live.htm) as soon as possible after the conclusion of the consultation period. We will notify respondents who provide an e–mail address when it is available.

DATA PROTECTION

8. If you reply to this consultation document in a personal capacity, rather than as a post holder of an organisation, you should be aware that information you provide may constitute “personal data” in the terms of the Data Protection

Act 1998. For the purposes of this Act, HSE is the “data controller” and will process the data for health, safety and environmental purposes. HSE may disclose this data to any person or organisation for the purposes for which it was collected, or where the Act allows disclosure. You have the right to ask for a copy of the data and to ask for inaccurate data to be corrected.

Copy of the questionnaire to fill in by hand

Instructions for completion

Please fill in the boxes, writing as clearly as possible. Where there is a series of tick boxes, please tick only one box. Where appropriate, please tick a box and give an explanation of your answer in the space provided below. Please tick a box and give a written answer if possible as the more information we receive the better. Please continue your answers on a separate sheet if necessary, making it clear that you have done so and which question you are answering on the supplementary sheet.

Please provide some background information about yourself and your organisation.

Title:	**Forename:**	**Surname:**

Organisation: **Address 1**: **Address 2**: **Address 3** **Town / City:** **County:** **Post code:**	

Email address (optional):	**Telephone Number (optional):**

Number of employees:

- ☐ **1-5**
- ☐ **6-10**
- ☐ **11-25**
- ☐ **26-50**
- ☐ **51-100**
- ☐ **101-500**
- ☐ **Over 500**

Role:		**Sector:**
☐ **Director**		☐ **Adventure Activities**

Employer ☐ **Health & Safety Advisor / Consultant** ☐ **Health & Safety Manager** ☐ **Inspector** ☐ **Project Manager** ☐ **Technical Advisor** ☐ **Trainer** ☐ **Other – please specify** **Adventure Activities only** ☐ **Centre Manager** ☐ **Employed Instructor** ☐ **Self employed instructor** ☐ **Other – please specify**		☐ **Agriculture** ☐ **Arboriculture** ☐ **Chemical / Pharmaceutical** ☐ **Cleaning** ☐ **Communications** ☐ **Construction** ☐ **Distribution** ☐ **Energy Industry** ☐ **General Maintenance** ☐ **Health & Safety Consultants** ☐ **Inspection** ☐ **Local/Central Government** ☐ **Manufacturers / Suppliers** ☐ **Ports / Maritime** ☐ **Retail** ☐ **Rope Access Industry** ☐ **Scaffolding Industry** ☐ **Steeplejacking** ☐ **Training Company** ☐ **Window Cleaning** ☐ **Other – please specify**
Role (details of 'Other'):	If you have answered 'Other' to Role or Sector, please enter a category that best defines the role or sector that your organisation operates in.	**Sector (details of 'Other'):**
'Equivalent Level of Safety' This approach has been derived from the AUWE Directive 1. 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		

Yes/No

If No please say why and what more evidence is needed to persuade you

2. Does this approach of an ‘equivalent level of safety’ have a place elsewhere in health and safety law? (Please specify)

Use of 2 Ropes

3. When would an instructor use two ropes in climbing or caving activities for access or positioning?

4. 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?

National Governing Bodies

We considered making a reference to the relevant National Governing Bodies of sport in the Regulations. We decided not to do this, as there are a number of issues, not least the facts that NGBs may change name over time or new NGBs may come into being. Any change of this nature would require a change to the Regulations.

In preparing for this consultation, we have had many discussions about the good practices that are present in these sectors. While there are many published sources of guidance or similar reference works, few of these could be easily cited as the “approved practice manual”. Indeed reference might need to be made to good techniques, training schemes, instructor assessment syllabi and other documents in any case. We think that this issue is best resolved by means of the guidance to accompany the Regulations, rather than in the Regulations themselves.

5. Do you agree that it is sensible to deal with this in guidance rather than in the Regulations? Yes/No

6. 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? Yes/No

Single Ropes

7. Does the amendment to Schedule 5 Part 3 make clear that a single rope may be used, subject to a risk assessment? Yes/No
8. If No, what more could be done to make this matter clearer?

General

9. Please use this space to make any other comments

Confidentiality:

Please indicate below if you do not wish details of your comments to be available to the public. (NB if you do not put a cross in the box they will be made public)

Please treat my response as confidential. ☐ (X means confidential)

Alternatively, to treat your comments on a particular section as confidential, please insert bracketed text '(Treat as confidential)' within that section response.

In your view how well does the Consultation Document identify and address the key issues?

☐ Very well ☐ Well ☐ Not Well ☐ Poorly

Is there anything you particularly liked or disliked about this exercise?

How/where did you find out about this consultation exercise? Please select on option from the list below, then either specify further or enter where you found out about it if you selected 'Other'.

☐ HSE Consultation Letter ☐ MTLUK/BMC etc website

☐ HSE Inspector/Official ☐ HSE Website

☐ Other government website – please specify ☐ Article in a Trade Journal – please specify

☐ Word of Mouth – please specify ☐ Other – please specify

Are you a member of a NGB? MLTUK BCA Yes/No Are you a member of a professional association? IOSH, AHOEC, ACI, AMI, BMG Yes/No
Please note that names and addresses will be removed before this form is transferred to CD and stored in the HSE Information Centre.
Please return to: **Gloria Birchall,** **Falls Team,** **HSE,** **8NW Rose Court,** **2 Southwark Bridge,** **London SE1 9HS.**

CONSULTATIVE DOCUMENT

The full text of this and other Consultative Documents can be viewed and downloaded from the Health and Safety Executive web site on the internet:

www.hse.gov.uk/consult/index.htm

Consultative Documents are available from:
HSE Books, PO Box 1999
Sudbury, Suffolk CO10 2WA
Tel: 01787 881165
Fax: 01787 313995

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