

## The RDBA Construction Groups response to PM 28

In the last issue we set out the Construction Groups views on why they are against the revision of PM 28, which if implemented will nearly prohibit the use of non-integrated man baskets by experienced, trained operatives for planned work at height. At the end of August the Construction Group provided the HSE with their official response to the draft revision, this response required a lot of research; some of the findings are listed below followed by a copy of the response.

This Forward is my personal view and should not be taken as the view of the Construction Group.

I do not propose to explain in detail all the points made in the RDBA Construction Group submission but I will clarify some of them.

Our understanding of the EU directives may not be perfect. If you have ever tried to understand one you will understand why; The original directive is agreed and published on the web site, when it is amended it is not rewritten but the amendments are published, so to understand what a directive is saying at any one time you need to find the wording of the original directive and then trace the wording of all subsequent amendments and add them to the original. This is not an easy task, and so it is possible that we have missed some amendments to the Directives under consideration but we are confident that the main thrusts of our arguments are correct.

This draft revision of PM 28 was written by the British Industrial Truck Association (BITA) with input from the HSE. In the minutes of their meetings; I have copies supplied by a source that wishes to remain anonymous; they say that they will copy the last revision, number 13, to the RDBA as a courtesy. When the Construction Group had their first meeting with the HSE at their meeting in September 2003, the HSE representative said that he would provide a draft of PM 28 for comment, when appropriate. We now know that in September 2003, BITA was working on draft 7. We heard nothing until the final draft 13 was agreed by BITA, when they agreed to send the RDBA a copy as a courtesy. We are unaware of any other users of man baskets who have been given the opportunity to comment; we have asked the HSE for a list of those that have been asked to comment but to date they have refused to provide us with this information.

We understand that BITA do not expect any amendments to be accepted to the published draft we have seen, in their eyes it is a done deal.

Some BITA members are very unhappy with the prohibition of non-integrated man baskets, when I asked if they had objected, they advised that "BITA is made up of a 'truck suppliers group' a 'components and services group' and a 'truck user group'. Sometimes it can be difficult for a member who has less input in BITA to get their views across and supported, as they may be a minority in the working group. So although PM 28 is a BITA document, certain aspects of it are not supported by all their members.

It is not only BITA which is split over this issue, the HSE is also split. I have spoken to a number of senior people within the HSE and received expressions of support from others who agree with us that this change is likely to cause more accidents than it saves.

BITA is a member of the International Powered Access

Federation (IPAF), who in my view are the people leading the drive against non-integrated man baskets. In discussions with them it is obvious that they have not taken into account the health and safety implications of the changes they are proposing. They disregarded our survey that showed that members have used non-integrated man baskets for nearly 500,000 man hours without accident. The only argument that they could come up with to support their stance was that EU Directives prohibited the use of non-integrated man baskets. They went on to say that their members as manufacturers of the machines that the baskets were attached to, would state that their machines were not designed to carry people, which would mean that in the unfortunate event of an accident and some one being hurt, this evidence would be introduced to the court and the judge would no doubt find fault with the user of the machine. I pointed out that the RDBA could well write best practice advice that said in certain circumstances the correct use of non-integrated man baskets by experienced trained personnel was safe, so the court findings would be based on the evidence rather than the statement from one trade association. They then fell back on threats along the lines of, you are just a small organisation and unless you have the support and resources to fight us for the next 5 years, you would be better to give up now. I hate a bully and so their comments reinforced my view that we should continue to fight, particularly as I still believe that the HSE, as a whole, does have safety as their first priority and that they will listen to our views.

Senior members of the HSE have confirmed that there is no history of accidents to those correctly using non-integrated man baskets. Since we now believe that there are more than 20,000 in use, this must show that they are safe to use and so it does beg the question of why certain people in IPAF and BITA are so keen to see them prohibited.

Certain members of the Construction Group are so annoyed about this 'UK gold plating' that they have suggested that they use their contacts in the House of Lords and the Commons to cause the Government embarrassment over a further example of UK 'Gold Plating' of EU directives.

At this stage the RDBA Construction Group has suggested that we should not go political as we are delighted that the HSE has proposed a meeting with the RDBA to discuss our concerns and we are hopeful that they will take our arguments on board.

