

HEALTH AND SAFETY EXECUTIVE			
CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)			
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Evaluation of the Construction (Design and Management) Regulations 2007

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Purpose of the paper

For discussion at CONIAC meeting on 13 July 2011

This paper highlights the findings of the CONIAC CDM Evaluation Working Group (WG) and those of the independent external research undertaken by Frontline Consultants. While there is broad agreement between the research and the WG, external developments since the March 2011 CONIAC meeting mean that any proposals will now have to be considered in the light of the Government's Löfstedt review of health and safety legislation and Red Tape Challenge.

Summary

1. The evaluation of the Construction (Design and Management) Regulations 2007 (CDM 2007) involved widespread industry engagement through a working group established under CONIAC and a major external research exercise. It measured CDM 2007 against five criteria endorsed by the then Health and Safety Commission in 2006. The evaluation has identified that CDM 2007 is an improvement against the 1994 regulations when measured against all five criteria.

2. Health and safety regulation is currently undergoing government scrutiny. In his 2010 report 'Common Sense, Common Safety' Lord Young of Graffham broadly endorsed HSE's approach to regulating high risk industries such as construction. Further reviews of health and safety legislation arising from both the UK and Europe will include regulation of the construction industry within their scope. The Red Tape Challenge website (www.redtapechallenge@cabinetoffice.gov.uk) is seeking views on general regulations and will focus on health and safety regulations from 30 June to 14 July 2011.

3. From the CDM evaluation work to date, concerns remain about the response to the regulations by dutyholders which often focuses on process

rather than on improving health and safety outcomes. The industry is still fragmented and risk-averse, and more may need to be done to achieve the proportionate and teamwork approach which is key to the successful management of health and safety in construction. CONIAC agreed the process for taking forward any future work on the CDM package as a whole at their meeting in March 2011. Members of the original working group have indicated that they wish to continue, and recognise that their work needs to dovetail with wider reviews.

Background

4. CDM 2007 replaced the Construction (Design and Management) Regulations 1994 in April 2007. The regulations were developed with the full support of the UK construction industry which, while endorsing the structured approach to managing health and safety risks established by CDM 1994, saw opportunities for improvements. CDM 2007 introduced a number of changes. These changes, and the concerns they gave rise to, are listed in annexes 1 and 2 of Health and Safety Commission paper [HSC/06/54](#). The same paper listed the key aims of the 2007 revision against which the evaluation has measured progress. These were to reduce construction accidents and ill health by:

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

5. During a prayer debate in May 2007 which sought to raise concerns about CDM 2007, HSE gave an undertaking to carry out an early review of the Regulations. This was agreed as being after three years as opposed to the more usual evaluation after five years. Following a pilot exercise in 2009 to develop the survey methodology and question set (HSE [Research Report 845](#)), HSE appointed independent researchers, Frontline Consultants ('Frontline'), to provide an evaluation of the degree to which CDM 2007 had met these aims.

6. To support the external evaluation and to provide an opportunity for a detailed appraisal of CDM 2007, CONIAC agreed in March 2009 to establish a task and finish working group to support the evaluation work.

External constraints

7. When the evaluation of CDM 2007 was started in early 2010, the expectation was that the evaluation report would be submitted to the HSE Board in Spring/Summer 2011, and that work to effect any changes would commence immediately afterwards. However, a number of developments have arisen independently of the evaluation and CONIAC is invited to note these developments.

8. On 21 March 2011 the Work and Pensions Minister, the Rt Hon Chris Grayling, announced that Professor Ragnar Löfstedt would undertake an independent review of health and safety legislation. This review has within its scope all health and safety regulations and Approved Codes of Practice including CDM 2007. Whilst its terms of reference have been published, the implications for CDM 2007 are as yet uncertain.

9. Furthermore, CDM 2007 implements the Temporary or Mobile Construction Sites Directive (92/57/EEC). Any proposed changes involving regulations would need careful consideration in order to maintain community obligations. The European Commission is taking an active interest in how Members States have implemented this directive and there is a suggestion that the UK currently under-implements certain areas of the Directive.

