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HEALTH AND SAFETY COMMISSION

THIRD REPORT TO THE EUROPEAN COMMISSION ON THE PRACTICAL IMPLEMENTATION OF THE TEMPORARY OR MOBILE CONSTRUCTION SITES DIRECTIVE

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Cleared by Jonathan Rees on 17 November 2005

Issue

1. Periodic report to the European Commission on practical implementation of a Directive on construction.

Timing

2. Routine. Subject to the Commission's agreement we plan to send the report to the Minister for his approval as soon as possible. Assuming he is content, the report should be with the European Commission early in the New Year.

Recommendation

3. That the Commission agrees that the annexed report should be sent to the Minister.

Background

4. The Temporary or Mobile Construction Sites (TMCS) Directive (92/57/EEC) was adopted on 24 June 1992. It sets out minimum safety and health requirements for construction sites within the EC. Currently, the main vehicles for implementing the

Directive in Great Britain are the Construction (Design and Management) (CDM) Regulations 1994 and the Construction (Health, Safety and Welfare) (CHSW) Regulations 1996, although some of its requirements are implemented through other health and safety regulations, e.g. the Management of Health and Safety at Work Regulations 1999 and the Work at Height Regulations (WAH) 2005.

5. The CDM Regulations, which came into force on 31 March 1995, implemented the organisational and management aspects of the TMCS Directive, and were a watershed for the construction industry. They introduced requirements for a systematic and managed approach to construction projects, placing new duties on players such as clients and designers. The CHSW Regulations came into force on 2 September 1996, and implemented the hardware health and safety requirements in the Directive, for example regarding access equipment and support for excavations. Most of these requirements updated and consolidated existing provisions. With effect from 6 April 2005, CHSW provisions relating to work at height were replaced by requirements in the WAH Regulations. The Health and Safety Commission (HSC) has recently consulted publicly on its proposals for revision of the CDM/CHSW Regulations (HSC/05/02).
6. Article 14 (4) of the Directive requires Member States to report to the European Commission every four years on the practical implementation of the Directive. Earlier reports covered 1994-97 and 1998-2001, the present report deals with 2002-05.
7. As part of its evaluation of the implementation of the TMCS Directive, the European Commission is currently seeking clarification on some aspects of the CDM/CHSW Regulations. This matter is more fully described in paper HSC/05/123, which reports on the emerging findings of the recent consultation on proposals to revise the CDM/CHSW Regulations, and which is for discussion at this meeting. While the draft report briefly acknowledges this matter (in paragraph 8), it necessarily bases its discussion on the regulatory regime as it existed during the period of the report.

Argument

8. The report is attached at the Annex. It follows a standard format agreed between the European Commission and Member States, and includes some information covered in earlier implementation reports, where it remains relevant. It also includes details of recent initiatives which aim to raise standards of health and safety in construction, where these are relevant to the matters covered by the Directive. These include specific work with designers and clients, involvement with the Senior Labour Inspectors' Committee (SLIC), and other campaigns for SMEs, and development of the Worker Engagement Decision Tool. Looking to the future, the report describes the challenging targets which have been set in the UK to reduce accidents and fatalities, and the project to revise the CDM/CHSW Regulations to address certain shortcomings identified by evaluation and responses to the 2002 Discussion Document *Revitalising health and safety in construction*.
9. As stated in paragraph 47 of the report, we do not propose any adjustments to the Directive at the present time, although we do believe there are aspects of it that could be simplified or clarified. We would welcome discussion with the EC to provide

feedback on our experience of its implementation in practice, and believe this would fit usefully with current thinking on the EU Better Regulation agenda.

Consultation

10. The draft report was cleared through the Construction Industry Advisory Committee (CONIAC) during November and members comments taken into account. The Health and Safety Executive for Northern Ireland and the Government of Gibraltar have also been consulted, as the scope of the report includes their territories.

Presentation

11. Subject to the Minister's approval, the report will be sent to the European Commission. It is unlikely to generate much media or public interest and there are no significant presentational issues for HSC/E arising from it.

