

# **Construction (Head Protection) Regulations 1989**

**Guidance on Regulations**

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General enquiries regarding this publication should be addressed to the Health and Safety Executive at any of the following public enquiry points:

Library and Information Services

Broad Lane

SHEFFIELD S3 7HQ

Telephone: (0742) 752539 Telex: 54556

Library and Information Services

St Hugh's House

Stanley Precinct

Trinity Road

BOOTLE

Merseyside L20 3QY

Telephone: 051-9514381 Telex: 628235

Library and Information Services

Baynards House

1 Chepstow Place

Westbourne Grove

LONDON W24TF

Telephone: 071-2210870 Telex: 25683

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## Introduction

1 This booklet gives guidance to all those involved in the construction industry on their legal obligations under the Construction (Head Protection) Regulations 1989. These Regulations are concerned with the provision and wearing of head protection during construction work. They come into force on 30 March 1990.

2 The Regulations are a part of the legal obligations on those involved in the construction industry. These obligations include measures for prevention of accidents which can lead to head injury. Appendix 1 gives a summary of these legal duties; Appendix 2 gives some practical examples of preventative measures.

3 Even when all practical preventative measures are taken the risk of head injury accidents cannot be completely eliminated in most construction work and head protection will need to be worn.

## Regulation 1

## Citation, commencement and interpretation

### Regulation

1

*(1) These Regulations may be cited as the Construction (Head Protection) Regulations 1989 and shall come into force on 30 March 1990.*

*(2) In these Regulations, unless the context otherwise requires suitable head protection" means head protection which -*

- (a) is designed to provide protection, so far as is reasonably practicable, against foreseeable risks of injury to the head to which the wearer may be exposed;*
- (b) after any necessary adjustment, fits the wearer; and*
- (c) is suitable having regard to the work or activity in which the wearer may be engaged.*

### Guidance

4 In most cases, suitable head protection will mean an industrial safety helmet conforming to British Standard BS 5240<sup>1</sup>(or an equivalent standard). Helmets to BS 5240 can include optional comfort features which are strongly recommended (Type 1 helmets). For work in a confined space, 'bump caps' to BS 40332 maybe more appropriate, but the wearer may also need a safety helmet if he or she has to cross the site. Manufacturers of head protection can advise whether individual models are suitable for particular types of work or activity. Further advice on selection of suitable head protection is in Appendix 3.

1 British Standard 5240: Part 1: 1987 Industrial Safety Helmets - specification for construction and performance.

2 British Standard 4033:1968 Specification for industrial scalp protectors (light duty).

1

## Regulation 2

## Application of these Regulations

### Regulation

2

*(1) Subject to paragraph (2) of this Regulation, these Regulations shall apply to -*

- (a) building operations; and*
- (b) works of engineering construction,*

**Regulation**

2

*within, in either case, the meaning of the Factories Act 1961.*

*(2) These Regulations shall not apply during a diving operation as construed in accordance with Regulation 2(2)(a) of the Diving Operations at Work Regulations 1981<sup>2</sup>*

<sup>1</sup> 1961 c.34, section 176 has been extended by S.I. 1960/421 and S.I. 1968/1530.

<sup>2</sup> S.I. 1981/399.

5 The Regulations apply to building operations and works of engineering construction as defined in the Factories Act. These definitions are set out in Appendix 4. They apply to operations and works throughout Great Britain and in territorial waters. Most of the activities carried out in the construction industry come under these Regulations.

6 The Regulations do not apply to diving operations. Divers at work on a building operation and a work of engineering construction need not wear head protection while preparing for, and actually diving.

**Sikhs and head protection**

7 A Sikh who is wearing a turban is exempt from any requirement to wear head protection on a construction site (Sections 11 and 12 of the Employment Act 1989 which secured this exclusion is reproduced as Appendix 5). Therefore, the duties in these Regulations to provide head protection, and ensure that it is worn, (and any other related legal requirements) do not apply in connection with the wearing of head protection by a turban wearing Sikh. Neither does the duty in these Regulations to wear head protection while working on a construction site apply to a Sikh wearing a turban.