External research

10. After successfully piloting the survey methodology HSE appointed Frontline to undertake the main stage evaluation. This set out to determine the extent to which CDM 2007 had met HSE's objectives for CDM 2007 and the cost implications for the construction industry of the Regulations. The full methodology of the research is contained within the draft report, but in summary they included a large-scale survey of some 350 duty holders across all dutyholder groups and sizes of business, face-to-face interviews with small clients and small contractors, key stakeholder interviews, influence network workshops, open forums and interviews with HSE Inspectors. The survey question set was reviewed by the CONIAC WG and the researchers presented their preliminary findings to the WG.

11. The research made use of a large-scale baseline study which was carried out in 2006. The question-set and methodology was therefore designed to ensure that a direct and statistically significant comparison of dutyholder attitudes towards the regulatory package as a whole could be made. To that extent, the findings of the research are reliable and defensible.

12. Updates were given on progress with the evaluation work to July and November 2010 and March 2011 meetings of CONIAC. Frontline submitted its Report and a detailed Technical Annex to HSE in April 2010. The draft report has been considered by CONIAC's CDM Evaluation Working Group members.

13. The main findings of the external evaluation are that:

- Respondents' level of agreement to statements relating to HSE's five objectives for CDM was far more positive for CDM 2007 than for CDM 1994.
- CDM 2007 has substantially met its objectives, but there are still concerns about how the principles underpinning the regulations are put into practice. In particular, more needs to be done to ensure that the industry does not generate unnecessary paperwork in its attempts to comply. This is a particular problem for stage 1 competence assessments.
- The interpretation of the ACoP rather than the regulations themselves can cause problems: the ACoP was found to be unwieldy and difficult to interpret and apply in practice.
- Respondents' level of agreement with statements relating to construction design, management and site practices were significantly more positive in 2010 than they were in 2006.
- Whilst there was a cost impact of CDM 2007, respondents rated the benefits as being higher than the costs.
- Industry practice has a significant influence on how the construction industry implements CDM 2007.

CONIAC CDM Evaluation Working Group

14. The CONIAC CDM Evaluation WG was established in November 2009 to provide a forum for its members to collectively represent the views of the UK construction industry. It brought together a broad range of interests and worked collaboratively to provide a wide perspective on CDM 2007. It benefited from member organisations surveying their own member businesses and meeting with them regionally. It also commented on the external research question set and methodology. The terms of reference and membership of this group are detailed at **Annex 1** and a summary of their activities at **Annex 2**.

15. Whilst the WG considered a substantial amount of detail, at the broadest level there is close agreement between the conclusions of the WG and the external research. The main findings of the WG were:

- CDM 2007 represents a significant improvement on CDM 1994, but the industry wants more guidance which better meets their needs to clarify not only their duties but the limits of those duties.

- Competence emerges as a strong theme – there is still a great deal more to be done to address the shortcomings of multiple accreditation schemes with lack of mutual recognition. The confusion, cost and bureaucracy arising from multiple card schemes for individuals with different standards is of great concern, particularly to sub-contractors. There was a consensus that more needed to be done to explain to clients in particular the role of prequalification schemes, in particular on the practical competences of organisations and individuals.
- Bureaucracy is still problematic and a primary source of dissatisfaction to the industry. For those who favour it, often as a way of transferring the risk of non-compliance to others, there is little within the existing CDM portfolio to clearly identify it as bad practice. This is an issue which polarises the industry, with some dutyholders having a clear vision of when documentation is needed, with others seemingly incapable of bearing down on what they see as an unstoppable flow of paperwork.
- There is still more to be done to embed the co-ordination requirements of CDM and to ensure that these are delivered effectively. The WG made a number of recommendations to improve co-ordination through design, procurement and construction. In particular the WG acknowledged the benefits of integrated team working, but went on to acknowledge that there is not a single model for such working across the different industry sectors.
- The role of designers in the influencing of health and safety outcomes has improved under CDM 2007 compared with CDM 1994. However, there is a worrying level of divergence of opinion within the design profession as to how they should discharge their duties and what the limits of those duties are.

16. There was broad consensus from the members of the working group on these matters. However, it is understandable that each of the dutyholder groups represented on the group would have views which were not necessarily shared by – or of particular relevance to – the others represented.

17. The WG did not feel that the case was supported for fundamental changes to CDM 2007 but that more needs to be done to spread understanding across industry generally (they reported that two thirds of occasional clients are unaware of CDM 2007, for example). This matches the main findings of the Frontline research and they made the case that improvements can be delivered by communication and clearer HSE and industry guidance. They felt that this would help to address industry misconceptions/misinterpretation and related costs associated with unnecessary bureaucracy.