Costs and Benefits

12. The estimated cost to HSE of producing this report, in terms of salary costs, is £4473.

Financial/Resource Implications for HSE

13. The only costs associated with this paper reflect the time taken to prepare the attached report. There are no further costs.

Environmental Implications

14. There are no specific environmental implications from this paper.

Other Implications

15. None

Action

16. If the Commission approves the report, it will be sent to the Minister for his consideration. If the Minister approves the report, it will be transmitted to the European Commission via UKREP.

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**ARTICLE 14(4) OF DIRECTIVE 92/57/EEC ON THE IMPLEMENTATION
OF MINIMUM SAFETY AND HEALTH REQUIREMENTS
AT TEMPORARY OR MOBILE CONSTRUCTION SITES**

**Third report by the United Kingdom on the practical implementation of this
Directive, indicating the points of view of employers and workers**

INTRODUCTION

How this report was produced

1. This is the United Kingdom's third report on Directive 92/57/EEC. It has been prepared on behalf of the Health and Safety Commission (HSC) by the Health and Safety Executive (HSE). HSE is the Government body responsible for ensuring that risks to people's health and safety from work activities in Great Britain are properly controlled. To do this HSE works in partnership with Local Authorities, who also have responsibilities for enforcement of health and safety legislation in Great Britain. The report has been produced in consultation with the health and safety at work authorities in Northern Ireland and Gibraltar, which have separate occupational safety and health administrations.

Social partners consulted and methods used

2. The views of duty holders and others were obtained in the course of ongoing contacts between Government agencies and the industry and in particular as a result of responses to a major discussion document issued by HSE during 2002. Additional insight was gained from an initial consideration of responses to a public consultation exercise on proposals for revising the Construction (Design and Management) Regulations (CDM) 1994 and Construction (Health, Safety and Welfare) (CHSW) Regulations 1996 that was completed about the time this report was prepared¹.

3. Social partners were consulted on this report through the HSC's Construction Industry Advisory Committee (CONIAC), which is a body on which employer, worker and other interests are represented.

Relevant statistics

4. Provisional figures from the Office of National Statistics (ONS) for 2004/2005 estimate that in the United Kingdom there are 2,067,396 workers in the construction industry of which 1,255,708 are employees and 811,688 are self-employed. All figures represent a rise on the previous year. In Gibraltar there were 1,517 employed workers (9.5% of total workforce) and 107 self-employed workers in the construction industry in

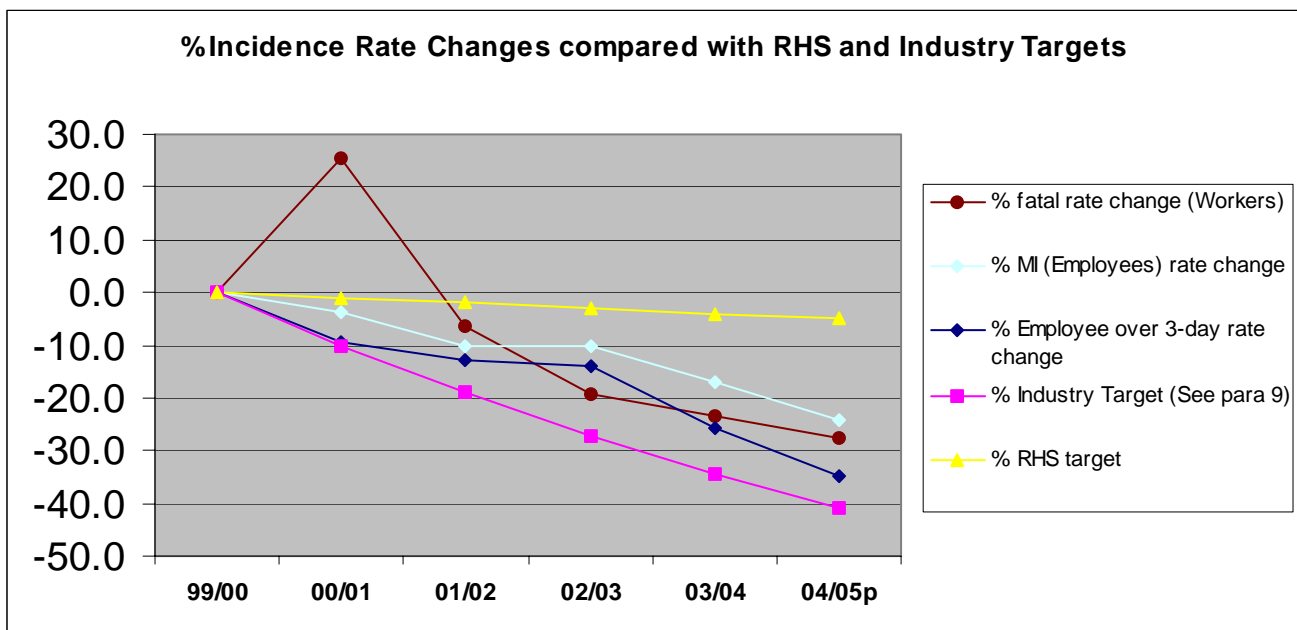
¹ A copy of the Consultative Document (CD200) is available at: <http://www.hse.gov.uk/consult/condocs/cd200.pdf>