8 No other workers are exempt from the Regulations, which therefore apply to Sikh construction workers not wearing their turbans.

**Regulation 3**

**Provision, maintenance and replacement of suitable head protection**

**Regulation**

3

*(1) Every employer shall provide each of his employees who is at work on operations or works to which these Regulations apply with suitable head protection and shall maintain it and replace it whenever necessary.*

*(2) Every selfemployed person who is at work on operations or works to which these Regulations apply shall provide himself with suitable head protection and shall maintain it and replace it whenever necessary.*

**General**

9 'Employers', 'self-employed person', 'employee' and 'at work' have the meaning given in the Health and Safety at Work etc.. Act 1974 (Appendix 6 sets out these definitions).

**Maintenance**

10 The head protection must be maintained in good condition. It should:

- (a) be stored, when not in use, in a safe place, for example, on a peg or in a cupboard. It should not be stored in direct sunlight or in excessively hot, humid conditions;



- (e) site manager;
- (f) subcontractor;
- (g) managers, including foremen and supervisors;
- (h) engineers and surveyors.

15 In some circumstances clients, architects and others may also have direct control over a person at work on operations or works on the construction site and will therefore have a duty to ensure head protection is worn.

**"Unless there is no foreseeable risk of injury to the head other than by fitting"**

16 **The** duty of employers or those who have control to ensure suitable head protection is worn applies unless there is no foreseeable risk of injury to the head or the only such risk is sustaining a head injury from falling. Head protection for use in construction work will not provide significant protection against the consequences of falls, which is why the duty to ensure wear does not apply when this is the only risk.

17 In construction work, head protection may prevent or mitigate head injury caused by:

- (a) falling or swinging objects - such as materials, tools or crane hooks;
- (b) striking the head against something - particularly if there is insufficient headroom;

18 The circumstances when there is no foreseeable risk of head injury from falling or swinging objects or striking the head against something will be very limited on most construction sites. Examples where wearing suitable head protection may not be required include:

- (a) sites which consist of, or where work has reached the stage of, completed buildings where there is no risk of objects or materials falling from one working level to another and which have sufficient headroom. Maintenance or decorative work is most likely to be involved;
- (b) in site offices, cabins, toilets, canteens or mess rooms.
- (c) the cabs of vehicles, cranes, etc., if they provide sufficient protection against falling objects;
- (d) when all work is at ground level, for example, road works such as kerb laying or resurfacing work.

**Steps to ensure head protection is worn**

19 Those who have duties to ensure suitable head protection is worn will need to:

- (a) identify when and where head protection should be worn;
- (b) inform site personnel;
- (c) provide adequate supervision;

(d) check head protection is worn when necessary.

**20** In many cases it will be easier to specify areas or work stages where there is no foreseeable risk of head injury other than by falling and then require that head protection is worn in all other circumstances. Where there is no foreseeable risk only at certain stages of work these should be identified, preferably at the planning stage, by those involved. Where there is any doubt about foreseeable risk, it is best to err on the side of safety, and require head protection wear. This is particularly necessary when personnel move from location to location on site during which they may be exposed to foreseeable risk of injury to the head.

**21** Inform site personnel. See guidance under Regulation 5.

**22** Supervision by those responsible for ensuring head protection is worn should be an habitual activity - including looking out for helmet use at all times, starting early in the day and taking in any arrivals on site.

**23** Employers must satisfy themselves that the necessary action has been taken to comply with their duty to ensure head protection is worn by their employees under Regulation 4(1). All those with a measure of control over the work must also satisfy themselves that action has been taken, to comply with their duty under Regulation 4(2).

