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HEALTH AND SAFETY COMMISSION

CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)

PROPOSED CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2007: CLEARANCE OF DRAFT REGULATORY PACKAGE

Summary

This paper presents the proposed Construction (Design and Management) Regulations 2007, associated Approved Code of Practice (ACoP) and Regulatory Impact Assessment (RIA). It reports on recent developments, highlights key contentious issues arising from the proposals, and seeks CONIAC clearance of the package for onward transmission to the Health and Safety Commission (HSC).

Issue

1. This paper reports on developments in the revision of the Construction (Design and Management) Regulations 1994 and Construction (Health, Safety and Welfare) Regulations 1996 (CDM/CHSWR) since the last CONIAC update (M1/2006/1). In particular, it alerts Members to key contentious issues and, crucially, seeks CONIAC clearance of the draft CDM 2007 regulatory package before Health and Safety Commission (HSC) approval is sought on 17 October. **(Paragraph 32 refers.)**
2. **Annex 1** summarises the background to the CDM/CHSWR revision; how HSE believes the CDM 2007 regulatory package achieves the revision's HSC-agreed aims; and post-consultation work with stakeholders. **Annex 2** summarises key changes. The documents comprising the regulatory package (draft Regulations, Approved Code of Practice (ACoP) and Regulatory Impact Assessment (RIA) are at **Annexes 3, 4 and 5** respectively.

Timing

3. Urgent. The key targets, following initial presentation of the regulatory package to CONIAC at its meeting on 20 July, are to gain formal CONIAC approval by early September, seek HSC approval on 17 October and from Ministers thereafter - with a

view to publishing the supporting ACoP in early 2007 and the Regulations subsequently coming into force from 6 April 2007. Discussions with some key stakeholders continue (**see paragraphs 12 and 13 of Annex 1**), but we are working to this timetable.

Contentious issues

4. Clearly, you can please some of the people all of the time, and all of the people some of the time, but you cannot please all of the people all of the time. Consequently, there are (and probably always will be) aspects of the proposals still dissatisfying some stakeholders. Paragraphs 5 to 24 below cover the main bones of contention in more detail, and explain the thinking behind the proposals, essentially relating to:

- implementing the TMCS Directive
- enhanced duties on clients;
- introducing an empowered co-ordinator (replacing the Planning Supervisor);
- strengthened designer duties;
- competence;
- demolition; and
- the ACoP

Implementing the TMCS Directive

5. From previous updates, Members will be aware of the relationship between CDM/CHSWR and the Temporary or Mobile Construction Sites (TMCS) Directive; and of HSE's discussions with European Commission (EC) officials as part of the EC's TMCS review. Subject to CONIAC and HSC agreement, we propose to maintain the approach we have taken so far in relation to:

- requiring appointment of a co-ordinator and Principal Contractor (PC) and production of a formal health and safety plan, only if a project is notifiable¹. (The Directive requires these appointments and a plan wherever there are more than two contractors on site); and
- exempting domestic clients from the CDM client duties - no such derogation exists in the Directive. CDM 94 does not place duties on domestic clients, (although site notification and designer duties apply to domestic projects). The client's position would remain the same under CDM 2007, as we do not feel it would be practical, proportionate, politically acceptable or enforceable to place duties on true domestic clients. To aid clarity and reduce administrative burdens further, we have removed the notification provision.

6. These departures from the strict terms of the Directive were pursued with the aim of simplifying the Regulations for duty holders, reducing the amount of unnecessary bureaucracy, and avoiding unnecessary burdens on business – particularly SMEs. We believe they do not compromise health and safety in practice, and are consistent with Better Regulation principles.

¹ the construction phase is likely to involve more than 30 days, or 500 person days of construction work for a client.

Enhanced duties on clients

7. CDM 2007 makes two main changes to clients' duties: a strengthened role and removal of the Client's Agent. These make existing duties in the Health and Safety at Work etc Act 1974 (HSWA) and the Management of Health and Safety at Work Regulations 1999 (MHSWR) more explicit in that they put a duty on the client to take reasonable steps to ensure that there are, and continue to be, suitable management arrangements to ensure health, safety and welfare on site, and that the design of any structure intended for use as a workplace complies with the Workplace (Health, Safety and Welfare) Regulations.

