

Open Government status: Fully open	Paper Number: M3/2008/5
	Meeting Date: 27 November 2008
Exempt material: None	Type of Paper: Below-the-line
	TRIM Folder: 1.14.2.100

HEALTH AND SAFETY EXECUTIVE

CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)

**Views on embedding of the Construction (Design and Management)
Regulations 2007 (CDM 2007)**

A paper by the CONIAC Secretariat

Cleared by Stephen Williams, Chief Inspector of Construction

Summary

For information, and responses in writing

This paper provides Members with views and evidence on take up of, and benefits from, the CDM 2007 Regulations, and asks for comments. Additionally, it asks for views on the setting up of a Working Group to support HSE's evaluation of CDM 2007.

Issue

1. (1) Progress with CDM 2007 embedding. (2) Possible establishment of a Working Group to assist HSE with the evaluation of CDM 2007.

Timing

2. Routine

Recommendation

3. That CONIAC Members note the information in the paper and submit written views on the issues identified in paragraphs 7 and 8.

Background

4. Early feedback on CDM 94 suggested that it was failing to promote effective health and safety but was prompting wasteful bureaucracy and related burdens on business. Industry-wide consultation in 2002 disclosed support for the

principles of CDM 94 but dissatisfaction with their implementation in the Regulations. Among the criticisms offered were that the Regulations were inflexible and difficult to understand, that the duties of clients should be more proportionate to their level of influence, and that the Planning Supervisor role was ineffective in many ways.

5. Subsequently, the Health and Safety Commission approved a project to revise the Regulations, and laid down the following objectives for it:
 - (a) Simplifying the Regulations to improve clarity – so making it easier for duty holders to know what is expected of them.
 - (b) Maximising their flexibility – to fit with the vast range of contractual arrangements in the industry.
 - (c) Making their focus planning and management, rather than the plan and other paperwork – to emphasise active management and minimize bureaucracy.
 - (d) Strengthening the requirements regarding co-ordination and co-operation, particularly between designers and contractors – to encourage more integration.
 - (e) Simplifying the assessment of competence (both for organizations and individuals) to help raise standards and reduce bureaucracy.
6. HSE, in collaboration with the industry (most particularly with the assistance of a CONIAC Working Group), embarked on a revision of the Regulations designed to address the identified deficiencies in a manner consistent with Better Regulation principles. CDM 2007 came in force on 6 April 2007 (a summary of the main changes introduced is at **Annex A**). During a Parliamentary debate on the Regulations following their introduction, Ministers agreed that HSE should carry out a review of CDM 2007 within 3 years.

Current position

7. CDM 2007 has been in force for 21 months and HSE will shortly commence initial research to prepare for a full evaluation of the Regulations. Consequently, it seems appropriate to take a preliminary view from CONIAC on how well the Regulations have bedded in, and the extent to which they have achieved their

aims. Some HSE officials and a few members of CONIAC were asked for their impressions of CDM 2007 embedding to date to inform this paper, and their views are summarised in **Annex B**. Members are asked to note the information in Annex B and submit in writing to the Secretariat any comments or further information they may have on CDM 2007 embedding.

8. CONIAC has previously considered the question of whether a Working Group should be established to assist HSE with the evaluation of CDM 2007. The general view expressed was that it was too early to set up such a group. Members may now wish to reconsider this question in light of the fact that HSE is beginning the evaluation work. More specifically, HSE expects to commission initial research during November 2008 to March 2009 which will design and pilot information gathering and assessment methods. Subsequently, the definitive information gathering and evaluation exercise will be carried out beginning during 2009 and aiming to report during 2010. Members are asked to submit in writing to the Secretariat any views they may have on the role and timing of the setting up of a Working Group to assist with the evaluation of CDM 2007.