4

## Regulation 5

### Rules and directions

**Regulation**

*(1) The person for the time being having control of a site where operations or works to which these Regulations apply are being carried out may, so far as is necessary to comply with Regulation 4 of these Regulations, make rules regulating the wearing of suitable head protection on that site by persons at work on those operations or works.*

*(2) Rules made in accordance with paragraph (1) shall be in writing and shall be brought to the notice of persons who may be affected by them.*

*(3) Every employer may, so far as is necessary to comply with Regulation 4(1) of these Regulations, give directions requiring his employees to wear suitable head protection.*

*(4) Every employer, self-employed person or employee who has control over any other self-employed person may, so far as is necessary to comply with Regulation 4(2) of these Regulations, give directions requiring each such other self-employed person to wear suitable head protection.*

5

### Rule making

**24** Rule making maybe especially useful to a main or managing contractor on a multi-contractor site. The rules on head protection wear will form one part of the overall procedures relating to site safety, which should be determined at the planning phase of the work.

**25** Rules should be in writing and brought to the notice of those affected. It will be appropriate for the person in control to consult any interested parties, including trade union safety representatives, where appointed. Site rules should be clear and unambiguous to ensure that there is no misunderstanding or doubt about the need to wear head protection.

2



## Regulation 7

## Reporting the loss of, or defect in, suitable head protection

### Regulation

7

*Every employee who has been provided with suitable head protection by his employer shall take reasonable care of it and shall forthwith report to his employer any loss of, or obvious defect in, that head protection.*

### Guidance

30 Employers should make arrangements to ensure that their employees can make reports of loss or defects to them or their representatives on site. These arrangements should also enable defective head protection to be repaired or replaced, before the employee concerned is allowed to re-start work.

31 Employees must take reasonable care of the head protection provided, and report to their employer any loss or obvious defect as soon as possible. If employees have any concerns about the serviceability of the head protection, they should consult their employer or the employers' representative on site.

7

## Regulation 8

## Extension outside Great Britain

### Regulation

8

*These Regulations shall apply to any activity to which sections 1 to 59 and 80 to 82 of the Health and Safety at Work etc. Act 1974 apply by virtue of article 7 of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 1989<sup>1</sup> other than the activities specified in sub-paragraphs (b), (c) and (d) of that article as they apply to any such activity in Great Britain.*

<sup>1</sup> S. I. 1989/840.

## Regulation 9

## Exemption certificates

### Regulation

9

*(1) Subject to paragraph (2) below, the Health and Safety Executive may, by certificate in writing, exempt any person or class of person or any activity or class of activities from any requirement imposed by these Regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time.*

*(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 enactment 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 because of it.*

### Head protection for visitors

### Guidance

32 These Regulations do not require head protection to be provided to visitors who are not employees or self-employed persons 'at work on operations or works' - for example a prospective house purchaser visiting a housing development under construction. However, in order to comply with their general duties under the Health and Safety at Work etc. Act 1974, contractors etc. engaged in work on such sites should ensure that visitors wear suitable head protection if a foreseeable risk of head injury other than by falling is present. When necessary, a stock of helmets should be kept available for visitors to use when on site.

9

## Appendix 1

### **Legal obligations to ensure safety in construction work, including the prevention of head injury accidents**

1 Employers and the self-employed in construction, as in other industries, have general duties under the Health and Safety at Work etc. Act 1974.

2 Under section 2 of that Act, employers must ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees.

3 Under section 3 of that Act, both employers and the self-employed must ensure, so far as is reasonably practicable, that other persons who may be affected by their activities are not exposed to risks to their health or safety.