2004. Additionally, it should be noted in respect of Gibraltar that any large-scale construction project could be undertaken by a contracted construction company from abroad. In such instances often the workers would be “detached” or “posted” from the country where the contracted company is established.

5. Because of the breadth of legislation arising from European Directives which apply to the construction industry, it is not possible to identify the specific impact on accidents and ill-health of the measures taken to implement the Directive. However, the statistics for construction accidents in Great Britain for the last 6 reporting years are as follows:

| Year | Fatal injuries (Employees and self-employed) | Change in annual incidence rate (base year 1999/2000) | Major injuries (Employees only) | Change in annual incidence rate (base year 1999/2000) | Over 3-day injuries (Employees only) | Change in annual incidence rate (base year 1999/2000) |
|------------|--|---|---------------------------------|---|--------------------------------------|---|
| 1999/2000 | 81 | 0.0% | 4386 | 0.0% | 10159 | 0.0% |
| 2000/2001 | 105 | 25.5% | 4303 | - 3.8% | 9367 | - 9.6% |
| 2001/2002 | 80 | - 6.4% | 4055 | -10.1% | 9100 | -12.9% |
| 2002/2003 | 70 | -19.1% | 4031 | -10.4% | 8949 | -14.1% |
| 2003/2004 | 71 | -23.4% | 3978 | -17.2% | 8256 | -25.8% |
| 2004/2005p | 71 | -27.7% | 3760 | -24.4% | 7509 | -34.8% |

Note: the figures for 2004/2005 are based on an initial assessment and may be revised later



LEGAL IMPACT

6. Currently, the main vehicles for implementing the Temporary or Mobile Construction Sites (TMCS) Directive in Great Britain are the Construction (Design and Management) (CDM) Regulations 1994 and the Construction (Health, Safety and Welfare) (CHSW) Regulations 1996, although some of its requirements are implemented through other health and safety regulations, e.g. the Management of Health and Safety at Work (MHSW) Regulations 1999 and the Work at Height (WAH) Regulations 2005. CDM implements the planning and management aspects of the Directive and CHSW the practical and hardware aspects. With effect from 6 April 2005, CHSW provisions relating to work at height were

replaced by requirements in the WAH Regulations. In Northern Ireland the implementing legislation is the Construction (Design and Management) Regulations (Northern Ireland) Regulations 1995 and the Construction (Health, Safety and Welfare) Regulations (Northern Ireland) 1996. The Directive is implemented in Gibraltar by way of the Construction (Design, Management, Health, Safety and Welfare) Regulations 1998.