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Summary of main changes introduced by CDM 2007

- CDM 1994 and CHSW 1996 consolidated into a single set of Regulations.
- The Regulations are grouped by duty holder, so it is easier for each to see what their duties are.
- Projects for domestic clients no longer need to be notified.
- The Regulations apply to all sites, but there are additional duties for sites where construction work lasts more than 30 days or takes more than 500 person days.
- Provision for a “client’s agent” removed.
- The Planning Supervisor role ceases to exist. A CDM Co-ordinator is introduced to advise and assist the client; to co-ordinate the planning and design phase and to prepare the health and safety file.
- There is a single trigger for the appointments of the CDM Co-ordinator and the Principal Contractor, and preparation of a written health and safety plan. This trigger is the same as the notification threshold i.e. 30 days or 500 person days of construction work.
- Demolition is treated in the same way as any other construction activity, except a written plan is required for all demolition work.
- Clearer guidance is given in the ACoP on competence assessment, which it is hoped will save time and reduce bureaucracy.
- There is an enhanced client duty, (making explicit duties which already existed under the Health and Safety at Work etc. Act 1974 and the Management of Health and Safety at Work Regulations 1999, to ensure that the arrangements other duty holders have made are sufficient to ensure the health and safety of those working on the project.
- A new duty is placed on designers to ensure that any workplace which they design complies with relevant sections of the Workplace (Health, Safety and Welfare) Regulations 1992.
- Clients and contractors (including the Principal Contractor) must tell those they appoint how much time they have allowed, before work starts on site, for appointees to plan and prepare for the construction work.

Summary of views received on CDM 2007 embedding

An HSE inspector perspective

CDM 2007 seems to have been well received generally with no major issues encountered. However, no sign of the hoped for “step change” in health and safety performance. More might be achieved in relation to client duties, designer duties and competence. Some cases have been noted where clients are trying to do the right thing but are constrained by external influences. (For example, school governors wishing to procure correctly but having limited time to do so because LA funding had to be spent by end of financial year.) Evidence that some designers not aware of what is expected of them, and don’t understand that they have duties even where a project is not notifiable. Some persons not realizing that decisions they make put them in the designer category. There continues to be evidence that application of CDM 2007 is not well understood, possibly related to the complexity of the definition of “construction work”. (For example, CDM 2007 erroneously assumed to apply to the putting up of strings of Christmas lights.) Some evidence that people are struggling with the competency requirements, ie both what they are and achieving them.

A Designer perspective

Generally good awareness of CDM 2007, with larger companies and those involved in Government work more likely to be aware. Some variation in interpretation of the requirements, and limited awareness of the industry guidance. Where designers are allowed to follow their procedures the Regulations work well. However, many in the industry create their own systems and consequently reluctant to reduce paperwork and inclined to insist on risk assessments, etc.

Consider that some pre-qualification schemes increase administrative burden, are not universally accepted and not necessarily in conformity with the ACOP. Also, some CDM-C have not fully adjusted to CDM 2007 and are continuing to focus on paperwork.

Consider that some in the industry still consider designers to be responsible for the problems but designers are only part of a team and most problems generated in procurement or on site.

CDM 2007 is much better than CDM 94 but there is still a long way to go in realizing the benefits. It is necessary to develop better (possibly clearer) ways of persuading people to fully adopt the CDM 2007 approach.

A Principal Contractor/Contractor perspective

View of many PCs on larger projects (ie £5M+) is that key actions and checks are still not being actioned, and that the link between the Client and the CDM-C is largely responsible for this. Result is PC must take on tasks that should have been completed before construction work started.

Perception is that many CDM-C (ie persons and organizations) are reluctant to stand up to the Client, with the result that some falling short of the ACOP standard is occurring. The worsening economic climate may exacerbate this effect.

Particular examples:

1. PC on large retail development on a tight programme has to develop and implement safe system for installation of deep drainage under overhead electric cables. This involves reducing levels and digging with electronically restricted machines that are not capable of lifting the preferred trench boxes and so a more complicated support system is used. Two days before completion of drainage the owner of the cables arrives on site to carry out diversion works. Only explanation given to PC revolves around store being opened by November.
2. Agent on a retirement village project reports that he spends 80% of his time trying to make the design work. Whilst the design deficiencies do not involve safety critical items the process does not allow him to programme works to give good traffic segregation.
3. Shopping complex site has major design issues. CDM-C does not attend design meetings and when design is modified worker safety considerations are argued only by PC.