### RDBA Construction Group's comments on Draft 13 of PM28

Dear Sirs

Thank you providing us with a copy of the 13th draft of PM28 for our comment. We are disappointed that following our meeting in September 2003, when we understand that draft 7 or 8 was under consideration we were not given the opportunity to comment on subsequent drafts until now, draft 13, and trust that there will be serious consideration given to our grave misgivings. We are disturbed to hear that some involved regard this draft as the final draft and that we have been copied in as a courtesy. We are also most concerned that, as far as we are aware, as it has not yet been confirmed to us, that all of those advising the HSE are representatives of machinery manufacturers; who it might be argued have a commercial interest.

We had thought that this draft of PM 28 was written by the HSE but we now appreciate that it has been written by The British Industrial Truck Association (BITA) with some input from the HSE and we believe that this should be stated in the introduction.

If you continue to claim it as an HSE document; we understand that that there are strict guidelines on the consultation process required for changes to guidance/regulations and so trust that you will ensure that they are followed in this case, and that this draft, if it has not already been distributed to interested trade associations is widely distributed to trade associations who's members are involved in the use of man baskets, such as, farmers, scaffolders, roofers, maintenance engineers, tree surgeons, general builders, etc and that their comments are given serious consideration.

We will start by commenting on the directives and regulations that we have been advised are the reason for the revision to PM 28, the Health and Safety case for the continued use of non-integrated baskets' by experienced, trained operatives for planned work at height, then we will provide more detailed comment on the draft and summarise.

## A. Directives

A.1. We note that the draft makes prominent mention of the Machinery Directive (98/37/EC). The only clause we can find, which might support the restriction on use of non-integrated baskets is 6.2.1, which states that: Where safety requirements do not impose other solutions: The carrier must, as a general rule, be designed and constructed so that persons inside have means of controlling movement upwards and downwards and, if appropriate, of moving the carrier horizontally in relation to the machinery.

In our view: There is a strong argument that, when taking into account Clauses 1.2.2 and 1.5.15 (see below), the safety requirements indicate that the controls should not be in the basket. But even if our view is not accepted this clause only says 'as a general rule' it does not prohibit their use in planned work at height.

The draft PM28 is very selective in the clauses it relies on and seems to ignore the clauses, which would indicate that the controls should not be in the basket, these clauses are listed below.

A.2. 1.2.2 Control devices must be: Located outside the danger zones, except for certain controls where necessary, such as emergency stop, consoles for training of robots.

In our view: With a fork lift or a telehandler the danger zone must be in the basket, it could therefore be argued that the operator in the cab is in an area of less risk than the operator in the basket and so that is where the controls should be.

A.3. 1.5.15 Machinery must be designed, constructed or fitted with a means of preventing an exposed person from being enclosed within it, or if that is impossible, with a means of summoning help.

In our view: It is most likely that if the operatives have integrated controls in the basket, there will be no-one in the cab and so in the unfortunate case of a serious accident or a break down occurring in the basket they will be unable to summon help. Who will be there to bring them down safely? So unless there is someone at ground level at all times (as there would be with a non integrated platform) it is likely that this clause of the directive is not being complied with when using mowps and integrated platform.

A.4. PM 28 - Part 1 THE LAW Clause 17 says that the working Group Standing Committee of the Machinery Directive (98/37/EC) has agreed that working platforms without controls do not meet the requirements of the Machinery Directive.

In our view: The Directive does not say this and it is the Directive that a Member State has to implement, not the views of the committee.

A.5. We have also considered The Use of work Equipment Directive (AUWED 89/655/EC) and amendments:

A.6 Annex I Clause 2.1 Work equipment control devices which affect safety must be clearly visible and identifiable and appropriately marked where necessary. Except where necessary for certain control devices, control devices must be located outside danger zones and in such a way that their operation cannot cause additional hazard. They must not give rise to any hazard as a result of any unintentional operation.

If necessary, from the main control position, the operator must be able to ensure that no person is present in the danger zones. If this is impossible, a safe system such as an audible and/or visible warning signal must be given automatically whenever the machinery is about to start. An exposed worker must have the time and/or the means quickly to avoid hazards caused by the starting and/or stopping of the work equipment.

