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HEALTH AND SAFETY COMMISSION

Proposed Revision of the Construction (Design and Management) Regulations 1994 and the Construction (Health, Safety and Welfare) Regulations 1996

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Issue

1. On 10 June 2003 HSE presented a proposed action plan to the Commission (paper HSC 03/55) which was prepared in the light of responses to the Discussion Document '*Revitalising Health and Safety in Construction*'. A few of the wide-ranging actions involved revision of the construction health and safety regulations. The Commission asked for a further discussion on the case for change and an outline of the changes that were being considered.

Timing

2. Routine, but there are related programmes, particularly the planned Work at Height Regulations¹ (WAH) that will involve major changes to the Construction (Health, Safety and Welfare) Regulations 1996 (CHSW). To maximise impact, while minimising the burden on dutyholders, it would be helpful to implement any changes at the same time.

Recommendation

3. That the Commission agrees to the preparation of a consultative document (CD), with a view to publication in Spring 2004, proposing revisions to the Construction (Design and Management) Regulations 1994 and the parts of the Construction (Health, Safety and Welfare) Regulations 1996 that remain after implementation of the WAH regulations.

¹ Paper HSC/03/43

Background

4. The CDM regulations were made in 1994 to implement, in part, the Temporary or Mobile Construction Sites Directive. However, because they were innovative and imposed explicit duties on, in particular, designers and clients for the first time, they were controversial. The Commission requested an early review of the regulations. This led, as a first step, to the revision of the CDM ACoP in 2001, to be followed by a review of the regulations 2 years after the revised ACoP was published.
5. Last September, HSE published a wide-ranging Discussion Document (DD). It highlighted the construction industry's poor health and safety performance and posed a number of questions designed to explore new and innovative ways to improve the industry's health and safety record – most of which were non-regulatory and involved action by stakeholders and government outside the *normal* range of consultees.
6. The focus of the DD was firmly on cultural change in the industry. Following the analysis of responses, an action plan was drawn up with the assistance of the Construction Industry Advisory Committee (CONIAC) and was agreed by the Commission. (To help set the context of this, Annex A illustrates the breadth of issues and activities being carried out by HSE in pursuit of the Construction Priority Programme.)
7. One of the issues raised in the DD was the possibility of changes to the construction regulations. Many of the 300 responses focused on this and on the enforcement regime. Overwhelmingly, respondents strongly supported the CDM principles, but were also concerned that their complexity, coupled with the bureaucratic approach adopted by many dutyholders, obscured the underlying objectives. Respondents wanted us to improve or tighten the legislation, particularly regarding planning supervisors and clients. Reasons put forward for change included:
 - the bureaucracy associated with the way in which the CDM regulations have been implemented by industry, which is often reinforced by difficulties understanding exactly what they mean in practice;
 - the failure of the planning supervisor role to add enough value to the process;
 - the failure of the regulations, in practice, to encourage team working (sharing information and expertise to identify hazards and deal with them);
 - the failure of competence assessment to improve the competence of construction businesses in practice.

Argument

8. In the light of the Commission discussion on 10 June and the wish to further consider the arguments for legislative change, HSE consulted CONIAC, at their meeting on 24 July. They unanimously agreed that the strategy set out by the Commission in 1999² for addressing early concerns about the bureaucracy associated with CDM was still appropriate. They all agreed that the CDM Regulations still need to be revised and that the gains to industry were likely to substantially outweigh any costs.
9. This view is also supported by construction press articles on CDM. For example Construction News, a leading and influential trade journal, reporting the publication of

² Paper number HSC/99/42

the action plan that followed our Discussion Document concluded: “The HSE’s targeted action plan to change guidance and legislation looks well-intentioned and sensible. ... Certainly, the decision to review the CDM regulations is long overdue, as is a hard look at the role of planning supervisors. ... Now a strategy has been developed it is imperative that the detail is developed at a pace. Slow reform will only feed indifference.”

