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## **HEALTH AND SAFETY EXECUTIVE**

### **CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)**

**An update on current and forthcoming work of HSE's construction policy unit**

**A paper by Anthony Lees, head of HSE construction policy unit**

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#### **Summary**

**For information and discussion at CONIAC meeting, 23 June 2008**

**This paper provides an update on the current and forthcoming work of HSE's construction policy unit**

#### **Issue**

- 1. Development of construction policy initiatives by HSE in the UK construction industry.**

#### **Recommendation**

- 2. That CONIAC notes the work described in this papers, and raises any issues arising at the CONIAC meeting on 23 June 2008**
- 3. That CONIAC discusses the timetable for reconvening the CDM Working Group**
- 4. That CONIAC discusses the embedding of CDM 2007**

#### **Background**

5. HSE's construction policy unit sits within the Construction Division of its Field Operations Directorate. It is within the same management structure as the various 'sector' teams, whose staff and work are often encountered by CONIAC members. The distinction between the work of the 'sector' teams and the policy team can be unclear to external audiences. While there may be some overlap of roles, the sector teams generally lead on operational policy matters on specific topics such as occupational health, plant safety or worker competence.
6. Distinct from this the policy unit leads with wider issues of HSE policy in the construction industry. Its work generally involves close working relationships with other government departments. It takes the lead on legislative developments and its work often has a European perspective. It acts as the interface between HSE and government on construction health and safety issues and provides support to the Chief Inspector of Construction, senior HSE officials and ministers. It also provides the administration and secretariat to CONIAC.

### **Reactive Work**

7. A significant proportion (typically around 50% at any given time) of the resource of the construction policy team is devoted to providing reactive support to HSE senior management and ministers. This work includes, but is not limited to the following:
  - Briefings for Ministers prior to meetings;
  - Drafting speeches for Ministers for speaking engagements or parliamentary debates;
  - Responding to Ministerial and other official correspondence
  - Supporting specific Ministerial initiatives such as the Construction Forum
  - Responding to parliamentary questions
  - Supporting senior HSC/E officials, including the Chief Inspector of Construction
8. This work is typically short-term and to tight deadlines. While the policy team develops and maintains lines to take on behalf of HSE, responding to such work

typically involves input from other staff within construction division and other parts of HSE.

9. Described in the following paragraphs is a summary of the major workstreams currently underway or under development by the policy team. The summary is not fully inclusive, and does not attempt to describe other contributions of the team to work led by sector teams or other policy teams within HSE. Nor does it describe in detail its work, under development, to provide a framework to support policy issues specific to the devolved governments of Scotland and Wales.
10. The more forward-looking work of the construction policy team can be categorised under the following headings:
  - Legislative development and review
  - Specific interventions with government
  - CONIAC management and reconstitution

### **Legislative development and review**

11. HSE is currently involved with a number of consultation exercises led by other government departments aimed at reviewing or amending existing legislation. These include the review of the Building Control regime within Communities and Local Government (CLG), and the equivalent consultation in Scotland. HSE's response will be influenced by the perceived need for better regulatory 'mesh' between the notification requirements of CDM and the corresponding approval requirements under the planning permission and building control systems (see below).
12. In addition, work is underway within CLG to amend the Construction Products Directive. This is likely to replace the existing Construction Products Regulations 1991 (as amended) with a set of European Regulations which are different in scope. This regulatory reform procedure is not yet at the formal consultation stage, but HSE is involved in a cross-government working group which will be closely involved in the consultation. The formal consultation should be issued by the autumn.

13. HSE is also committed to an early review of Construction (Design and Management) Regulations 2007 (CDM 2007), which implemented in part the Temporary and Mobile Construction Sites Directive 92/57/EEC (TMCS). It is envisaged that this review will go ahead in the 2009-10 work year. However, in 2008-09 HSE will be commissioning research to establish baseline data which will inform this review. Construction Division staff will be meeting with HSE economists in early summer 2008 to decide how this research will be progressed.
14. In addition to its involvement in baseline research to inform the CDM review, HSE is also mindful of an implementation report being prepared for the European Commission on the implementation of TMCS in European member states. This report, which has not yet been published, recognizes that implementation of TMCS is not without difficulties. It is likely to lead to the publication of non-binding explanatory guidance by the Commission, although progress to date on this guide has been slow. It is intended that this guide will be published in 2009.