7. The CDM/CHSW Regulations are currently under review, and the HSC has recently consulted publicly on its proposals for their revision. Implementation of the Directive, and any potential changes to the way in which some aspects of it are implemented, will be considered as the proposed legislative package is taken forward.

8. As part of its evaluation of the implementation of the TMCS Directive, the European Commission has written recently, seeking clarification on some aspects of the CDM/CHSW Regulations. This matter is under consideration by the UK authorities and is not addressed in this report which focuses on practical implementation of the existing Regulations.

PUBLICISING THE LEGISLATION

9. The previous report mentioned the UK Government's Revitalising Health and Safety (RHS) Strategy. The targeted approach which is a feature of that strategy has been maintained throughout the period of the current report. In response to the Government's all-industry Revitalising targets, the construction industry set its own more challenging targets in recognition of the step change needed in performance. In 2001, the industry committed, amongst other things, to reduce the incidence rate of fatal and major injuries by 66% by 2009/2010.

10. Although not specifically intended as vehicles to publicise the CDM/CHSW Regulations, HSC/E has held two Construction Summits during the period of this report. Both brought together key construction stakeholders, representing all duty holders, with the aim of encouraging ownership, leadership and partnership in improving health and safety standards in the construction industry. Both events raised awareness of what CDM/CHSW duty holders' responsibilities were.

11. During the second Summit organised by HSE in February 2005 the Strategic Forum for Construction, a high level group representing all key stakeholders in the construction industry, launched its Respect for People Code of Good Working Health and Safety Practices. This identified the actions that various construction stakeholder groups should take in addressing the eight leading health and safety issues currently faced by the industry many of which, such as competence, designer duties and integrated working, impact in compliance with the CDM Regulations.

12. HSE is in constant contact with the construction industry, and has run a series of campaigns to ensure designers are aware of their duties and are acting on them. These include seminars and awareness-raising events run jointly with the industry, including events run by clients. Further details are given at paragraphs 28-37.

13. The Health and Safety Inspectorate in Gibraltar, is also in constant contact with the construction industry. Enquiries from the industry combined with the inspectorial function

of the implementing body ensure a basis for ongoing communication and relevant information dissemination. Further, the Health and Safety Advisory Council, with representation from the Government's relevant bodies, the trades union and private sector contributes to the general understanding and better assessment of health and safety requirements.

14. The Health and Safety Executive Northern Ireland (HSENI) is similarly involved with the industry, and is represented on the HSC's Construction Industry Advisory Committee (CONIAC). Northern Ireland (NI) health and safety legislation does not differ in any significant way from the corresponding legislation in Great Britain. Such differences that do occur relate only to NI legislation and institutions. HSENI public consultation on proposals for new Construction (Design and Management) Regulations ended on 31 October 2005, and the NI consultation document was closely based on the recent GB document.

SMALL AND MEDIUM SIZED ENTERPRISES (SMEs)

15. For the purposes of these reports, the European Commission has defined small and medium sized enterprises as independent firms with fewer than 250 employees and which are independent from other organisations.

16. The HSC defines a small firm as a business employing less than 50 people. However, according to the UK's Department of Trade and Industry (DTI) statistics for 2003, only 21,996 of the 171,092 private contractors in the construction industry employ more than 7 people.

17. HSE took part in the Europe-wide Senior Labour Inspectors' Committee (SLIC) inspection campaigns in 2003 and 2004. The 2004 campaign was held during June and targeted 1,255 construction sites (over 90% of which had less than 50 workers) across Great Britain. It focussed on the three major causes of fatal and serious injuries in construction: falls from height; transport on site; and lifting of heavy loads. In the course of the campaign HSE inspectors looked for proper assessments of risk and application of suitable controls. Where significant shortcomings were found, inspectors followed up by requiring duty holders to identify underlying causes and prepare a programme to secure improvements. In total 314 enforcement notices were issued (240 prohibition and 74 improvement). It was noted that the proportion of prohibition notices to sites visited was 1 in 5 whereas it had been 1 in 4 for the 2003 campaign, and that this indicated some progress in securing improved health and safety standards in construction.