4 There are also specific construction Regulations made under the Factories Act 1961, which apply to employers and contractors undertaking building operations or works of engineering construction. The Regulations which may help prevent head injury accidents from falling objects etc., include the following:

- (a) The Construction (General Provisions) Regulations 1961 (S1 1961 No 1580). Regulation 46( 1) says that on parts of the site where persons are habitually employed, steps must be taken to prevent them from being struck by any falling material or article. Regulation 46(2) says that scaffold materials, tools, other objects and materials (including waste material) should not be thrown, tipped or shot down from a height where they are liable to cause injury;
- (b) The Construction (Lifting Operations) Regulations 1961 (S1 1961 No 158 1). Regulation 49 says that loads being raised or lowered must be adequately secured to prevent danger from slipping or displacement;
- (c) The Construction (Working Places) Regulations 1966 (S1 1966 No 94). Regulation 28 and 33(2) says that guard-rails and toe-boards or other barriers must be so placed as to prevent, so far as possible, the fall of persons, materials and articles. Regulation 35(8) says that suitable and sufficient means must be provided to prevent the fall of materials or articles from a sloping roof.

5 There are numerous other construction Regulations where duties to prevent falls of materials or articles are covered in an indirect way; for example lifting appliances and gear have to be examined regularly, the safe working load of lifting equipment has to be known, competent persons have to operate lifting appliances, and adequate supplies of timber have to be provided and used in excavations.

## Appendix 2

### The best approach - Preventing head injury accidents

1 Examples of general safety precautions which can help prevent objects falling include:

- (a) toe boards, end toe boards and brick guards or other suitable vertical protection on scaffolds;
- (b) fans over access ways;
- (c) fully boarded work platforms and protection around or over openings in floors, etc.;
- (d) edge protection during roofing work;
- (e) safe slinging of materials using nets or palletised loads;
- (f) debris chutes and sheeting of the skips they feed into.

2 Examples of specific measures to prevent or minimise injury from striking the head against something include:

- (a) protection at the ends of scaffold poles, etc.;
- (b) capping of projections from structures, eg studs for use in fixing suspended ceilings;
- (c) hooking the sling of a crane;
- (d) provision of sufficient head room on scaffolding;
- (e) good housekeeping to prevent slipping or tripping accidents.

## Appendix 3

### The selection of suitable head protection

1 Relevant British Standards are listed on page 1 of this booklet. Other factors to take into account are set out below.

#### Fit

2 To fit, suitable head protection should:

- (a) be of an appropriate shell size for the person who is to wear it;
- (b) have an easily adjustable headband, nape and chin strap.

3 The range of size adjustment should be large enough to accommodate thermal liners used in cold weather.

#### Comfort

4 Head protection should be as comfortable as possible. Comfort is improved by the following:

- (a) a flexible headband of adequate width and contoured both vertically and horizontally to fit the forehead;
- (b) \*an absorbent, easily cleanable or replaceable sweatband;
- (c) \*textile cradle straps;
- (d) chin straps (when fitted) which:
  - (i) fit around the ears,
  - (ii) are compatible with any other personal protective equipment needed,
  - (iii) are fitted with smooth, quick release buckles which do not dig into the skin,
  - (iv) are made from non-irritant materials,
  - (v) are capable of being stowed on the helmet when not in use.

#### Compatibility with the work to be done

5 Whenever possible, the head protection should not hinder the work being done. For example, an industrial safety helmet with little or no peak is functional for a surveyor taking measurements using a theodolite or to allow unrestricted upward vision for a scaffold erector. If a job involves work in windy conditions, especially at heights, or repeated bending or constantly looking upwards, a secure retention system is required. Flexible headbands and Y-shaped chin straps can help to secure the helmet on the head. If other personal protective equipment (ppe) such as ear defenders or eye protectors are required, the design must allow them to be worn safely and in comfort (check manufacturers instructions regarding compatibility of head protection with other types of ppe).

#### Involving the user in the choice

6 It is always better to involve those who will wear the head protection in its selection. Where possible, more than one model satisfying the appropriate safety performance and the other criteria detailed above, should be made available.

\* Type 1 helmets conforming to BS 5240 are fitted with these features.