8. The enhanced duties, particularly to ensure there are suitable management arrangements in place throughout the project, are a fundamental principle of the CDM 2007 Regulations. They are specifically intended to motivate clients to use their substantial influence over the selection of the project team and the manner and conditions under which its members work; and to address the need to empower the co-ordinator (one of the perceived key failings of CDM 94 regarding the Planning Supervisor (PS) role.) The removal of the Client's Agent provision prevents clients "contracting out" of their legal health and safety responsibilities.

9. The majority of respondents to the consultation felt the clients' duties generally were reasonable and appropriate, and the support was largely consistent, irrespective of the size or type of respondent. There was also majority support for the specific duties relating to management arrangements, allocation of sufficient time and resources, and a belief that the proposed role of the co-ordinator would provide the support needed by clients. However, many respondents expressed concerns about co-ordinator competence and how inexperienced clients would know (or be able to ensure) the co-ordinator was doing a proper job. Issues were also raised about lack of support for clients on non-notifiable projects, where a co-ordinator was not formally required.

10. Consultees who were not in favour of the clients' duties generally accepted the underlying principle, but felt them to be unreasonable in relation to inexperienced clients, questioning how they would know about appointing a co-ordinator, what to ask of them, and how they would ensure co-ordinators were doing their job. The CCG, SBTAF and DTI (as well as Tim Kind, in his report), have expressed the same concerns to HSE, believing that the duties are likely to be burdensome to SMEs, especially inexperienced one-off and occasional clients. In response we have modified the duty to address these concerns, and Specific ACoP material has been added setting out exactly what these clients need to do, and what they do not need to do. The CCG is producing simple industry guidance through the CONIAC Industry guidance working group, and we believe that any remaining fears can be alleviated through the CDM 2007 launch process, by getting the right messages across about what clients do, and don't, need to do.

11. The CCG and NDA have also raised larger clients' concerns about removal of the Clients Agent provision. Consultees' responses generally were fairly evenly balanced between those in favour of removal and those against. Of the CDM WG members, the CCG is alone in supporting retention of the Client's Agent provision – which was deliberately removed to avoid confusion over criminal liability in relation to CDM duties, and to prevent clients retaining their influence, yet shifting their criminal liability to another party, i.e. the Agent. Its removal is also consistent with the TMCS requirement that the client should remain liable. HSE's view is that the Client's agent

provision creates confusion, because although it transfers criminal liability in respect of duties under CDM, it does not relieve the client of other duties under the HSWA and Management regulations. Furthermore, HSE believes there will be no detrimental effects from the proposal such as perceived increases in client costs, or a need for clients who take advantage of the Clients Agent provision to develop their construction expertise. Under the new proposals, client's can still employ an agent, i.e. someone to manage their CDM functions on their behalf, but they cannot transfer their legal criminal responsibilities to them. This brings the Regulations in to line with all other health and safety legislation.

12. Both Tim Kind and the CCG have suggested that for the new Regulations to be effective in their application to small clients, better integration between CDM 2007 and the building control and planning regimes is necessary. HSE is already committed to working with the Department for Communities and Local Government (DCLG) on this, with a view to bringing forward a simplification proposal should discussions bear fruit. It is not possible to achieve this within the CDM 2007 timetable, and we do not believe postponing CDM 2007 to await the outcome is justifiable.

13. Tim Kind also suggested that clients should be provided with CDM-related information at the planning approval stage, to raise their awareness at the "point of need". We will work with Local Authorities as part of our 'Benefits Realisation' programme to make this happen.

Introducing the empowered co-ordinator

14. The proposals eliminate the CDM 94 PS role (which was not as successful as we hoped) and introduce "the co-ordinator" – who, by virtue of his duties (and those of other duty holders), is positioned within the Regulations as the client's friend. The co-ordinators main role is to advise and assist the client in the discharge of his client duties, in particular to advise on the competence of appointees and the adequacy of other duty holders' arrangements for controlling risk arising from the project. Empowered through the client's contractual arrangements, and having the ear of the client, a competent co-ordinator can be a friend also to the rest of the project team. He has a pivotal advisory and liaison role throughout the project - pulling the team together to work in an integrated way - and is essential at the planning stage, in ensuring necessary health and safety issues have been considered and the right information provided. CDM 2007 requires a co-ordinator only if a project is notifiable; and allows for more than one person to undertake the co-ordinator's duties, i.e. for individual or corporate appointments.