### **Specific interventions with government**

#### **Exploring regulatory alignment between CDM, planning and building control regimes**

15. HSC agreed in late 2006 that HSE should progress the work it is carrying out with CLG on considering the scope for better integration of the CDM, Building Control and Planning regimes. The aim of this work is to identify overlapping regulatory requirements and streamline them where possible - with a view to alleviating administrative burdens on those subject to the Regulations and improving compliance.
16. More recently, HSE's Construction Division has been considering the opportunities for moving forward this agenda, and progress was reported to the Commission in 2007. This work will need wide consultation to take in, for example, the different approaches to building control taken by England & Wales compared with Scotland; and the wider CLG Planning and Building Control reviews and agenda, as well as the forthcoming launch of the Sustainable Construction Strategy by BERR. HSE is responding to the current review of Building Control, and this provides an excellent opportunity to feed in views on how this review

can further the cause of regulatory integration. In preparing its response HSE has made extensive use of an external expert, a former head of building control within a local authority. HSE will be meeting with CLG officials in June 2008 to start to explore integration options in more detail.

17. Aside from looking for opportunities for regulatory integration, HSE is also pursuing how it may work better with other regulators to ensure that health and safety information reaches the widest range of dutyholders. This includes exploring the use of the government Planning Portal and working through building control and planning officers. This work is being taken forward as part of HSE's Local Authority Construction Engagement (LACE) project. The work reflects the Ministerial commitment to improving access to good health and safety advice for small and occasional clients.
18. In addition to the above, HSE is developing an electronic construction project notification system and related F10 form. This was piloted in early 2008, and is now live. HSE hopes shortly to make arrangements with CLG to provide links from the CLG Planning Portal to the electronic F10, and HSE's free CDM 2007 guidance leaflets for clients. This would help provide a single point for dutyholders to obtain all the relevant information needed for a construction project (e.g. Building Control, Planning, CDM).

### **Improving health and safety in public sector procurement of construction work**

19. A major strand of work within the construction programme has been to address standards of health and safety in construction work procured within the public sector. The Office of Government Commerce (OGC), as part of its Achieving Excellence in Construction (AEC) work has set out specific standards for construction procurement (AE-10). Following on from the Buying for Life initiative in 2006, research conducted for HSE in 2006/7 by Davis Langdon investigated procurement practices amongst local authority construction clients, non departmental bodies, housing associations and central Government. This research showed few adopted the established recommendations. It concluded that "public sector clients are using traditional methods of procurement, in preference to others, despite guidance to the contrary". However, industry looks to the public sector to set an example. This was recognised by the Rt Hon Peter

Hain at the 2007 Construction Forum which identified deficiencies in public sector standards. As a consequence a short 'think piece' was produced by HSE identifying key issues for health and safety in public sector procurement for Lord McKenzie. There is now strong Ministerial support for pursuing improvements in public sector procurement in the 2008-09 plan of work, which is echoed by concerns raised by the construction industry itself direct with Ministers.

20. The work will involve further research, with two explicit aims:
  - To understand why public sector clients have not generally adopted best practice in relation to construction procurement (and specifically the measures geared to securing exemplary standards of health and safety).
  - To determine what steps could secure the desired improvement in public sector construction procurement practices.
21. It is proposed that the work will also seek to gain commitment from Ministers in high-spending departments to ensure that commitment to compliance with the OGC guidance is embedded not only at the senior level of those making government funds available for construction work, but also throughout the procurement process.

### **CONIAC management**

22. The future constitution and format of CONIAC is the subject of a separate paper, M/2/2008/2 [agenda item 5]
23. It was agreed at the March meeting of CONIAC that the timing of the reconvening of the CDM Working Group would be discussed at the June 2008 meeting of CONIAC. Members are invited to present their views on this during the presentation of this paper.
24. It was also agreed to discuss the embedding of CDM 2007 at the June 2008 meeting of CONIAC, in particular the link between SMEs and public sector procurement

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