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HEALTH AND SAFETY EXECUTIVE

CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)

Update on the Construction (Design and Management) Regulations 2007

Summary

**This paper describes future work to consult on a revision of the CDM 2007
Regulatory package**

Issue

1. HSE completed its evaluation of CDM 2007 in May 2011. Further consideration of future work on the Regulations and Approved Code of Practice (ACoP) was delayed following the announcement of the Löfstedt Review of Health and Safety Legislation and the subsequent Red Tape Challenge initiative. The HSE Board has agreed that work to simply and rationalise the CDM 2007 Regulatory package should now be undertaken. This is to be based on copy out of the Temporary or Mobile Construction Sites Directive (TMCSA). A revised draft package along with a Consultative Document is planned for submission to the HSE Board by the end of 2012.

Timing

2. For consideration by CONIAC at its 20 June 2012 meeting.

Background

3. HSE's evaluation of CDM 2007 commenced in late 2009 and continued into 2011. HSE received an early draft report of the external element of the

4. In March 2011 the Employment Minister announced an independent review of health and safety legislation. Professor Ragnar Löfstedt, who led this work, published his report at the end of November 2011. The Government accepted his recommendations, and a substantial amount of work is currently underway by HSE to deliver them. This work is described in paper **M1/2012/1**.
5. In April 2011 the Cabinet Office 'Red Tape Challenge' (RTC) initiative was launched as a mechanism by which members of the public could comment on (and argue for the removal of) legislation. Health and safety at work was identified as one of six cross-cutting themes for the two year period of the initiative. It was also the subject of a 'spotlight' period of two weeks in July 2011 during which over 80 comments were made on CDM 2007.
6. The evaluation concluded that whilst CDM 2007 had delivered improvements over CDM 1994, concerns remained in a number of areas. The regulations are still believed to encourage a bureaucratic approach by many dutyholders, the approach to competence assessment (including individual competence) is problematic, and health and safety co-ordination is often not effective.
7. Smaller sites continue to be a particularly poorly performing sector of the construction industry, and they are disproportionately represented in the serious and fatal accident profile of the industry. The challenge of providing an effective regulatory framework for smaller construction sites remains substantial and CDM 2007 is not perceived as delivering change in this regard.

Wider considerations affecting future work on CDM 2007

8. Since the evaluation of CDM 2007 started, a number of considerations have emerged which suggest that, if change is carried out to CDM 2007, it should be more fundamental than those suggested by the evaluation report itself.

¹ <http://www.hse.gov.uk/aboutus/meetings/iacs/coniac/130711/m2-2011-2.pdf>

9. First, the policies of the Government with regard to regulation are substantially different from those of the previous administration. The Government has published a set of guiding principles² which specify how regulations should implement European Directives. A policy of ‘copy out’ should be adopted as a starting point to avoid imposing requirements beyond those contained within the Directive. Any change to existing Directive-based legislation – such as CDM 2007 – has to comply with this policy unless there are strong arguments for doing otherwise.
10. Furthermore, the Government’s ‘one in one out’ rule³ for regulation further restricts the scope for regulations to impose new duties without a net reduction in compliance costs.
11. CDM 2007 goes beyond the TMCS D in a number of ways. The most significant of these is the area of competence, where the evaluation has shown that industry response to the requirements is frequently disproportionate and adds minimal value to health and safety.
12. Second, any revision to CDM would need to satisfy the requirements of the European Commission to fully implement Directives. In this regard, CDM 2007 under-implements TMCS D in that it does not impose duties on owner occupiers - so called ‘domestic clients’ (in most situations) by excluding them from the definition of ‘client’.
13. Thirdly, the larger, more structured part of the industry has made significant progress in improving health and safety over the last 10 years. Increasingly, the motivation for achieving high standards of health and safety is through best practice and continuous improvement, rather than by regulation. A two tier industry has emerged and the challenge of providing an effective regulatory framework for smaller construction sites remains substantial. To make a real impact on small sites the regulatory package needs to be simpler and more accessible. The evidence indicates CDM 2007 is poorly understood and applied on the smallest construction sites, with accordingly inappropriate or low compliance rates.

² <http://www.bis.gov.uk/policies/bre/policy/european-legislation/guiding-principles-eu-legislation>

³ <http://www.bis.gov.uk/policies/bre/one-in-one-out>

Current position

14. The HSE Board has agreed that a revised regulatory package should be prepared primarily based on copy out of TMCSD. However the package should avoid a reduction in standards, retain those aspects that add value or enhance them, particularly in regulating smaller projects. The Board further requested that HSE should present the redrafted regulatory package with an accompanying impact assessment and consultative document to its December 2012 meeting.

Next steps

15. Assuming this timetable is not changed HSE plans to consult publicly on revised regulations in early 2013. The earliest that any new Regulatory package would come into force would be April 2014.
16. HSE will continue to engage with the construction industry through updates to CONIAC and dialogue with stakeholders. Initial work to draft a revised Statutory Instrument will be taken forward by an internal HSE working group, and formal consultation would be premature at this stage. However, HSE proposes to reflect its early thinking about the shape and nature of the revised Regulatory package with a representative industry panel. This panel would have membership similar to the former evaluation working group and would provide a mechanism for soundings to be taken periodically on industry reaction to HSE's thinking as the redrafting progresses.
17. The revised regulatory package will encompass consideration of the ACoP and guidance framework. A key test will be the role and value the ACoP has in improving standards on smaller projects. The existing ACoP is generally perceived as long and complex and not to have significant penetration in small construction projects. Whatever replaces it must reflect this. Moreover, a consensus has emerged that in places the ACoP does not clarify interpretation of the law and indeed leads to an overly bureaucratic approach. HSE is committed to working with the industry to ensure that materials supporting the CDM Regulations are focused on delivering practical and proportionate

Action

18. Members are asked to note the content of this paper and raise any points they wish to in discussion

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