18. The WG also agreed to review the published CDM regulatory impact assessment (<http://www.opsi.gov.uk/si/si200703>) and comment as appropriate. Their observations at **Annex 3** will prove helpful in any future work with HSE's economic advisors in refining the impact assessment.

Argument

19. Despite the differing methodologies employed, the broad agreement between the conclusions of the external evaluation and the CONIAC WG gives confidence that the evaluation has identified those areas in which CDM 2007 has met its aims, and those where more needs to be done.

20. The research shows that CDM 2007 has gone a considerable way towards meeting its aims, albeit with some caveats. It should also be noted that where reservations exist about the success of CDM 2007, those views are not universally held: against each success criterion the degree of success, at worst, is neutral, and in most cases positive.

21. A strong case has emerged for a reappraisal of the scope and scale of the ACoP and, potentially, the industry's own guidance. The industry appears to be increasingly of the view that the ACoP as it is currently framed is too long, in many cases too detailed and fails to improve health and safety outcomes on the sites it most needs to. Conversely, the WG expressed a need for more guidance in a number of different areas. Whether what is needed is more or simply better material is a matter which will need to be considered carefully.

22. Clear themes have emerged from the evaluation. First, that more work is needed to address concerns about the issue of competence to ensure that the benefits of a competent and qualified workforce are realised without the negative impacts on individuals and small businesses which can often arise. The recently-published HSE-Construction Skills research '*A Commentary on Routes to Competence in the Construction Industry*', will hopefully prove instructive in finding a way forward.

23. Second, bureaucracy arising from a tendency to focus on process to the detriment of outcomes devalues the currency of CDM 2007. This is an issue at every stage of projects, but it is clear that the influence of forms of contract on the management culture of projects would be worthy of future work.

24. Finally, the emphasis on co-ordination which was increased under CDM 2007 has, at best, delivered significant cultural change in the way health and safety is managed throughout the supply chain. When applied badly the perception is that it is simply an additional cost which does little to improve the management of health and safety risks.

25. There is general acceptance that the construction industry is high risk and HSE will need to be able to respond to any future challenges over CDM,

whether from Europe or at home. In the light of the wider reviews of health and safety legislation referred to in paragraphs 2 and 8, it seems sensible for HSE to develop its initial thinking based on the external research and WG findings. The various policy options will be considered over Summer/Autumn 2011, before returning to CONIAC once the results of the Löfstedt review and Red Tape Challenge are known.

Timing

26. CONIAC has already endorsed the reinstatement of the CONIAC WG as a mechanism to take forward future work. It would be premature to proceed further with this work prior to the outcome of the Löfstedt review of health and safety regulation and the Red Tape Challenge.

Action

27. CONIAC is therefore invited to:

- note the outcome of the external research;
- note the findings of the CONIAC CDM Evaluation WG and HSE's overall conclusions;
- note that further progress on the evaluation will be considered on the conclusion of the Löfstedt review;
- formally express its thanks to the various industry members of the CONIAC CDM Evaluation Working Group.

Contact

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Agreed terms of reference of CONIAC CDM Evaluation WG

1. Purpose

- a. To provide a forum of members who can collectively represent the views of the UK construction industry to inform, through CONIAC, HSE's forthcoming evaluation of the Construction (Design and Management) Regulations 2007.
- b. To act as a consultative body to HSE in developing its evaluation methodology.
- c. To exist as such for an agreed duration.

2. Tasks

- a. To review a variety of existing material produced prior to the launch of CDM 2007 to allow working group members to familiarise themselves with the background to the Regulations.
- b. To comment on the findings of HSE-commissioned research to pilot different evaluation methodologies.
- c. To provide industry-led stakeholder views (NB focusing on high level messages to CONIAC rather than detailed development of any new package) on:
 - i. the degree to which the aims of CDM 2007 (as distinct from CDM 94) have been met;
 - ii. the perceived adequacy or otherwise of the existing HSE and industry guidance and Approved Code of Practice (ACOP) supporting the Regulations;
 - iii. the need for amendments to the existing Regulations and supporting ACOP and guidance.
- d. To provide interim reports to each full CONIAC meeting for the duration of the working group.
- e. Members will consult with stakeholders in the groups they represent and seek to agree a consensus of views from that group, reflecting differences where a consensus is not reached.

