

DRAFT LETTER FROM HSC CHAIR TO MINISTER

Lord Hunt of Kings Heath OBE –
Parliamentary Under Secretary of State
Department for Work and Pensions

PROPOSED CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2007 AND APPROVED CODE OF PRACTICE

I am pleased to enclose proposals for revised Construction (Design and Management) (CDM) Regulations (CDM 2007 Regulations) and the related Approved Code of Practice (ACoP) “*Managing Health and Safety in Construction*”. The Health and Safety Commission (HSC) approved the Regulations and ACoP at its meeting on 17 October.

The proposed Regulations consolidate and revise the main pieces of existing construction health and safety at work legislation, namely - the Construction (Design and Management) Regulations 1994 (CDM 1994) and the Construction (Health, Safety and Welfare) (CHSW) Regulations 1996 - resulting in a single, simplified set of Regulations. Both sets of existing Regulations were made, in part, to implement the Temporary or Mobile Construction Sites Directive (TMCSA).

The revision was undertaken following concerns about the complexity of CDM 1994 and the bureaucratic approach taken by many duty holders. Both these issues frustrated the Regulations’ underlying health and safety objectives. These views were supported by an industry-wide consultation in 2002, and resulted in the HSC/E’s decision to revise the Regulations. The aims for the revision, which the HSC agreed, are to reduce construction accidents and ill health by:

- being clearer – making it easier for duty holders to know what is expected of them;
- being flexible, so accommodating the wide range of contractual arrangements found in the construction industry;
- emphasising the need to plan and manage work, rather than treating the paperwork as an end in itself;
- emphasising the communication and co-ordination advantages of duty holders working in integrated teams; and
- simplifying the way duty holders assess competence.

CDM 2007 Regulations

The proposed Regulations, which have been developed in line with Better Regulation principles, streamline requirements to ease administrative burdens, whilst ensuring health and safety standards are maintained or improved. We believe restructuring the Regulations to make matters clearer and simpler for dutyholders will aid compliance.

Last year, the HSC consulted publicly on these proposals, and the draft package takes into account over 400 responses to that consultation, including those of key Government stakeholders. In addition, the proposals were developed in close collaboration with a range of stakeholders, representing all parts of the construction industry, and principally in partnership with the Construction Industry Advisory Committee (CONIAC). The proposals reflect over 10 years' practical industry and HSE experience and we are therefore confident that they reflect HSC/E and industry needs.

Responses to the formal consultation have confirmed our view, although certain industry groups have raised concerns, particularly in relation to perceived burdens on small and inexperienced construction clients (see below for further detail). We are taking action to address these with the help of our industry partners, and have a planned communications strategy and programme of targeted activities and events (see below), designed to raise awareness and correct misconceptions about the practical application of the Regulations.

[See Supplementary Note for additional text]

Approved Code of Practice

The CDM 2007 ACoP sets out simply and clearly what dutyholders (particularly small and occasional clients) need to do to comply with the Regulations. It will replace the current ACoP and Guidance "*Managing Health and Safety in Construction: Construction (Design and Management) Regulations 1994*". Any additional guidance will be produced by the industry itself, with CONIAC in an advisory and co-ordinating role.

Regulatory Impact Assessment

A thorough final Regulatory Impact Assessment (RIA) has been undertaken, informed by independent research and responses to the consultation, and is attached for your consideration. It concludes that CDM 2007 will place no undue burden on contractors, principal contractors or designers, as their duties are either clarified (particularly in the case of designers) or remain essentially unchanged. .

The greatest impact of the proposals will be on clients – who, because of their influence on the way projects are conducted, are central to CDM 2007's success in improving health and safety in construction. We do not think clients will be disadvantaged overall, but understand that small and occasional clients may feel threatened and overawed by what they see as a "new" duty. We are addressing these concerns in the ACoP and guidance. Larger clients generally welcome the proposals, as they see the revised duty as an opportunity to become more involved with the process, and in so doing they expect to realise broader business benefits.

Although there is a potential for the costs to slightly outweigh the benefits (taking an adverse view at the extreme ends of the ranges), HSC/E is steadfast in its belief that the changes are justified (given the aims of the revised Regulations and the broad industry support).

Launch and Communications Strategy

We believe some of the concerns raised stem from a misunderstanding of how the proposals will actually apply in practice, and these can be resolved through appropriate presentation and effective communication of the right messages. To this end, we are developing (with CONIAC and other partners) a communications strategy including appropriate publicity for the launch of the Regulations, to be followed by a targeted programme of events, activities and key messages. We believe this, together with our related communications plan and ongoing engagement with the industry, will successfully embed the desired changes.

Subject to your agreement, the Commission would wish for the new CDM Regulations to come into force on 6 April 2007, with a view to publishing the supporting ACoP in early 2007. I would welcome your approval to the Regulations and your consent¹ to HSC's approval of the new supporting ACoP: "*Managing Health and Safety in Construction*".

Yours sincerely

Bill Callaghan

Chair, Health & Safety Commission

¹ Section 16 of the Health and Safety at Work etc. Act 1974 requires the consent of the Secretary of State before Approved Codes of Practice (ACoPs) or revisions can be issued. In practice, as Minister for Health and Safety, you consent on the SoS's behalf.