MONITORING OF IMPLEMENTATION

Bodies responsible for monitoring implementation

18. The HSC and HSE are statutory bodies whose mission is to ensure that risks to people's health and safety from work activities are properly controlled – this includes the health and safety of non-employees, including the general public. The HSC is responsible for advising the Government on implementation of health and safety standards, including those in the TMCS Directive. The HSE advises and assists the HSC and also has day-to-

day responsibility for enforcing health and safety legislation under general guidance from the HSC.

19. In Northern Ireland, HSENI is the lead body responsible for the promotion and enforcement of health and safety at work standards. HSENI is an executive Non-Departmental Public Body sponsored by the Department of Enterprise, Trade and Investment (DETI). Its vision for NI is to achieve world-class performance in workplace health and safety and therefore improve the overall economic and social well being of the community.

20. In Gibraltar, the Ministry with responsibility for Employment is responsible for the promotion and enforcement of standards in relation to health and safety at work. This responsibility is exercised through the Gibraltar Health and Safety Inspectorate (GHSI). The primary role of the GHSI is to ensure that risks to people at work and risks to any person affected by any work related activity, are appropriately assessed and duly controlled in accordance with the Laws of Gibraltar. The GHSI advises the Ministry with responsibility for Employment in relation to the implementation of health and safety standards and legislative issues, and the Ministry in turn instructs the Legislation Support Unit of the Government of Gibraltar in respect of legislative matters.

21. In Great Britain, appropriate enforcing authorities monitor the implementation of health and safety requirements by employers and other duty-holders. Similar arrangements apply in Northern Ireland. Local Authorities also have responsibilities for enforcing health and safety law, which they carry out alongside their other responsibilities – e.g. for public health. HSE has sole responsibility for enforcing the CDM Regulations and most of the remaining requirements of the CHSW Regulations. HSE and Local Authorities enforce the WAH Regulations.

Methods used for monitoring

22. HSE and Local Authority inspectors have legal powers to inspect construction work. Visits may be made as part of a planned programme; or randomly as poor practices are observed; in response to requests for advice; or in response to complaints. Inspections generally cover most activities on site.

23. Whether or not enforcement action is taken depends on the facts in each case. The CDM and CHSW Regulations are enforced in the same way as other occupational health and safety regulations. Formal enforcement action is considered where:

- there is a significant risk of ill-health or injury;
- employers appear deliberately obdurate and unwilling to recognise their responsibilities;
- standards of compliance are low.

24. HSE's Enforcement Management Model (EMM) provides a framework to help HSE inspectors make enforcement decisions in line with the HSC's Enforcement Policy Statement (EPS). The EPS sets out the principles inspectors should apply when determining what enforcement action to take in response to breaches of health and safety legislation – including the CDM and CHSW Regulations:

- **Proportionality** in applying the law and securing compliance, ie action by enforcing authorities should be proportionate to any risks to health and safety and to the seriousness of any breach of legal requirements.
- **Consistency** of approach, ie there should be a similar approach in similar circumstances to achieve similar ends.
- **Targeting** of enforcement action, ie visits are targeted on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and the person responsible for creating the risk should be held to account for it.
- **Transparency** about how the regulator operates, ie duty-holders should be clear about what they have to do and what they should expect from enforcing authorities.

25. Applying the above principles, HSE inspectors take a significant amount of formal enforcement action under the CDM and CHSW Regulations. Between January 2004 and October 2005 this amounted to:

- 88 prosecutions and issued 263 enforcement notices under CDM.
- 257 prosecutions and issued 2,348 enforcement notices under CHSW.

26. Inspectors also took enforcement action on construction under other relevant provisions of health and safety law. Overall, there were 550 construction-related prosecutions and 2,481 construction-related enforcement notices in 2004/2005².

