



The manufacturers' organisation

EEF Response to the HSC Consultative Document – CD 190 ‘Proposals for New Control of Vibration at Work Regulations Implementing the Physical Agents (Vibration) Directive (2002/44/EC) Hand-Arm Vibration

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**Consultation
Response**

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ABOUT US

EEF, the manufacturers' organisation, has a membership of 6,000 manufacturing, engineering and technology-based businesses and represents the interests of manufacturing at all levels of government. Comprising 11 regional Associations, the Engineering Construction Industries Association (ECIA) and UK Steel, EEF is one of the UK's leading providers of business services in health, safety and environment, employment relations and employment law, manufacturing performance, education, training and skills.

EXECUTIVE SUMMARY

1. Exposure to excessive levels of hand-arm vibration (HAV) can lead to the hand-arm vibration syndrome (HAVS), a well recognised occupational disease. It is therefore appropriate that proportionate controls are adopted to provide EU-wide minimum protection for workers carrying out work, which can expose them to this phenomenon. However, as with all other legislation emanating from the EU we are keen to see uniformity of application across all member States.
2. Due to the source of these requirements we have not commented on the draft Regulations suffice to say that these appear to be a faithful transposition of the Physical Agents (Vibration) directive. We still have concerns that some industrial processes will experience great difficulty in complying with the limit values even taking into account both weekly averaging for infrequent exposure and the relatively lengthy transposition periods.
3. Straightforward guidance will be at the heart of enabling business to comply with what for many small firms will be a complex set of requirements. Whilst the comprehensive guidance will be of assistance to the technical experts and companies with in-house expertise it will be of little help for the SME. (We would like to see all forthcoming HSE guidance available on your web-site. Straightforward guidance following 'Clear English' guidelines should be produced to assist duty holders. Some of the sections are repetitive)
4. There are frequent references throughout the consultation document to measurement of vibration. The *uncertainty* of this and other sources of vibration data should be stressed in simple terms (Part 6 and Appendix 2 is not particularly accessible to the general reader).

There are 2 documents attached to this paper:

- Annex 1 addresses specific questions posed by HSC, and
- Annex 2, specific comments on the text of CD 190

ANNEX 1

The Health and Safety Commission have asked for answers to a number of specific questions. Proposed responses are provided below for comment.

EEF REPLIES TO CD 190/2003 QUESTIONS

We will respond to the particular questions you pose, but also make more detailed comments on associated parts of the guidance. Many of the latter reinforce the general point made above.

Question 1 Should HAV and WBV guidance be separate documents?

Yes, these are 2 very different issues and will have to be dealt with as such. We also hold the view that management of Hand-arm vibration (HAV) is a real occupational health issue which contrasts with whole-body vibration (WBV) exposure which we consider is still doubtful as a cause of occupational ill-health.

Question 2 Should the short guide remain part of the main guidance?

No. The most important piece of guidance is the short document which will be the only source of information for many SMEs. Both documents should be provided as free down-loads from the HSE website. Ideally both pieces of guidance should follow '*Clear English*' principles.

Question 3 Is the guidance structure and content helpful?

We do not have any concerns regarding the structure of the guidance. However, the long document will benefit from close editing. The current version is repetitive. It is also important throughout the documents that readers are given clear direction. A characteristic of the current drafts is that they tend through the use of equivocal phrases to lead the duty holder to potentially more costly forms of compliance. There may be a place for measurement but it needs to be clear and targeted and rarely routine.

Question 4 Should transitional periods be in the regulations and available to all

Yes. Dealing with transitional allowances on a case-by-case or sector basis would be a waste of for HSE's resource and it must be recognised that if this were to be adopted there would also be a significant extra burden on some businesses particularly SMEs.

Question 5 Should the transitional period apply to second hand and hire equipment

Yes, it is important that the maximum flexibility is contained within these regulations because it is clear that for some sectors and processes the ability to comply using existing technology is far from assured.

Question 6

Can you identify a particular reason why the transitional period for HAV for agriculture and forestry work should be extended beyond 6th July 2010 to 6th July 2014?