10. CONIAC and HSE believe that the standards set out in the revised CDM ACoP are essentially correct, but some issues could not be properly addressed in the ACoP because of the wording of the regulations. As a result there is evidence that some of the resource that is currently devoted to CDM compliance is being wasted. For example:
 - designers estimate that CDM costs them £100-200 M per year, but they are, in the main, not addressing the elimination or reduction of risk as CDM requires; therefore there is minimal impact on the actual risks faced on site;
 - health and safety plans are often treated merely as a paperwork requirement and don’t help with practical management of construction work;
 - enquiries about the application of CDM indicate that considerable effort is spent to avoid CDM. This wasted energy could be used to make projects safer.
11. In contrast, separate studies carried out for HSE and by the Movement for Innovation suggest that proper implementation of CDM results in generally improved project management, which results in lower rates of injury, improved quality and deliverability as well as significant savings.
12. The revised ACoP was intended to address such issues. It says: “Many people seem to think that CDM requires people to produce paperwork for its own sake. This is far from the truth. CDM is intended to encourage the integration of health and safety into project management; any paperwork should contribute to the management of health and safety. Work carried out under the Regulations needs to be targeted to where it will bring health and safety benefits. If you are asked to do something under CDM which will not produce a health and safety benefit, there is probably a misunderstanding of what the Regulations require. This revision aims to help improve the focus of work carried out, and reduce bureaucracy.”
13. Changing the regulations cannot, by itself, change the culture of the industry in this respect, but CONIAC and HSE believe that it would provide a powerful opportunity to challenge everyone to ensure that they target their efforts where there will be health and safety benefits. Regulations do, moreover, set the baseline for the large section of the industry that wants to comply and are the basis for action against those who ignore the management of health and safety.

Objectives

14. If we revise the regulations our key aim would be to maintain the CDM principles, but better focus attention on the management of health and safety — encouraging its integration into project management, and discouraging paperwork that does not add value. This would involve clearer, better regulation, in line with government policy — not more regulation. This clarity would also increase the enforceability of the regulations, where appropriate.
15. The suggested high-level objectives for any revision of CDM and CHSW, agreed with CONIAC, are therefore to improve the management of risk by:

- a) simplifying the regulations to improve clarity and so making it easier for dutyholders to know what is expected of them;
- b) maximising their flexibility to fit with the vast range of contractual arrangements;
- c) making their focus planning and management, rather than **the** plan and other paperwork, to emphasise active management and minimise 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 the competence of organisations.

Issues

16. The key issues to be addressed during any revision of the regulations are set out below.

Clients

17. This is one of the most difficult areas to tackle in view of the vast range of clients and their different levels of expertise. We do not expect any significant change from that already set out in the ACoP, apart from that indicated below.

Planning supervisors

18. There is widespread agreement that this role as currently developed has not proved as effective as intended. The title is also misleading as they neither plan nor supervise! We propose to emphasise the functions that need to be carried out and to allow clients to determine the best way to allocate those functions. However, we still need to implement the Temporary or Mobile Construction Sites Directive requirement for the appointment of a health and safety co-ordinator.
19. To ensure that these tasks are discharged in practice, however, there would also need to be corresponding duties on designers and contractors — or clients may never be told what needs to be done.

Designers

20. The primary aim is to clarify the wording of regulation 13 so that it becomes less subjective. The ACoP already sets out most of what we expect designers to do in practice. However, we believe that designers should also ensure that their designs meet other relevant requirements that apply to fixed workplaces — basically the Workplace Regulations — and that they can be maintained and cleaned safely. (The duty regarding maintenance is currently limited to structural maintenance, but we want designs to address safety during routine maintenance, for example, changing high or inaccessible light bulbs and maintaining ventilation systems.)

Contractors

21. Fewer changes are needed regarding contractors, except to ensure that the requirements reflect modern construction practices. It would, however, be helpful to include an explicit requirement that contractors manage their work to ensure that it is carried out safely.

Construction (Health, Safety and Welfare) Regulations 1996 (CHSW)

22. No changes are planned to the standards or wording of the remaining CHSW regulations (after the proposed Work at Height Regulations are implemented), but minor changes may be identified in the course of the review. The key issue is whether consolidating what is left of CHSW with revised CDM regulations into a

single set of construction regulations would assist industry. (Respondents to the DD thought that it would.)

The Temporary or Mobile Construction Sites Directive

23. We need to ensure that the Directive is fully implemented. There are a number of issues that need further consideration.

Consultation

24. This paper is based on the views of respondents to the Discussion Document and of the members of CONIAC. Colleagues in HSE's Policy Group and Construction Division have also been consulted. If revision goes ahead, CONIAC proposes to set up a working group so that members can properly contribute to the developing proposals.

Presentation

25. The Discussion Document was one of the most high-profile consultations HSE has undertaken and the quotation from Construction News shows the continued level of interest that we may expect.

