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HEALTH AND SAFETY COMMISSION

CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)

Construction (Design and Management) Regulations 2007: Initial Feedback

Summary

This paper provides an update on issues relating to the Construction (Design and Management) Regulations 2007 (CDM2007). It includes a brief history of events since CONIAC's November 2006 meeting leading up to implementation including the Early Day Motion (EDM) debate, developments with the integration of Planning/Building and CDM regimes, the CDM launch on 4 April, HSE inspector training and the enforcement approach, the provision of CDM2007 information and guidance, nation-wide familiarisation events and CDM research.

Issue

1. Report back on (CDM2007) related issues and developments.

Timing

2. Routine.

Recommendation

3. That CONIAC members note the developments and activities at paragraphs 6 – 25.

Background

4. CONIAC's last meeting in November 2006 included an oral update on the CDM revision. CONIAC Members and Members of the CDM Review Working Group were thanked for the significant contribution they had made to developing the CDM package.
5. They were informed that the HSC had considered the proposed revised CDM Regulations, ACoP and Regulatory Impact Assessment (RIA) at its meeting on 17 October. Following a discussion that highlighted the need to provide clear guidance for clients and to continue discussions to develop closer links with the Building Control and Planning regimes, the HSC had approved the package (as submitted) for formal submission to the Minister. HSE agreed to report back to the HSC on progress and did this in February 2007 (see HSC/07/23 "Integrating CDM2007 into the Planning and Building Control Regimes" at <http://www.hse.gov.uk/aboutus/hsc/meetings/index.htm>.) (See paragraph 25 for further information.)

Subsequent developments and activities

Implementation

6. The Regulations were signed by the Minister, Lord McKenzie on 7 February and laid before Parliament on 15 February, following which they were subject to the usual procedures of Parliamentary scrutiny. The Opposition tabled an Early Day Motion (EDM) on 15 March 2007, calling for the annulment of the Regulations (see paragraphs 9 to 11). The CDM ACoP¹ (Managing Health and Safety in Construction) was published on Tuesday 27 February and the Regulations came into force on 6 April. To assist the industry during this initial period, the answers to the most frequently asked questions (FAQs) concerning CDM2007 were published on the HSE website on 5 April 2007 at <http://www.hse.gov.uk/construction/cdm/fagindex.htm>. The FAQs are regularly updated to reflect common questions. HSE's Infoline (HSE's public enquiry contact centre) was also fully briefed prior to implementation and between March and May 2007 answered 4632 telephone enquiries and responded to 417 written enquiries on the Regulations.

CDM launch event

7. The new CDM Regulations were launched at a well-attended and successful industry stakeholder event at St Pancras Station on 4 April <http://www.hse.gov.uk/press/2007/e07014.htm>. All the speakers welcomed the Regulations and recognized their value in improving in health and safety standards in the construction industry. A transcript of the event can be found in the following file.



Carole Lomax - CDM
2007 National Launch

CDM concerns and the EDM debate

8. Most CONIAC members were supportive of the revised CDM Regulations and extensive lobbying following the announcement of the EDM confirmed the industry's overwhelming support for the new Regulations. However, there were those who held, and still hold, concerns over issues including a perceived disproportionate burden on small or occasional construction clients, a potential lack of CDM co-ordinators, and the lack of early integration between the Planning/ Building Control/CDM regimes.
9. The debate took place in the House of Commons by Delegated Legislation Committee on Thursday 10 May 2007. Opposition spokesman Andrew Selous (Shadow Minister with responsibility for health and safety) opened the debate and Anne McGuire MP (Commons lead on occupational health and safety issues) responded for the Government. A list of the Committee members can be found in the footnote².
10. There was endorsement of HSC/E's consultation process and of the Regulations themselves as an example of sensible, proportionate regulation. It was made clear that the construction industry strongly supported the Regulations. Key points made in response to issues raised in the debate were:
- work undertaken by HSE to date on integration of the planning/building/CDM regimes (see also paragraph 25). Anne McGuire said it was not possible to provide a specific timetable

¹ 25 000 copies of the ACoP were sold in the first print run. A reprint of 30,000 copies was undertaken at the beginning of May and to date (1 June) 9000 have been sold.

² Chairman: David Wilshire
Chairman: Members: Danny Alexander, Colin Challen, Jon Cruddas, Jeff Ennis, David Gauke, Greg Hands, John Heppell, Adam Holloway, Eric Joyce, Fraser Kemp, Susan Kramer, Mark Lancaster, Anne McGuire, Andrew Mackinlay, Nick Raynsford, Andrew Selous and Graham Stringer.

for integration, as work would need to be done across the range of stakeholders, looking carefully at all the issues;

- a review of CDM 2007 would be undertaken after two to three years; and
 - provision of information on the availability of advice and guidance. Anne McGuire referred to the current availability of simplified, clarified ACoP advice for SME clients, industry guidance and information available on the HSE website, and the planned re-issuing of the HSE Information Sheet. (See also paragraphs 15 - 22).
11. The debate culminated in a unanimous affirmative vote in response to the question being debated, i.e. whether the Committee had considered the CDM 2007 Regulations. Stephen Williams emailed CONIAC members with a précis of the debate on 11 May (see Annex 1) together with links to the transcript of the debate :

<http://www.publications.parliament.uk/pa/cm200607/cmgeneral/deleg3/070510/70510s01.htm>
or alternatively <http://www.publications.parliament.uk/pa/cm/cmdeleg.htm>.