15. Our intention is that the client (commensurate with the influence they have), will be accountable, but the co-ordinator (as the power behind the throne), will be similarly accountable. If enforcement action is necessary, each will be judged according to their level of construction experience and competence (respectively), whether their actions were reasonable according to the facts and circumstances of the case. (This would bear in mind that the client is entitled to rely upon professional advice given by the co-ordinator and others). We believe this will be particularly beneficial to SME and occasional clients, help raise standards and credibility levels not always associated with the PS, and address consultees' concerns about client liability.

16. The main objections to the proposals come (not surprisingly) from the Association for Project Safety (APS), which has come to terms with the demise of the PS, but essentially seeks appointment of a co-ordinator for all projects, and is concerned

that a key CDM 94 “stumbling block” to PS effectiveness - client failure to appoint at the outset – has not been clearly and unequivocally solved by CDM 2007. The CDM WG has struggled to devise a universally acceptable, clear and workable legal provision. The best practical solution is to require that nothing more than initial design work should be done before the co-ordinator is appointed. Clarification of what this means in practice will be provided in the ACoP and guidance.

17. The APS is also concerned that applying the full CDM regime only to notifiable projects, rather than all projects regardless of staff numbers or duration, will result in a rise in fatality, accident and injury rates, because many small and medium-sized projects will not be notifiable. The APS recognises that applying the CDM regime to all projects would gold-plate the Directive, and suggests that domestic projects could form the demarcation line and be excluded from the main thrust of CDM. With the exception of the FMB, the CDM WG and HSE view is that domestic clients should be exempt (for reasons already stated). Given that designers and contractors will still have the same health and safety responsibilities as for notifiable projects, and it is only the requirement for a formally appointed co-ordinator and PC and written plan that are lacking, the APS argument that construction workers’ safety will be seriously undermined does not hold water. Our view is that the proposed package, as a whole, will strengthen worker protection, and to apply these provisions across the board would place significant administrative burdens on SMES, with no significant health and safety advantages.

Clarified designer duties

18. The proposals clarify, rather than substantially change, the duties on designers. They now prohibit designers from undertaking more than initial design work on a project until the co-ordinator has been appointed; require them (where they can) to eliminate hazards giving rise to risks, and reduce those risks which remain; and (where the structure will be a workplace in accordance with the Workplace Regulations), require them to achieve compliance with the relevant sections of the Workplace Regulations in order to ensure that workplaces are safe to use. (Currently, clients carry the latter duty under the Workplace Regulations alone, and this parallel CDM 2007 duty on designers is therefore helpful to them.) Competent designers will already be doing this, so there should be minimal additional work. As with the clients’ duties, HSE believes many concerns arise from misunderstanding of the requirements, and that objections can be overcome by clarifying, for designers, what the duties mean in practice.

19. Whether the “hazard/risk” provision is reasonable has been the subject of great debate. The CDM WG and the main designer stakeholder groups believe it is, and that designers should be accountable for the decisions they make. What is required has not changed fundamentally from the CDM 94 position (and supporting ACoP advice), and is qualified by “so far as is reasonably practicable” (SFAIRP), taking account of other design considerations. Designers are only required to minimise risks where they can – not eliminate them completely. We are in discussion with HSE’s Risk Policy Team over the wording of the requirement, in the light of the “sensible risk” debate.

Competence

20. Competence, particularly in relation to designers and co-ordinators, was an issue which generated a great depth of feeling during the consultation, and which is

fundamental to the CDM proposals. The main industry concerns centre on a need to ensure that the level for demonstrating competence is meaningful, but not set too high – particularly in relation to co-ordinators and contractors. We must be careful not to “disenfranchise” experienced, competent construction workers who may not have formal qualifications or a ready portfolio of evidence; and we need to keep methods of assessment and demonstration plain, simple and proportionate.