Perception of contractors is that while they are trying to make CDM 2007 work not everyone else is. While many duty holders try hard and achieve improvements, CDM 2007 is still seen as a paper chase.

A trade union perspective

Consider that worker engagement requirements are still not adhered to on many sites, and may be seen erroneously as an optional and not a legal requirement. Additionally, consider that welfare facilities are often inadequate.

An individual perspective from engineering construction

Consider that CDM 2007 has made little difference within the engineering construction industry, which was already in line with many of the requirements, particularly the major change in the Regulations, ie the increased focus on client responsibilities.

Design also has been little impacted by CDM 2007 within engineering construction. However, within the wider designer community seems to be growing realization of their role and duty, and this is supported by the professional bodies taking steps, eg in training, to generate CDM 2007 competence among their members. Believe that those on the periphery of design but subject to duties, eg Qs, remain to be convinced that their role is significant for CDM 2007.

Not convinced that CDM 2007 has reduced bureaucracy, particularly for competence assessment. Too much insistence on rigid approaches, eg possession of a particular qualification/card, even though the ACOP permits flexibility and encourages use of judgement. With hindsight the preference for box-ticking approaches and proliferation of defensive paperwork was foreseeable and the ACOP should have

done more to discourage it. We now need to be more robust in stating unnecessary bureaucracy is positively bad and not merely undesirable.

Consider that decision to consolidate CDM and CHSW has brought benefits.

Worker engagement has traditionally been good in engineering construction. However, believe that progress has been made in the construction industry more generally. For example, it seems to be accepted amongst all those who have any interest in complying with the Regulations, that site inductions are the essential norm (although the quality of the inductions may vary).

Information received from the Association for Project Safety (APS)

APS has carried out a survey of members' views. The survey examined views on a 12-month period from early 2007 to early 2008. 166 members or member companies responded, based on experience of 2926 projects. Selected results follow.

Timing of Appointment of CDM-C:

Before design work commences:	17%
During early stages of design:	40%
During late stages of design:	25%
During the tendering phase (or equivalent):	11%
Later than the above:	about 10%

(These figures differ only slightly from an earlier survey in 2007.)

Competence and resource assessments of CDM-Cs: CDM-Cs responded to client assessments on about 20% of projects. 43% experienced no checks on any projects.

Proportion of projects with sufficient time for the effective application of CDM 2007:

During the design process: 64% (56% in 2007)

During the tendering and contract phase: 69%

CDM-C's role in advising and assisting the Client has resulted in:

77% indicated consequent overall client compliance with CDM 2007

59% indicated consequent attention to competence/resources of those appointed

59% indicated suitable H&S management arrangements put in place

55% indicated sufficient time is being allowed for each stage of the project

69% indicated that clients are providing information needed by those involved

64% indicated clients co-operating with others so that they can carry out their duties

53% indicated clients are co-ordinating their work with others

61% indicated clients for workplaces are satisfied the design meets H&S legislation requirements

67% indicated that contractors are being told of the minimum time they will be allowed for planning/preparation between appointment and starting work

87% indicated that suitable welfare facilities are being provided by contractors from the start and throughout the construction phase.

Clients' value of CDM-C service compared with PS service:

41% thought more, 56% said same value, 3% thought less value

Effect of role of CDM-C in relation to Designers:

69% thought that Designers are giving more commitment to the new Regulations
67% thought that Designers are giving greater attention to Design Risk Management
55% thought that Designers are providing better pre-construction information
38% thought that Designers are providing better information for the H&S File

CDM-C view on proportion of Designers

Up to speed with CDM 2007: 48%
Giving adequate attention to Design Risk Management: 52%
Giving adequate attention to workplace health and safety: 50%

CDM-C view on proportion of Clients providing asbestos management information:

69%

Availability of pre-construction information at start of project:

69% thought there is now more information available at the start.