**Definitions of building operation and work of engineering construction (Factories Act 1961 Section 176(1))**

**Building operation**

1 '....."Building operation" means the construction, structural alteration, repair or maintenance of a building (including re-pointing, re-decoration and external cleaning of the structure), the demolition of a building, and the preparation for, and laying the foundation of, an intended building, but does not include any operation which is a work of engineering construction .....

**Work of engineering construction**

2 '....."Work of engineering construction" means the construction of any railway line or siding otherwise than upon an existing railway, and the construction, structural alteration and repair (including re-pointing and re-painting) or the demolition of any dock, harbour, inland navigation, tunnel, bridge, viaduct, water works, reservoir, pipe-line, aqueduct, sewer, sewage works or gas-holder except where carried on upon a railway or tramway, and includes such other works as may be specified by regulations .....

3 *The works to be included in the definition of a work of engineering construction have been extended twice by Regulation to include:*

*'the construction, structural alteration or repair (including re-pointing and re-painting) or the demolition of any of the following except where carried on:*

*(a) in a factory as defined in section one hundred and fifty-one of the Principal Act (s 175 of the 1961 Act) or on premises to which that Act applies by virtue of sub-section (1) of section one hundred and three thereof (s 123(1) of the 1961 Act); or*

*(b) upon a railway or tramway;*

*that is to say, any steel or reinforced concrete structure other than a building, any road, airfield, sea defence works or river works, and any other civil or constructional engineering works of a similar nature to any of the foregoing works'.*

4 *'The construction, structural alteration or repair (including re-painting) or the demolition of any pipe-line for the conveyance of anything other than water, except where carried on upon a railway or tramway'.*

**Sections 11 and 12 of the Employment Act 1989**

**Exemptions of Sikhs from requirement as to wearing safety helmets on construction sites**

11.-(1) Any requirement to wear a safety helmet which (apart from this section) would, by virtue of any statutory provision or rule of law, be imposed on a Sikh who is on a construction site shall not apply to him at any time when he is wearing a turban.

(2) Accordingly, where -

(a) a Sikh who is on a construction site is for the time being wearing a turban, and

(b) (apart from this section) any associated requirement would, by virtue of any statutory provision or rule of law, be imposed -

(i) on the Sikh, or

(ii) on any other person,

in connection with the wearing by the Sikh of a safety helmet,

that requirement shall not apply to the Sikh or (as the case may be) to that other person.

(3) In subsection (2) "associated requirement" means any requirement (other than one falling within subsection (1)) which is related to or connected with the wearing, provision or maintenance of safety helmets.

(4) It is hereby declared that, where a person does not comply with any requirement, being a requirement which for the time being does not apply to him by virtue of subsection (1) or (2) -

(a) he shall not be liable in tort to any person in respect of any injury, loss or damage caused by his failure to comply with that requirement; and

(b) in Scotland no action for reparation shall be brought against him by any person in respect of any such injury, loss or damage.

(5) If a Sikh who is on a construction site -

(a) does not comply with any requirement to wear a safety helmet, being a requirement which for the time being does not apply to him by virtue of subsection (1), and

(b) in consequence of any act or omission of some other person sustains any injury, loss or damage which is to any extent attributable to the fact that he is not wearing a safety helmet in compliance with the requirement,

that other person shall, if liable to the Sikh in tort (or, in Scotland, in an action for reparation), be so liable only to the extent that injury, loss or damage would have been sustained by the Sikh even if he had been wearing a safety helmet in compliance with the requirement.

(6) Where -

(a) the act or omission referred to in subsection (5) causes the death of the Sikh, and

(b) the Sikh would have sustained some injury (other than loss of life) in consequence of the act or omission even if he had been wearing a safety helmet in compliance with the requirement in question,

the amount of any damages which, by virtue of that subsection, are recoverable in tort (or, in Scotland, in an action for reparation) in respect of that injury shall not exceed the amount of any damages which would (apart from that subsection) be so recoverable in respect of the Sikh's death.