21. Chapter 6 of the ACoP, together with Appendices 4, 5 and 6, provides guidance on demonstrating and assessing competence against specified core criteria based, with some modifications, on John Carpenter’s recommendations (and taking CDM WG and other consultees’ views into account). **As stated in paragraphs 10 and 11 of Annex 1**, HSE is working with the industry to ensure that standards for existing competence assessment schemes and Continuing Professional Development (CPD) programmes etc are appropriate and sufficiently robust. The CDM WG and HSE believe the final guidance will assist, through clarification and simplification of the process, all those who appoint dutyholders, as well as dutyholders themselves when tendering for contracts or offering their services. It should be particularly helpful to small and occasional clients, and to this end we are working with others to ensure it meets their needs and is user friendly. We anticipate the ACoP material will lead to significant reductions in bureaucracy and resource devoted to competence assessment.

Demolition

22. CDM 94 requires formal appointments and a written construction phase plan for all projects involving demolition. Under the proposals, demolition or dismantling is treated the same as all other work, and does not automatically trigger formal appointments and a written health and safety plan.

23. Some sectors of the industry, principally demolition contractors and associations (i.e. the IDE and NFDC), are calling for all demolition work to be notified. They see the possibility of HSE intervention as a useful lever in maintaining health and safety standards, and a prevention against undue pressure to cut corners and complete jobs within 6 weeks (i.e. before a project becomes notifiable). As far as improving health and safety standards is concerned, The CDM WG and HSE sees little value in requiring notification for all demolition work as the proposals already require such work to be planned and carried out in such a way as to, SFAIRP, prevent danger; and arrangements for the work must be recorded in writing. Furthermore, most demolition work only involves one contractor on site, or is undertaken as part of a much larger (generally notifiable) project. The former situation would have no need of an appointed co-ordinator and PC, and the latter would be governed by the requirements relating to notifiable projects anyway. The proposals have an additional benefit, in that the new proposal would mean a reduction in the volume of F10s which business will need to complete (and the associated administrative burden).

ACoP

24. The HSC decided on 6 December 2005, that CDM 2007 should be supported by a “shortish”, fit for purpose ACoP and industry produced guidance. The CDM WG has taken forward the ACoP (**Annex 4**), with a view to setting out simply and clearly what dutyholders (particularly small and occasional clients) need to do to comply with the Regulations. It is also intended to enable flexibility in compliance, through inclusion of material which, if included in the Regulations, would have resulted in a more prescriptive rather than goal-setting approach. Examples have also been in-

cluded to aid clarity, and because the CDM WG felt they would be particularly helpful to SMEs. Strictly speaking, examples are not appropriate to an ACoP, and it may be that they will be rejected by the HSC – particularly as they lengthen the ACoP beyond what could be described as “shortish”. For the sake of fitness of purpose, however, the CDM WG believes they should be retained.

25. As agreed by CONIAC on 30 March, a new CONIAC CDM Guidance Working Group has been created to co-ordinate production of the industry-produced guidance. The Group will encourage key industry bodies to draft guidance in areas of special relevance to them, seek to achieve consistency within the guidance package and advise on endorsement by HSC/E and the Strategic Forum for Construction (SFfC). Its Chair, Kevin Fear (CITB-ConstructionSkills), will provide an oral update on progress at the 20 July CONIAC meeting.

Better Regulation

26. One of the key, underlying themes of the CDM/CHSWR revision was that the CDM 2007 proposals should promote Better Regulation principles, i.e. transparency, targeting, consistency, proportionality and accountability – with the overall objective of reducing administrative burdens on business. **Annex 1** explains the key Better Regulation features of CDM 2007 in more detail. In brief, they are:

- greater clarity through consolidation of construction legislation and restructuring of the Regulations by dutyholder;
- simplification through notification as the ‘Trigger’ for Co-ordinator and Principal Contractor appointments, rather than more than 1 contractor on site;
- reduction in administrative burdens, due to a less complicated trigger, leading to fewer notifications;
- proportionality through no duties on domestic clients; introduction of an effective co-ordinator (on whose advice the client is entitled to rely); and balancing of non-domestic clients’ duties with those of the co-ordinator;
- clearer ACOP guidance on demonstration and assessment of competence, which will significantly reduce bureaucracy for all parties concerned;