Changes in inspectorate practice

27. The requirements of the TMCS Directive and its implementing legislation created new duty holders, such as clients, designers, planning supervisors and principal contractors, and extended duties on contractors generally. As a consequence, the range of duty-holders with which inspectors deal was also extended, and the way in which they approach the management aspects of construction health and safety and engage duty holders was fundamentally changed. HSE now has a discrete Construction Division, comprising 25% of HSE's field force, which is dedicated to raising health and safety standards on the construction industry.

28. The Construction Division has taken forward various initiatives specifically targeted at engaging "new" duty holders, such as clients and designers and addressing related CDM/CHSW issues.

29. A common agenda has been developed, and recently reviewed and updated, to structure inspectors' dealings with major projects and large nationally-operating companies. Over sixty major clients, designers and contractors have been allocated national lead inspectors, whose role is to co-ordinate dealings with their companies, develop and implement an intervention plan to focus on improvements and foster co-operative working.

30. Designers – A series of inspection campaigns in Scotland and the North of England has been held in three successive years. It has involved inviting designers onto site to

² These figures, which are provisional, are taken from table 5 (prosecutions) and table 6 (enforcement notices) of *Health and Safety Offences and Penalties 2004/2005: A Report by the Health and Safety Executive* <http://www.hse.gov.uk/enforce/off0405/off0405.pdf>

discuss their design decisions and their impact on working at height. The reports of all three initiatives, together with other helpful information on the CDM regulations, are available on the Construction pages of the HSE website at:

<http://www.hse.gov.uk/construction/designers/report05.pdf>

31. Action resulting was a mix of verbal and written advice, follow-up visits and enforcement notices.

32. Overall there has been a continuing improvement in designer performance over the last three years. Particular noteworthy good practices identified by inspectors were:

- clients, planning supervisors and principal contractors proactively engaging designers;
- an increased number of designers who had identified sources of training to gain practical knowledge on health and safety;
- health and safety being seen by many as part and parcel of design and not an add-on;
- an increase in team approaches to design; and
- greater success in reducing risk through the design process.

33. Despite the overall improvement, poor practices which continued to figure in field work findings this year were:

- production of vast quantities of paperwork with no useful purpose;
- ineffective communication of information about residual risks;
- lack of understanding of the needs of the contractor during construction and maintenance; and
- the use of running lines as the main control for work at height.

34. This indicates that both HSE and others should continue to develop guidance in these key areas. It is hoped that the current consultation on the revision of the CDM Regulations and the “less is more” message will help designers move from the false comfort of producing vast quantities of untargeted and generic paperwork while key messages are overlooked or hidden.

35. Clients – HSE has worked with trade associations to explain to their members the importance of fulfilling their role as clients – the economic, legal and moral case, supporting the Engineering Employers Association’s road shows in 2002. HSE has supported clients who have been seeking to improve the skills and awareness of the pool of contractors available to them, working in particular with local authorities. Additionally, HSE has collaborated with local government and other intermediaries in putting on seminars for local authority and private sector clients on the role of the client in promoting management of occupational health, and has held client health and safety awareness days, with excellent support from a major retail client.

36. The clients selected for national lead inspector intervention include government departments with significant construction spend. HSE took part in a seminar for government clients in 2003, organised by the Office of Government Commerce, to promote procurement guidelines, including guidance on health and safety which HSE had helped to draft. The National Audit Office, assessing HSE’s performance with the construction industry in May 2004, contacted five of these government clients and found

that they considered the interventions had been beneficial, particularly in clarifying roles and responsibilities, raising awareness and promoting action.

37. Contractors – Work with large contractors has been guided by the common agenda. Contractors on site are a traditional part of HSE's work, but the construction programme has focussed on early interventions with clients, contractors and designers, planned work on major projects. Work with SME contractors has been via inspection campaigns, including the SLIC campaigns, but also specific intensive campaigns on health issues combining publicity, guidance, and a period of nationwide site visits (Healthy Handling in March 2005 and Backs! in June and July 2005). There are also awareness raising events run in local Working Well Together groups which comprise contractors, clients and designers providing guidance and advice to SMEs around a set of campaign messages.