3. Membership

Initially, membership will be as described as in the following table (originally Annex 1). HSE will provide the Chair and Secretariat support to the working group.

With the agreement of the Chair, the WG may seek to co-opt other members as appropriate for one or more meetings.

With agreement of a majority of the WG, the Chair may terminate an individual's membership of the WG.

4. Roles and responsibilities

The functions of WG members shall be as follows:

- a. To represent, so far as possible, the views of their professional bodies and CDM duty holder groups
- b. By agreement, to take actions from the meetings of the WG to assist with delivery of the tasks outlined in (2) above
- c. To communicate with other members of the WG outside its meetings as necessary, either bilaterally or in self-supporting sub groups, to assist in delivering the work of the group.

5. Organisation: meetings and resources

It is envisaged that after its initial meeting, the working group will meet four times, endorsing its final report at the final meeting.

Meetings will be held once every three months at dates to be agreed at the initial meeting.

HSE will, wherever possible, provide accommodation for the meetings. It will not, however, provide financial support for the WG beyond travel and subsistence as for any other working group of CONIAC.

Following each meeting the HSE Secretariat will circulate minutes and action notes to members for agreement.

Delivery of the tasks assigned to the WG will be by its members, not the Chair or its Secretariat.

The Chair of the WG will not seek to influence the views of its members or the way in which it delivers its work unless the WG seeks to depart from the broad parameters which define the tasks to be delivered.

Initial Membership of the Working Group

Anthony Lees (Chair)	Health and Safety Executive
Andrew Maxey (Secretary)	Health and Safety Executive
Steve Acaster	HBF
Richard Ash	ECIA
Greg Brown	APS
Paul Bussey	DIOHAS
Ian Colley	ICS
Kevin Fear	ConstructionSkills
Prof Rudi Klein	SEC Group
David Lambert	ICE
Rob Miguel	The Trade Unions
Alan Muddiman	CECA
Peter O'Connell	FMB
Colin Silcock	UKCG
Ian Simms	CCG
David Watson	IStructE and ACE

Brief summary of activities/discussions of CONIAC CDM Evaluation WG

The WG had 6 meetings: 26 October 2009 (inaugural meeting), 29 January 2010, 1 March 2010, 7 July 2010, 3 November 2010 and 11 May 2011.

Activities included:

- discussion and agreement of the terms of reference
- commenting on the pilot study and draft survey questionnaire
- commenting on the CDM regulatory impact assessment
- contributing to an issues log that informed ongoing discussions
- agreement to engage with their membership eg by discussion, mini surveys, regional meetings, workshops, written feedback or articles
- three members published substantive reports of their own:
 - Ian Simms, Construction Clients Group/BPF – Research into the Construction (Design and Management) Regulations - the client voice (April 2010)
 - David Watson, IStructE/ACE– Report on the survey to help evaluate CDM 2007 designer issues (September 2010)
 - Rudi Klein, SEC Group – Experience of working with the Construction (Design and Management) Regulations 2007 (October 2010)
- two presentations followed by discussion from:
 - Mike Webster (Frontline Consultants) on pilot study findings
 - Mike Webster (Frontline Consultants) on emerging findings of the main stage research
- giving opening presentations at 9 Frontline open forums
- discussion on overall findings, priorities and key recommendations
- consideration of the paper for July 2011 CONIAC

CONIAC CDM Evaluation Working Group: comments on CDM 2007 regulatory impact assessment (RIA)

1. Any future work on further developing the impact assessment supporting the regulations should clarify the impact of over-compliance in addition to non-compliance, partial compliance or full compliance.
2. Dutyholders draw little distinction between regulations, ACoP and guidance but attach considerable importance to the authority which the HSE 'badge' gives.
3. The WG commented that research undertaken by Loughborough and Salford Universities suggests that 50% of accidents could have been avoided through a design change.
4. There were additional costs to contractors of obtaining accreditation of their compliance with the core criteria due to the plethora of pre-qualification schemes which were not fully reflected in the RIA (the RIA assumes that the main cost was familiarisation).
5. The assumption that the costs to clients of checking competence would reduce over time is very optimistic.
6. The RIA states that there should be no additional costs for projects where clients, designers and contractors are following best practice, but genuine team working involving consultants, supply chain and FM contractors is still rare.
7. There are no core criteria for the demonstration of competence of principal contractors.