EEF does not have any views on this point.

Question 7 Is the use of published HAV data an acceptable alternative to vibration measurement?

Yes. Indeed we would go much further in saying that the key to making these *health and safety requirements* enabling is to place the presumption of compliance through risk assessment and planned maintenance rather than measurement. We welcome the work that is already being done in this area by HSE. The requirement for employers to carry-out on-site measurement may only be necessary where older poorly maintained tools need assessing for the purposes of identifying those requiring maintenance.

Question 8 Do we agree that measurement may be necessary in the paragraph 33 situations?

Yes. There is significant field data available on which to base assessments but there can be uncertainties here. However the *uncertainties* also associated with the measurement of vibration, means that these may not be very helpful for informing on whether ELVs are being approached or whether control measures are working satisfactorily. This coupled with how operator technique influences exposure is another strong argument for minimising the role of any measurement of HAV. Greater emphasis should be drawn to the problem of both trade and supplier data and measurement.

Question 9 Could assessment be carried out by employer staff using HAV data?

Yes. This must be the approach which businesses are encouraged to adopt. A strategy of compliance based on measurement would result in excessive compliance costs. We believe that following many years of collecting field-data there is now an opportunity to provide access to data upon which such assessments can mostly be based. HSE's works on a web-based data library are very helpful in this respect.

Question 10 Could employer staff be trained to carry out measurements?

Yes. Clearly it is possible for anyone with relatively basic technical, numerical and linguistic competence to be trained in the measurement of mechanical vibration. We do not consider this to be desirable or necessary routinely. There is also the matter of maintaining competence, if an employee gains the necessary skills and training to carry out satisfactory measurement they will also need to use these skills relatively frequently to maintain their competence. We do not consider it adequate that someone would be practicing such a technique say on an annual basis.

Question 11 Do you agree with HSE guidance on assessment competence and the criteria for consultancy?

The guidance does not break any new ground. It is hard for an employer following this to ever be content that they have done enough to comply. The guidance should be re-drafted in such a way that the user is guided to making the correct decision for their circumstances. Given our view that the basis for compliance should be risk assessment rather than routine measurement it is vital that this text underpins this.

Question 12 Should assessments be updated on a needs basis rather than at fixed intervals?

Yes. This is what industry has grown to expect and arguably more importantly this is the correct approach to managing any health and safety hazard, i.e. when process changes or unexpected cases of HAVS present.

Question 13 Should the decision on weekly averaging derogation be left to employers or decided by application to HSE?

It is vital that weekly averaging is left to the discretion of the companies concerned. This was an important concession granted to reduce the worst excesses of this directive. It is vital that the fullest flexibility is provided by providing employers with the discretion concerning if and when to use this derogation.

Question 14 Do you agree with the proposal that tiered health surveillance is appropriate and effective?

Yes. This is the basis upon which HAV health surveillance is currently based. It means the right surveillance is carried out in the most efficient way.

Question 15 Do you agree with the suggested criteria for when health surveillance should be undertaken?

The criteria referred to are:

- There is regular exposure above the EAV; or
- There is occasional exposure to particularly serious vibration; or
- Employees already have or present for the first time with HAV symptoms.

We support the use of these criteria. However there is much that remains to be done in the guidance to make it clearer what they mean in practice. (We discuss the current guidance draft in more detail below)

What the draft regulation 7(1) says is that if assessment indicates a risk, employees should be under health surveillance i.e. the initial trigger for health surveillance is assessment conclusion. Reg 7(3) mitigates this by defining when such assessment is appropriate and thus required by law.

We presume that the intention is to use 'appropriate' to limit health surveillance to circumstances when it is needed. However there will be those who take an over-reactive cautionary approach.

ANNEX 2

DETAILED COMMENTS ON SECTIONS OF THE DRAFT GUIDANCE

Part 1

1. paragraph 15

The new and explicit reference to an 'action plan' will provoke a new administrative layer in addition to the risk assessment. In the guidance it makes it clear that the assessment should set out what needs to be done. There is no reason why the underlying aims of the action plan cannot be included in the assessment process and be contained as its conclusions.