Costs and Benefits

26. A formal preliminary RIA will be prepared if revision goes ahead, once the proposals are firmed up. However, from soundings made to date, we expect that there will be minimal additional costs, but that there will be a refocusing of resources where there can be real health and safety benefits. We also expect that an increased focus on planning and management will lead to other benefits to the industry.

Financial/Resource Implications for HSE

27. Development of revised regulations, ACoP and guidance is expected to account for only 1-2% of HSE's existing resources devoted to the Construction Priority Programme. Changes to the regulations would incur costs associated with the training of inspectors and the revision of existing guidance; it is anticipated that such costs would be met within the existing budget allocations for the Construction Priority Programme.

Environmental Implications

28. None.

Other Implications

29. The construction regulations apply to large numbers of SMEs, as clients, designers and contractors. To ensure that the requirements are workable for SMEs, we propose to include SME representatives on the CONIAC working group that will assist in the preparation of the CD.

Action

30. The Commission is asked to agree that the Construction (Design and Management) Regulations 1994 and the remaining parts of the Construction (Health, Safety and Welfare) Regulations 1996 are revised and that work begins on the preparation of a CD.

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Priority Programme Strategy and Workstreams

So that the legislative proposals in this paper can be seen in context, below are some illustrations of the breadth of issues and activities being carried out by HSE in pursuit of the Construction Priority Programme.

Priority Programme Strategy

The strategy is to engage with key stakeholders including clients, designers, planning supervisors, contractors, suppliers, trades unions and workers, directly and through representative bodies. The purpose is to deliver a targeted programme of work that will support industry in achieving its targets, encouraging those who are striving for excellence and taking a robust enforcement line with those who are not.

Key elements of the strategy are to:

- engage with key intermediaries and stakeholders to achieve a cultural change in the industry, in particular to develop an expectation of compliance and continuous improvement that involve partnership between those who create, manage and are exposed to risk;
- develop the regulatory framework to address key issues for the construction industry and to ensure regulations are easy to understand, especially by small firms;
- develop and promulgate guidance and standards that are clear and easy to understand, up to date and, in particular, meet the needs of small firms;
- develop improved intelligence on the technical, organisational, demographic and human factors that affect health & safety performance;
- pursue an effective intervention and compliance strategy that targets all those in the construction procurement and supply chain;
- take a vigorous approach to enforcement (in accordance with the Enforcement Policy Statement and Enforcement Management Model) to promote compliance and address shortcomings by dutyholders;
- seek increased competence of all those working in the industry;
- support the development of improved occupational health support for the industry; and
- pursue a publicity & media strategy that secures a positive and supportive high-level profile to help bring about cultural change.

Priority Programme Workstreams

There are a range of workstreams that target the delivery of the 9-point strategy above. These workstreams are variously short to medium term, or are continuing and at the core of the long-term strategy, in particular relating to engagement with intermediaries.

For 2003-2004, project plans have been developed for specific workstreams in relation to:

- Dutyholders:
 - ◆ Better CDM compliance
 - ◆ Government as client
 - ◆ HOPI & lead PI interventions
 - ◆ Micros & SMEs through Working Well Together - in particular, through Safety & Health Awareness Days promoting a 'High 5' of key issues
- Health Issues:
 - ◆ Asbestos
 - ◆ Musculoskeletal disorders
 - ◆ Noise & hand/arm vibration
 - ◆ Cement dermatitis
- Safety Issues:
 - ◆ Falls from height including ladders, step ladders & roofwork
 - ◆ Workplace transport including temporary traffic management and on-site transport
 - ◆ Slips trips and falls, in particular tidy and well organised sites
- 'The Basics':
 - ◆ 'Decent welfare
 - ◆ Employer engagement with workers

Work is also proceeding in:

- Developing with industry a pilot for an occupational health support scheme
- Taking forward actions from the *'Revitalising Health and Safety in Construction'* Discussion Document
- Developing a strategy for designers
- Further improving our intelligence through a programme of research and analysis
- Delivering a publicity & media strategy through:
 - ◆ paid publicity in support of national initiatives
 - ◆ news releases that promote HSE's priorities nationally; and gain local media coverage, including for local workstreams (e.g. blitzes & prosecutions)
 - ◆ press launches, interviews and briefings targeted at leading trade journals known to reach target audiences
- Using analytical modelling techniques (BOMEL Influence Network) to assist in targeting and evaluating activity
- Supporting other Priority Programmes through both technical support and in the delivery of our own programme