

<b>HEALTH AND SAFETY EXECUTIVE</b>			
<b>CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)</b>			
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## **Future of the CDM Approved Code of Practice (ACOP)**

### **A paper by Sue Brandrick, HSE Construction Sector**

For information and discussion

#### **Purpose**

1. To inform CONIAC of work since the March 2015 meeting to establish industry views on the replacement of the Construction (Design and Management) Regulations 2007 (CDM) Approved Code of Practice; to describe the considerations that will inform future work; to outline a timetable for taking this work forward.

#### **Background**

2. In August 2014, in considering the results of the public consultation on the draft CDM 2015 Regulations, the HSE Board supported the retention of a short, signposting ACOP to support CDM 2015 provided that it could be shown to add value.

3. Since the publication of the CDM 2015 Regulations in April, HSE has been engaged in private, informal discussions with industry stakeholders (principally, but not exclusively CONIAC members) on options for any replacement of the ACOP which supported the 2007 Regulations. These discussions have not been predicated on the assumption that there will or will not be an ACOP supporting CDM 2015, but have explored stakeholder views on a wide range of options in a neutral way.

4. The meetings have sought views on whether an ACOP would add value to the Regulations and the guidance which supports them currently, what any value would be and what the replacement might be. They have also explored a wider range of options which include not producing anything more than the existing HSE and industry guidance, and the development of further HSE or industry guidance. HSE is committed to ensuring that CONIAC's views are fully represented through this process, CONIAC members which have not yet made their views known to HSE are invited to do so.

## Discussion

5. The public consultation on the draft CDM 2015 Regulations proposed that the new Regulations would not be supported by an ACOP. However, a significant majority of respondents (70%) who answered the relevant question opposed this proposal.

6. On this basis, HSE therefore proposed to the HSE Board that the revised Regulations should be supported by an ACOP. The Board, however, was more cautious in its support of an ACOP, and agreed that one should be developed only if it could be shown to add value, and in any case should be considerably shorter than the ACOP supporting the 2007 Regulations. Furthermore, they expressed the view that it should be 'signposting' in nature; that is, a concise document which cross-refers to other existing material rather than being a stand-alone document in its own right.

7. Consideration of the merits of any future ACOP have to be mindful of both this consideration, and of the wider review of ACOPs supporting health and safety regulations which resulted from Professor Ragnar Löfstedt's review of health and safety Regulations. This exercise resulted in the consolidation, withdrawal or truncation of a significant number of ACOPs and followed a public consultation which proposed specific courses of action for individual ACOPs.

8. The HSE Board considered the outcome<sup>1</sup> of the consultation on proposals to review HSE's ACOPs at its December 2012 meeting. It endorsed a set of principles against which the work arising from Professor Löfstedt's review should proceed. This is reproduced at the Annex to this paper. It is suggested that these principles should underpin consideration of the future of the CDM ACOP.

9. The review of ACOPs drew a number of common themes from the variety of responses it received. Most significant among these were the following:

- a broad acceptance that many ACOPs did not meet modern needs, in terms of their language, style, length and accessibility to key audiences;
- the special legal status which ACOPs have (which allow them to be introduced in criminal proceedings as evidence) is of limited practical use, as it is primarily authoritativeness of material which courts demand rather than a particular legal status;
- whilst ACOPs were originally conceived as a means of bridging the gap between prescriptive pre-HSWA era legislation and the goal-setting

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<sup>1</sup> HSE/12/94

legislation which followed it, broad familiarity with modern legislation has reduced the usefulness of ACOPs; and

- there has been a tendency for the distinction between ACOP and guidance to become blurred.

10. Following discussion with industry stakeholders, HSE proposes to analyse the views expressed alongside these principles. This analysis will have to take into account a range of factors arising from the Government's deregulation agenda. In particular, any proposal for an Approved Code of Practice will require Ministerial approval (as would any subsequent amendments) and in the current deregulatory climate this would be potentially very difficult to secure and would take considerably longer than other options (such as producing additional guidance in particular areas). In practice, an ACOP would be seen as a last resort, and would require a clear demonstration that the same result could not be delivered through other means.

11. HSE will nonetheless consider the merits of arguments put forward by stakeholders and will inform the HSE Board of its conclusions later this year. It is intended that this matter be further discussed at the November 2015 meeting of CONIAC.

### **Recommendation**

12. CONIAC Members to note this paper. (Members who wish to comment in writing should submit such comments direct to the paper author.)

### **Contact**

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## Principles for producing ACOPs

### Designed to provide users with confidence in how to comply with the law

ACOPs should:

- Be considered as a format to provide guidance only where:
  - There are certain preferred or recommended methods to be used (or standards to be met) to achieve compliance; and
  - The nature of the issue being addressed is such that in most cases users should be strongly encouraged to pursue those methods.
- Be considered as a format to provide guidance only where:
  - Provide practical guidance on what users can do to comply with the general duties of the Health and Safety at Work Act or the requirements of associated goal-setting regulations
  - Provide clear and succinct guidance proportionate to the nature and complexity of the subject area, relevant legislation and risks to be managed.
  - Not require reference to other standards or guidance except where the additional information is not suitable for inclusion in the ACOP.
  - Clearly indicate the regulation(s) each section of the ACOP relates to and provide a brief summary in plain language of what the regulation(s) requires.

### Easy for the intended users to understand

ACOPs should:

- State the purpose and status of the ACOP and the guidance it provides upfront.
- Be written in concise, jargon-free language and avoid unnecessary duplication of content.
- Be supported by glossaries, diagrams, flowcharts and examples where they can assist with understanding.
- Be consistent with other HSE guidance.

### **Based on good understanding of users**

ACOPS should:

- Be developed in discussion with users and consulted on prior to publication.

### **Easy to access**

ACOPs should:

- Be accessible online and be kept and presented so that it is easy to find, identify, and obtain required information

### **Reviewed and maintained**

ACOPs should:

- Be clearly dated and reviewed at regular intervals so that they remain correct, accurate and current.