Control systems must be safe and must be chosen making due allowance for the failures, faults and constraints to be expected in the planned circumstances of use

In our view: Saying 'must be located outside of danger zones..... Must be chosen making due allowance for the failures faults and constraints to be expected in the planned circumstances', it could be argued that, as being in the platform working at height has more risks attached to it than working in the cab, the controls should be in the cab to more closely comply with this clause.

A.7 Annex II Clause 3.1.2. .... Work equipment which is not specifically designed for the purpose of lifting persons may be used to this effect, provided appropriate action has been taken to ensure safety in accordance with national legislation and/or practice laying down appropriate supervision.

While workers are on work equipment designed for lifting loads the control position must be manned at all times. Persons being lifted must have reliable means of communication. In the event of danger, there must be a reliable means of evacuating them.

In our view: This means that even if there are controls in the basket there must still be an operative in the cab, and in particular there must be someone to bring the operatives down if they cannot do it themselves, and so we are unclear as to how mowps and integrated platforms can comply with this clause.

A. 8 From the above it could be argued that mowps and integrated platforms do not fully comply with all the clauses in the Directives, but we fully accept that they are safe when correctly used and so of course we are not suggesting they should be prohibited from use

## B. Regulations

B.1. We have studied the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER). We have found nothing that prohibits the use of non-integrated man baskets.

The ACOP at clause 128 says The raising and lowering of people by work equipment which is not specifically designed for the purpose should only be undertaken in exceptional circumstances, ....

In our view: "The LOLER regulations implement the lifting provisions of AUWED 89/655/EC), these regulations allow the use of lifting equipment see A.7. above. So it is only the ACOP, which nearly prohibits the use of non-integrated man baskets. An ACOP is not a regulation; it is an interpretation of a regulation.

## C. Health and Safety of non-integrated man baskets

C.1. We have provided information to the HSE and others that our members' records show nearly 500,000 man hours using 52 man baskets with non-integrated controls, without accident. We now understand from manufacturers and suppliers of these baskets that they believe that there are approximately 20,000 non-integrated man baskets in use. So as there has not been a large number of accidents recorded during the correct use of such equipment it demonstrates that they are safe to use.

C.2 Most small sites have a telehandler or fork lift on site, in the past they were used for lifting material, steel work, etc., with the operatives working off ladders, tower scaffolds, pallets, loading buckets etc. In more recent times many non-integrated baskets have been either made or purchased to be used in preference to the less safe alternatives. This has been a good step in the correct direction as it has reduced the number of accidents. If this revision of PM 28 is put in place as it stands contractors will be breaking the law if they continue to use their non-integrated platforms for planned work. The assumption has been made that having been banned from using this equipment the contractors will all start using either mowps or integrated platforms; this is a false assumption. Whilst these contractors are experienced using a forklift and will have the correct training and certification to use that equipment they are not going to be as experienced with mowps and integrated platforms. They are also unlikely to invest in either the specialist plant, training certification or hire and transport charges for short duration work that is to be categorised as "planned". What they will do is either ignore the rules as they know that they can use non-integrated platforms safely and that they are very unlikely to be caught by the HSE, or they will revert to using less safe means of access that are still recognised as legal eg towers and scaffolds.

C.3. If PM28 were to be enforced as written and if all contractors were to use other plant as assumed there would be a problem obtaining the equipment. We know that there are approximately 20,000 non-integrated man baskets in place, if we presume that they are used on average only once a week, taking into account delivery times we will probably need in excess of 4000 mowps or machines with integrated baskets, to cover the demand. At an average of £30,000 each this would entail a £120,000,000 investment by the hire industry!!!

C.4. For many contractors using a forklift and a non-integrated platform is their first step up to using powered access as they are using machinery that they are very familiar with in a slightly different way. Remove this step and these contractors will take longer to trade up to powered access from less safe means.

## D. More detailed comment on the draft

Please find our comments in numerical order

3. Integrated platforms are not readily available for hire
5. Would a reference to which guidance does cover this other equipment be appropriate at this point?
- 12 What evidence is there that other European Countries do not allow the use of non-integrated baskets? They are not prohibited by the Directives.
- 13c. We would suggest that the reference to "agricultural barns" be removed as it applies to clearing any gutters be they agricultural, commercial or domestic.
14. The statement that NI platforms do not provide as high a level of safety as purpose built equipment is not always true and should be modified or removed. To give three examples:
  1. Forklift trucks and telehandlers provide greater stability for platforms than most mowps.
  2. As the operator of a mowp can be elevated when driving there is a far greater risk of tipping due to, say, not seeing a

hazard at ground level.