2. paragraph 24

It is unclear whether the last bullet is a part of assessment or monitoring because the initial assessment cannot record what happens after it.

3. paragraph 25

This does little to answer doubts as to what constitutes adequate assessment. The first sentence warns that data can be unreliable and pushes the reader towards measurement. The next sentence suggests that it will be straightforward concluding that the EAV will not be exceeded. Thus most readers are left uncertain as to whether vibration assessment is something technical and difficult or simpler. In essence the guidance says that assessment is sometimes difficult and sometimes easy, but there is little to tell the reader which situation he is in.

4. paragraph 26

The regulations actually require that the employer must make health surveillance available rather than introducing a programme. They are not quite the same. The distinction could be important if in practice employers have to rely on sharing health surveillance resources rather than providing their own.

5. paragraph 27

It needs to be emphasised that this sort of study can easily be carried out by trained employees and does not necessarily require external consultant help.

6. paragraph 28

A list of data sources would be invaluable. Health and safety professionals can find it difficult locating the data. 'Average' employers will find it even more so. Paragraph 29 is helpful in this respect.

7. paragraph 30

'Measurement is not required in all cases' is too weak. The implication is that it usually is but sometimes not. Employers need clarity in this guidance.

8. paragraph 31

As above 'it may not be necessary to measure' in the last sentence is too weak. If an employer has done all the things mentioned, realistically we can assume that he does not need to measure, unless there are particular reasons suggesting otherwise.

9. paragraph 34

Whilst the final sentence of this paragraph is simply a re-statement of the Directive and its transposing regulations it does fail to take account of the fact that despite even the best available technical solutions there will continue to be some processes which cannot be modified to bring exposure below the ELV.

10. paragraph 37

It is unclear what is meant by 'certain types' of machinery. If a machine is not one of them but still vibrates it would be useful to highlight the wider HSW section 6 requirement to provide information. Without it there is a danger that vibration information will be limited to 'certain types'. If that happens employers could be faced with a highly complex technical measuring challenge for assessment.

There is a strong recommendation to contact manufacturers if there is any doubt that their published figures are not suitable. In view of the substantial doubt about 'out of the box' data the scope for doubt is substantial. Taken together this means that there will be a proliferation of correspondence between suppliers and employers anxious to demonstrate that the assumptions they have made are sound. (Note that both parties will have civil litigation threats in mind. Both will be keen for the other to take the responsibility for deciding what the real figure is and this will inevitably make the correspondence more protracted)

There needs to be advice for employers about how they deal with uncertainty without having to trigger bureaucratic exchange with manufacturers.

11. paragraph 40

Health surveillance data falls under the Data Protection Act and is considered as sensitive personal data. Collecting and using such information without falling foul of the Data Protection Act is often demanding and is a major concern to many employers particularly when small numbers of workers are concerned. Whilst the need for economisation is acknowledged, more detailed advice on how to go about it would be especially welcomed.

Consideration needs to be given to providing guidance for both SMEs and larger business that only have a small group of exposed workers.

12. paragraph 41

It would be helpful here if the text could be illustrated through the provision of some practical examples to explain what is and is not reasonably practicable.

13. paragraph 45

The stated requirement is to 'ensure' that the ELV is not exceeded. This implies that measurement is required in order to be sure. We do not believe that this is the right approach to be adopted. Assessments based on the field data which already exists is the way in which compliance should be achieved.

14. paragraph 46

The final bullet point appears more onerous than the Regulations in requiring employers to provide enhanced health surveillance for workers under a weekly averaging regime. Whereas the regulations place a condition on this; '*where such surveillance is appropriate*'.

15. paragraph 47

It is important to state that health surveillance can range from the very simple by a responsible person to the more complex procedures carried out by occupational health professionals.

16. paragraph 49

Regulation 7(6) refers to a '*...doctor or other occupational health professional*'. The guidance appears to water this down by failing to qualify the word 'doctor'.