Consultation

27. As the HSC requested, the proposals for revised construction Regulations and supporting guidance material have been developed in close consultation with stakeholders. Since October 2003, HSE has taken forward the project principally in partnership with CONIAC’s CDM WG. The draft regulatory package takes into account responses both to the 2002 Discussion Document and to last year’s Consultative Document; as well as issues raised by the CDM WG and in ongoing informal discussions with key industry stakeholders. We are confident, therefore, that the proposals reflect HSC, CONIAC and Strategic Forum for Construction (SFfC) views - based on over 10 years’ practical industry and HSE experience of CDM/CHSWR.

Presentation

28. Following CONIAC consideration of the draft regulatory package on 20 July, it will be opened up to a wider audience, including further consideration by the Euro-

pean Commission (EC) and key Whitehall stakeholders. Ultimately, if approved by the HSC, Lord Hunt (Department for Work and Pensions Minister with responsibility for Health and Safety) will consider the proposals. Although some adjustments to meet objections may be made, there are issues on which CONIAC and HSC/E will want to maintain the current policy line. Successful progress of the package largely depends on how TMCS issues impacting on CDM policy are resolved; how well the proposals are presented to stakeholders during the launch period; and to what extent the industry itself is willing to take ownership of them and grasp the nettle.

Costs and Benefits

29. A final RIA (**Annex 5**) has been prepared in line with Cabinet Office Better Regulation Executive (BRE) guidelines. This will shortly be circulated to the BRE and Small Business Service (SBS) for scrutiny, which may lead to the BRE requiring further work and/or consideration of the RIA by the Ministerial Panel for Regulatory Accountability (PRA). (This is only likely if the proposals or their impact on business change significantly from those in the Consultative Document.)

30. The RIA takes account of information received during consultation and detailed research on CDM costs and benefits conducted by BOMEL Ltd, on behalf of HSE. As it provides a detailed analysis of how the costs and benefits were calculated, this is not repeated here. Estimates in the initial RIA (in relation to the 10 year appraisal period) were:

Costs	£M 1,009 to 2,846
Benefits	£M 1,957 to 5,918

31. Estimates in the final RIA, over the same period (see Table 18), are:

Costs	£M -1,222 to 3,327
Benefits	£M 740 to 2,645 ²

Action

32. Members are asked to:

- note the contents of this paper and its Annexes;
- provide the CONIAC Secretariat with any comments of substance they have on aspects of the proposals **by 10 August 2006**; and
- indicate whether they are content to formally clear the package by correspondence – or wish to discuss it further at an extra-ordinary CONIAC meeting (to be held on **11 September 2006**).

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² ECIA approach, including non-injury accidents.

Annex 1

THE CDM/CHSWR REVISION: BACKGROUND AND CURRENT POSITION

Background

1. CONIAC has been kept abreast of developments with the CDM/CHSWR revision through a series of oral updates and papers³, which provide full background information. In summary, since the CDM Regulations were introduced in 1995, concerns have been raised that their complexity, and the bureaucratic approach of many duty holders, frustrate their underlying health and safety objectives. These views and the underlying CDM objectives were supported by an industry-wide consultation in 2002⁴, resulting in HSC/E's decision to revise the Regulations.

2. The revised Regulations have been developed in line with Better Regulation principles, and are intended to reduce bureaucracy and improve the general business management of construction projects. (In turn, this should lead to improved health and safety management and increased profitability). The HSC-agreed aims for the revision are to reduce construction accidents and ill health by:

- being clearer – making it easier for duty holders 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 paperwork as an end in itself;
- emphasising the communication and co-ordination advantages of duty holders working in integrated teams; and
- simplifying the way duty holders assess competence.

Achieving the aims of the CDM/CHSWR revision

3. The above aims evolved from a need to address the concerns mentioned in paragraph 1 above. We believe the draft CDM 2007 package, once embedded in the consciousness of the construction industry, will successfully achieve those aims. Paragraphs 4 to 13 below set out how the package has addressed each aim.