3. If a harnessed operative fell from a cherry picker at full reach it could tip it over; this is unlikely to happen with a forklift.
- 26h. This is unclear. Does it mean that once the platform is elevated and positioned the fork lift must continue to be manned? Surely providing the key is removed from the machine preventing the machine from being operated that is sufficient to ensure safe working?
27. The idea that every person who ever buys or makes a man basket for their own use is going to consult the manufacturer who is in turn going to assess that the combination is suitable is unrealistic. Might it be more realistic to just say that it responsibility of the employer/user to ensure that they comply with items a, b and c.
28. Given that fork lifts are often more stable than the alternatives why should they be further de-rated? If a machine is capable lifting a tonne of bricks why is it any less capable of lifting a tonne of basket, people and tools? A safety margin is already designed in.
33. Should the pre use checks not be carried out by a competent rather than an authorised person?
35. As mentioned previously, how does this improve safety?
- 37c. Whilst one would concur that best practice would be for operatives to leave the platform when the fork lift is being moved it is inconsistent that it is acceptable for a mowp to be permitted to move when the driver is elevated yet with a fork truck mounted platform there would be two pairs of eyes looking for danger.
39. In the real world when NI baskets are used the means of communication in the vast majority of situations is by hand signals supplemented by shouting. Members have purchased a set of portable radios for evaluation and we found them to be less efficient than our current system of hand signals. Permissioning controls, whistles, klaxons etc might sound good on paper but in reality are complications that do not add to safety. Therefore our recommendation for this section is that the emphasis be on having a simple set of hand signals that are rehearsed prior to use of the NI platform and if the driver cannot clearly see the hand of the controller on the platform then the platform should not be used.
40. Given that there is a wide recognition in both the industry and the HSE that people are regularly exiting and entering mowps and platforms of all types whilst elevated, that it can be done safely and that the regulations need to be re-written to accommodate this situation it would seem unwise to include the first part of the first sentence of this section. We would recommend that exiting and entering needs a section of its own giving some basic dos and don'ts and that the dangers of leaning out of platforms, which is very dangerous, is given its own section.
- 46d. NI platforms on telehandlers with reach of over 6.0m should not be excluded. There is no evidence of their having a bad accident record, not least because they are massively stable (many supplemented with jack legs). We do however believe that mid steer telehandlers are not appropriate for use with platforms and that this should be stated in this section  
Would the comment in brackets regarding rough terrain environments not be better placed in section 22?
47. This section should be removed. Principal contractors have a responsibility to employ sub contractors who know what they are doing and what is the best kit for the job.
64. There is no reason for the width of a platform not to exceed the arbitrary figure of 250mm past the wheels of the forklift provided that the design of the basket and machine is stable at full reach. We would recommend that this section be changed to provide this guidance.
70. The reason for handholds in addition to a sound handrail seems excessive and no reason is given as to why they are

needed. The less items in a platform to provide snags for harnesses the better. Either a reason why handholds are essential needs to be given or the item removed.

73. Not necessary for reasons previously stated.

74. Not necessary for reasons previously stated.

## E. Best Practice

Based on the above considerations and the RDBA Construction Group's long experience of using non-integrated man baskets safely, it is highly likely that in our best practice documents we will be stating that when correctly used, by experienced, trained operatives for planned work at heights, non-integrated man baskets can be an acceptable working platform at height and in certain situations provide a safe form of access for men and equipment.

## F. Summary

Despite a lack of evidence to prove non-integrated platforms are unsafe PM28 will prohibit the planned use of such equipment by experienced trained operatives but exception will be made for unplanned use by, one must conclude, operatives with little experience or training. The exception is presumably made on the grounds that it is accepted that non-integrated platforms are safer than the alternatives. This contradiction itself makes the legislation look foolish, but worse, non-integrated platforms are to be prohibited because they do not comply with the regulations not because they are dangerous.

If this draft of PM28 is enacted in its current format it will increase accidents not reduce them.