17. paragraph 50

As this guidance is presumably aimed at employers it is important that it clearly states what information they are entitled to.

18. paragraph 52

Whilst this guidance is practical it should have a caveat that this will not be practical for SMEs

Part 3

1. paragraph 3

The tone of '*If you are able to follow this guidance...*' appears patronising

2. paragraphs 8 and 9

This sort of information is the very useful. It gives employers explicit answers about specific issues. Whilst we recognise that HSE cannot provide prescriptive solution to every question, there is a particular need for more of it in HAV which is relatively poorly understood particularly amongst SME.

3. paragraph 19

This is a statement which we agree with however, this will make clear to duty holders how difficult the EAV and ELV are to comply with.

4. paragraph 20

We agree with the second sentence says that 'measurement is not always necessary'. Additionally, it should be stated that measurement is likely to be the exception.

5. paragraph 21

The website not easy to navigate.

6. paragraph 27

We think there is an error in the final sentence, if our understanding is correct the word 'would' should be replaced by 'could'.

7. paragraph 33

It would be helpful to have some reference here of the need for correct selection of disposables and maintenance of equipment.

8. paragraph 36

It would be helpful here to have some guide regarding what 'regularly' constitutes.

9. paragraph 37

All the bullet points could be relevant to include in assessment records. However, including them all as a mandatory minimum is in our view excessive.

Part 4

1. paragraph 19 (See also Part 6 paragraph 2)

Reference is made to '*in the UK...*' we believe this should more accurately be Britain which is the scope of the regulations to which reference is made.

2. paragraph 31

We are unclear concerning the nature of the '*other management techniques*' which are referred to.

3. paragraph 36

We agree that gloves should not be relied on. They may have a benefit in dampening higher frequencies but it is not known whether this is more protective against sensorineural damage

4. paragraph 37

We are pleased with the reference here to the detrimental effect of smoking but feel that further explanation may be necessary to emphasise the employees responsibility for their own health. Smoking whilst working is particularly harmful.

Part 5

1. paragraphs 7 and 9

These simple statements are the only guidance on when health surveillance is required. They add little to the statement of the duty in the regulations. Much more is needed to explain what is meant by 'regularly' and 'occasionally'

2. paragraph 11

We agree that pre-employment assessment is a vital first component in managing workers exposed to HAV. This does also raise employment and disability issues and we suggest it is right to highlight this for duty holders.

3. paragraph 12

We support the surveillance regime outlined in this paragraph.

4. paragraph 16

Relying on self reported symptoms alone can be problematic and that at least one professional assessment by a suitably trained Occupational Health nurse should be made at some point.

Part 6

It would be helpful to aim this guidance at customers and or suppliers specifically in order that they can be made aware of their complimentary responsibilities.

1. paragraph 6

The final sentence implies that the entire elimination of risk is a desirable outcome, we do not concur. (note the risk can still occur and < 2.5 is susceptible.)

2. paragraph 11

Whilst the explanation of *uncertainty* is technically valid we do not believe as drafted it is helpful.,

3. 6, page 129 Hilti hammer drill case study

We do not consider it appropriate for HSE to advertise Hilti's vibration assessment service however, the case study itself is useful.

4. Appendix 1 paragraphs 9-10

This is an important section. The scope for overselling of consultancy is immense. It is essential that the guidance sets clear criteria to minimise this potential. The current text in paragraphs 9 and 10 is generic and lacks clear direction for the reader. In effect it says little more than appoint a consultant if necessary.

It would be helpful to provide key questions which an employer should ask when deciding whether they need a consultant.

5. Appendix 2 paragraph 10

The significant *uncertainty* associated with mechanical vibration measurement is at the heart of our concerns with these regulations. This explanation serves to highlight the problem and we suggest should lead the reader to the conclusion that measurement is of limited value. We urge HSE to explicitly draw this conclusion

6. Appendix 2 paragraph 17 and figure 2

We welcome the development of the HSE vibration calculator. This is an excellent initiative.

7. Appendix 5 Protection from vibration

This whole section appears to be 'overkill and suggestive of an overall protective effect.