Improving clarity

4. Currently, the CDM and CHSW Regulations (as their names suggest) focus respectively on design, planning and management of construction projects; and on-site health, safety and welfare issues. CDM 2007 unites and updates those provisions to provide a single, consolidated set of key construction regulations for stakeholders to refer to, which encompasses all the health and safety considerations needed for a construction project to be conducted, from start to finish, without unnecessary risks to health, safety or welfare.

5. As part of this streamlining process, the Regulations have been restructured to group individual provisions according to whether they apply to all construction pro-

³ M2/2003/1, M3/2003/1, M1/2004/8, M2/2004/3, M3/2004/3, M1/2005/3 and M1/2006/1

⁴ HSE Discussion Document "Revitalising Health and Safety in Construction"

jects, to notifiable⁵ projects only, or to non-notifiable projects only. Within those groupings, requirements are shown by dutyholder. We felt this would make it much easier for dutyholders to see, almost at a glance, which requirements were relevant to them (and also what other dutyholders should be doing). In response to concerns highlighted during consultation, the former CHSWR provisions (perceived to have been “relegated” in the Consultative Document (CD) to Schedules) are now incorporated into the main body of the Regulations – thereby rightly conveying equal status.

6. The distinction in CDM 94 between application of the Regulations to certain projects and notification of certain projects caused dutyholders some confusion. In addition, the ‘trigger’ for the application of certain provisions of CDM 94 (the requirements for appointments and the preparation of a health and safety plan) was complex, leading to a huge number of enquiries to HSE. To eliminate this, and to further clarify and simplify matters (particularly for small businesses), CDM 2007 is framed in terms of two types of projects: notifiable and non-notifiable. For non-notifiable projects, CDM 2007 does not require a formally appointed co-ordinator or Principal Contractor, or a written health and safety plan. We see no added health and safety value in requiring them for smaller projects, but there must be written arrangements for any high-risk work involved, such as demolition.

Flexibility to suit the industry

7. It is important that the new regulations provide sufficient flexibility to accommodate the vast range of contracting arrangements and types of construction project. We believe the combined effects of the restructured Regulations, shorter, fit for purpose ACoP and a co-ordinated suite of clear simple industry guidance will enable construction industry stakeholders to implement CDM 2007 in a way which suits them best, yet still achieves compliance.

Effective planning and management triumphs over unnecessary paperwork

8. One of the main criticisms of CDM 94 is that it generates high volumes of unnecessary and unhelpful paperwork, mainly due to dutyholders striving to protect themselves against potential litigation or justify their existence. There is a tendency towards providing over-detailed, generic documents to everyone, rather than simple, relevant, project-specific information to those who need it. CDM 2007 is intended to steer dutyholders towards more effectively planned projects with the right information being given to the right people at the right time. The simplification measure mentioned in paragraph 9 above is a key step towards achieving this, as is the adoption of core criteria and provision of ACoP guidelines for competence assessment.

The virtues of integrated team working

9. Like its predecessor, CDM 2007 is built around the ethos that co-operation between project team members, to ensure timely exchange of relevant information and effective co-ordination of each other’s activities, will reap dividends in terms of both health and safety and business efficiency. The Regulations emphasise this through more explicit references to co-operation and co-ordination duties in the Management of Health and Safety at Work Regulations 1999, and by specifically requiring all dutyholders on a project to co-operate with each other and, in the case of contractors, with dutyholders on adjacent projects; and co-ordinate their activities. Similar requirements for provision of information aim to get the right information to the right

⁵ the construction phase is likely to involve more than 30 days, or 500 person days of construction work for a client

people at the right time, and shift the focus from provision of a named document (e.g. the pre-tender plan) to a flow of specific, tailored and necessary information to those who need it at appropriate stages of a project.