(7) In this section -

“building operations” and “works of engineering construction” have the same meaning as in the Factories Act 1961;

“construction site” means any place where any building operations or works of engineering construction are being undertaken;

“injury” includes loss of life, any impairment of a person's physical or mental condition and any disease;

“safety helmet” means any form of protective headgear; and

“statutory provision” means a provision of an Act or of subordinate legislation.

(8) In this section -

(a) any reference to a Sikh is a reference to a follower of the Sikh religion; and

(b) any reference to a Sikh being on a construction site is a reference to his being there whether while at work or otherwise.

(9) This section shall have effect in relation to any relevant construction site within the territorial sea adjacent to Great Britain as it has effect in relation to any construction site within Great Britain.

(10) In subsection (9) “relevant construction site” means any construction site where there are being undertaken any building operations or works of engineering construction which are activities falling within Article 7(a) of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 1989.

**Protection of Sikhs from racial discrimination in connection with requirements as to wearing of safety helmets**

**12.-(1)** Where -

(a) any person applies to a Sikh any requirement or condition relating to the wearing by him of a safety helmet while he is on a construction site, and

(b) at the time when he so applies the requirement or condition that person has no reasonable grounds for believing that the Sikh would not wear a turban at all times when on such a site,

then, for the purpose of determining whether the application of the requirement or condition to the Sikh constitutes an act of discrimination falling within section 1(1)(b) of the Race Relations Act 1976 (indirect racial discrimination), the requirement or condition shall be taken to be one which cannot be shown to be justifiable as mentioned in sub-paragraph (ii) of that provision.

**(2) Any special treatment afforded to a Sikh in consequence of section 11 (1) or (2) above shall not be regarded for the purposes of the Race Relations Act 1976 as giving rise, in relation to any other person, to any discrimination falling within section 1 of that Act.**

**(3) Subsections (7) to (10) of section 11 above shall apply for the purposes of this section as they apply for the purposes of that section.**

## **Appendix 6**

### **Definitions of self-employed person, employee, employer and at work (Health and Safety at Work etc. Act 1974 Sections 52 and 53)**

#### **Self-employed person**

1 “Self-employed person” means an individual who works for gain or reward otherwise than under a contract of employment whether or not he himself employs others’.

#### **Employee and employer**

2 “Employee” means an individual who works under a contract of employment, and related expressions shall be construed accordingly. A contract of employment means a contract of employment or apprenticeship (whether express or implied and, if express, whether oral or in writing)’.

3 ‘Employer’ is one of the ‘related expressions’ included in the definition of ‘employee’.

#### **At work**

4 “Work” means work as an employee or as a self-employed person’.

5 ‘An employee is at work throughout the time when he is in the course of his employment, but not otherwise’.

6 ‘A self-employed person is “at work” throughout such time as he devotes to work as a self-employed person’.

7 ‘.....the expressions “work” and “at work”, in whatever context, shall be construed accordingly’.

# Damage or deterioration to shell of suitable head protection

### Damage to shell

1 Damage to the shell of a helmet can occur when:

- (a) objects fall onto it;
- (b) it strikes against a fixed object;
- (c) it is dropped or thrown.

### Deterioration in shock absorption or penetration resistance

2 Deterioration in shock absorption or penetration resistance of the shell can occur from:

- (a) exposure to certain chemical agents;
- (b) exposure to heat or sunlight;
- (c) ageing due to the effects of heat, humidity, sunlight and rain.

3 Chemical agents which should be avoided include paint, adhesives or chemical cleaning agents. Where names or other markings need to be applied using adhesives, advice on how to do this safely should be sought from the helmet manufacturer.

4 Exposure to heat or sunlight can make the shell go brittle. Head protection should never be stored therefore near a window, eg the rear window of a motor vehicle because excessive heat may build up.

5 Helmets should always be replaced when:

- (a) the shell has received a severe impact;
- (b) deep scratches occur, ie to a depth greater than 25% of the shell thickness;
- (c) the shell has any cracks visible to the naked eye.