38. Worker engagement – HSE is taking steps to improve worker engagement in health and safety in the industry, and through CONIAC has developed and launched a Worker Engagement Decision Tool to help companies assess their own performance and decide what action to take. Inspectors will use this tool when deciding whether the firm is complying with legislation (CDM Regulation 18, as well as requirements of the Safety Representatives and Safety Committees Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996) and whether enforcement action is required.

ASSESSMENT OF EFFECTIVENESS

39. The National Audit Office reviewed HSE's effectiveness in dealing with the construction industry, looking both at HSE's and the industry's performance. It reported in May 2004. It confirmed that the HSE approach of targeting CDM duty holders, and giving greater attention to clients, government clients and designers than had previously been done, was correct, and recommended that this work be extended. It also considered that the awareness raising campaigns were an effective way of reaching workers and SMEs.

40. Extensive contacts with industry over the implementation of the Regulations and experience of telephone and written enquiries about them provides useful information concerning their operation, and further information is provided by the extensive field force of construction inspectors (and other Construction Division staff) who visit workplaces.

41. Additionally, as part of its wider Revitalising health and safety initiative and in light of continuing concern about the high level of accidents in construction, the HSE published a discussion document *Revitalising health and safety in construction* (DDE20, issued in September 2002). The document generated a large response which, among other things, yielded information on industry perceptions of the effectiveness of the CDM/CHSW regulatory regime.

42. The general view that emerged from the discussion document responses was that, while the principles on which CDM is based are correct, there are nevertheless a number of deficiencies in their implementation in the Regulations. As a result, HSE initiated a programme to revise the Regulations which, while maintaining implementation of the Directive, was intended to:

- simplify the Regulations to improve clarity and so make it easier for duty holders to know what is expected of them;
- maximise their flexibility to fit with the vast range of contractual arrangements found in the industry;
- make their focus planning and management, rather than the plan and other paperwork, to emphasise active management and minimise bureaucracy;
- strengthen their requirements regarding co-ordination and co-operation, particularly between designers and contractors to encourage more integration;
- simplify the assessment of the competence of organisations.

In addition, it was proposed to amalgamate the CDM and CHSW Regulations, with a view to raising clients' and designers' awareness of practical site safety issues, and addressing some of the misconceptions as to when the Regulations apply. From the Better Regulation perspective, consolidation, simplification and clarification of the CDM/CHSW Regulations – together with ease of reference, should also reduce burdens on business and aid compliance. But consolidation needs careful presentation to avoid creating confusion over who is responsible for what with respect to providing physical safeguards on site.

43. Public consultation on the proposed Regulations has ended and analysis of the views submitted by duty holders and others is now being undertaken. No decisions have yet been taken on the final form of the Regulations or when they are to be enacted. As mentioned in paragraph 7, implementation of the Directive, and any potential changes to the way in which some aspects of it are implemented, will be considered as the proposed legislative package is taken forward. We look forward to constructive discussions with the European Commission (EC) as the proposals are being refined.

SUMMING UP

Positive aspects

44. Available information suggests that the CDM Regulations are based on sound principles, and have increased awareness of health and safety.

Negative aspects

45. However, some also regard the Regulations as obscure, inflexible and overly bureaucratic and, consequently, not as effective as they could be in securing integrated management of health and safety during all stages of construction work. Some of these concerns relate back to the requirements of the Directive itself.

OUTLOOK

New priorities in the field

46. It is intended that the revision of the Regulations now underway will correct the shortcomings identified in paragraph 45. Once the revised regulatory package has been

finalised, operational staff will be involved in a programme of work to raise awareness of the revised requirements and promulgate key health and safety messages.

Adjustments to the Directive needed

47. The United Kingdom does not propose any adjustments to the Directive at the present time, although we believe there are aspects of it that could be simplified or clarified. We would welcome discussion with the EC to provide feedback on our experience of its implementation in practice.

Necessary adaptations to technical progress

48. The United Kingdom does not propose any adaptations to technical progress at the present time.