Simplified competence assessment

10. One of the key aims of the revision was to simplify, and provide related guidance on, assessment of individual and corporate competence for people engaged or appointed as CDM duty holders. John Carpenter undertook research on this for HSE, and an ad hoc CONIAC Working Group met on 24 January to discuss the recommendations in his Report⁶. CONIAC has broadly accepted his recommendations, and Chapter 6 of the ACoP, together with Appendices 4, 5 and 6, provides guidance on demonstrating and assessing competence against specified core criteria based, with some modifications, on John's recommendations and taking CDM WG (and other consultees') views into account.

11. HSE is also working with the Professional Institutions, to ensure that their membership standards and Continuing Professional Development (CPD) programmes are robust enough to warrant future reference in the competence chapter of the ACoP. Similar work is being done with respect to the various schemes operated by the industry to ensure site worker competence.

Post-consultation work with stakeholders

12. Since the extended formal consultation concluded on 31 August 2005, HSE's Construction Policy Team (CPT) has been working with the CDM WG to refine the proposed Regulations and develop the ACoP in the light of views expressed. Members will be aware that, although the consultation indicated strong overall support for the proposals from the key industry players, more work was needed in some areas. Post-consultation work has concentrated on those areas, taking into account the findings from Tim Kind's and David Watson's follow-up work on client and designer duties; and the views of the ad hoc CONIAC Working Group on competence.

13. Informal consultation has continued with some key stakeholders, i.e. the Construction Clients' Group (CCG), Association for Project Safety (APS), the Nuclear Decommissioning Authority (NDA), and HSC's Small Business Trade Association Forum (SBTAF) over their particular concerns. Most recently, the Institute of Demolition Engineers (IDE) and National Federation of Demolition Contractors (NFDC) have made further representations regarding the Regulations and ACoP. HSE's CPT will be meeting with them on 25 July. As mentioned above, HSE is also liaising with the industry on issues relating to competence standards.

⁶ "Developing guidelines for the selection of designers and contractors under the Construction (Design and Management) Regulations 1994" (HSE Research Report 422 published on 20 January 2006)

SUMMARY OF KEY CHANGES IN CDM 2007

1. Regulations re-ordered to group duties together by dutyholder; and to show whether individual provisions apply to all projects, only notifiable projects or only non-notifiable projects. ("Notifiable" is defined as before, but the application provision relating to less than 5 workers on site has been removed.)
2. Domestic projects no longer need to be notified.
3. Client's Agent and Developers provisions removed; a group of clients involved in a project can now elect one to be the only CDM client.
4. Planning Supervisor ceases to exist. "Co-ordinator" introduced to support and advise the client in discharging his duties and co-ordinate design and planning.
5. Appointment of a co-ordinator or Principal Contractor, and a written health and safety plan only required for notifiable projects (but demolition work requires written system of work).
6. Dutyholders cannot arrange for, or instruct anyone, to carry out or manage design or construction work unless that person is competent (or being supervised by someone who is); and cannot accept a CDM appointment/engagement unless they are competent to carry it out.
7. Assessment and demonstration of competence simplified, with new core criteria and specific ACoP material on individual and corporate competence.
8. General co-operation and co-ordination duties on everyone involved in a project (relating to others on the same or adjoining sites); and a specific requirement to implement any preventive and protective measures on the basis of the principles specified in the Management Regulations.
9. Clients now have a duty, (making explicit those in the Health and Safety at Work Act and Management Regulations) to take reasonable steps to ensure that dutyholders' management arrangements (including time and other resources) are suitable to enable the construction work to be carried out, (and any related structure designed for use as a place of work can be used), without risk to health or safety; also that the arrangements are maintained and reviewed throughout the project.
10. Clients must tell designers and contractors how much time they have, before the start of work on site, for planning and preparing construction work.
11. For notifiable projects, designers are prohibited from doing anything more than initial design work before the co-ordinator has been appointed. In preparing or modifying a design they are required, so far as is reasonably practicable, to avoid risks to the health or safety of any person using a structure designed as a workplace. They must eliminate hazards which may give rise to risks and reduce risks from any remaining hazards.
12. The civil liability exemption has been removed in relation to employer/employee relationships, but is expected to have limited effect as the Management Regulations have already been amended along these lines.
13. Various definitions have been changed, including those of "client", "construction phase plan", "construction work", "contractor", "design" and "designer", "place of work" and "structure".