HSE Inspector training and the enforcement approach

12. All HSE's Construction Inspectors and some Nuclear Inspectors have been trained on CDM requirements. To help ensure that consistent messages are promoted to the industry, the training package will be made available on HSE's website shortly (it is currently being refined for website use).
13. Enforcement of CDM2007 will be in line with HSC's published Enforcement Policy Statement (which reflects Government policy). Enforcement policy principles are: Proportionality, Targeting, Consistency, Transparency and Accountability. Serious problems and offenders, and not trivialities, will be targeted.
14. In the vast majority of cases, HSE will retain the responsibility for enforcing the regulations, and other measures relating to construction health and safety. The Office of Rail Regulation enforces CDM in relation to operational railways in accordance with the existing Memorandum of Understanding. Local authorities (LAs) are now able to enforce CDM 2007 in some limited circumstances. HSE has drafted a position paper providing guidance on the practical enforcement of CDM 2007 by HSE and LAs and outlining those circumstances where liaison between HSE and local authorities may be desirable. This paper is currently being disseminated to LAs via the Local Authorities Coordinators of Regulatory Services (LACORS)³. LA's comments will be discussed at the LACORS Policy Forum meeting on 12 June 2007. The paper also suggests that LAs may wish to consider whether they are likely to require specific training for their inspectors. An update will be provided at the CONIAC meeting on 25 June 2007.

Provision of CDM2007 information and guidance

15. At the launch event on 4 April, Kevin Fear (CITB-Construction-skills and Chair of CONIAC's CDM Industry Guidance Working Group) reported that four sets of the guidance (for designers, contractors, principal contractors and workers (although they are not strictly CDM duty-holders)) would shortly be made freely available at the ConstructionSkills website <http://www.citb.co.uk/healthsafety/cdmregulations/>.⁴ Kevin will be providing an oral

³ LACORS provides advice and guidance to local authority regulatory and related services.

⁴ They were published by 6 April.

update on the position with industry guidance at CONIAC's 25 June meeting (Agenda Item 5).

16. In addition to the supporting advice provided in the ACoP and the FAQs on HSE's website, HSE has refreshed the construction pages on its website and provided further advice/information in links entitled: "What do I need to do?"; "What's in it for me?"; "How do I find out more?"; "Legal Requirements?"; "How to notify projects (F10)"; and "CDM2007 launch and events". These can be found at <http://www.hse.gov.uk/construction/cdm.htm> . These pages will be kept constantly under review to ensure that they reflect the latest information.
17. Infonet (HSE's monthly construction e-bulletin) has been providing links to CDM-related information on HSE's website since August 2006. April's edition was dedicated solely to CDM2007 information. Infonet has over 18 000 subscribers.
18. HSE has also drafted two leaflets ("Want Construction work done safely? A quick guide for clients on the CDM Regulations 2007" and "CDM explained"). The client leaflet provides information chiefly for small and one-off clients. HSE plans to go to print in early June and is currently developing a strategy to ensure the widest and most effective distribution to SMEs (including through local building merchants, HSE's construction pages and LA channels). "CDM explained" will be available shortly afterwards.
19. HSE has provided numerous articles to the trade and technical press, including to Construction News, New Civil Engineer, Safety Management and Health and Safety at Work.

Nation-wide familiarisation events

20. Further, HSE has committed extensive resource to participating in/organising numerous nationwide events publicising CDM2007, clarifying the requirements, providing advice and answering questions.
21. HSE recorded 148 events occurring between April 2006 and April 2007 in all parts of the country, but this represents only some of the total number of events that have been held to publicise CDM2007. Most featured HSE speakers and it is estimated that more than 4000 persons attended, drawn from all duty holder groups. There was generally a very positive reception for the new Regulations with much interest shown. The new competence guidance in particular, was welcomed. Questions were wide-ranging and requests for advice about a perceived lack of competent co-ordinators was highlighted. It was thought that few would know enough about construction design to be able to co-ordinate its health and safety aspects. A few examples of locations and events held are as follows:
 - Manchester and Ascot – to the Chartered Institute of Building,
 - Newcastle – to a CDM support group. Presentations were given to a wide variety of stakeholders (270) including clients and designers;
 - London – to RIBA client advisors;
 - Wetherby and Bury St Edmunds – to the Electrical Contractors Association;
 - HSE participated in a CDM "webinar" event where speakers presented information over the internet. It was received by around 500 subscribers.
22. Importantly, HSE has embarked on an extensive programme of regional talks on CPD to the Royal Institute of British Architects (RIBA) (up to a dozen have been held to date).

These talks consist of background to the revision, requirements and implications of the revised regulations, and the opportunity for specific questions.

CDM2007 Research

23. Tracking work has commenced (and is under continued development with HSL) relating to the launch, subsequent awareness raising events and initial implementation of CDM2007. The work aims to collect and review information on the awareness, attitudes and understanding of the Regulations and associated key messages, and the potential actions of individuals, companies and projects. This in turn should provide insight into the effectiveness of the events and early implementation throughout 2007/08. It also provides opportunity for supplementary/corrective measures to be taken if appropriate.
24. Members will already be aware of two pieces of research to inform the future evaluation of CDM2007. Both can be found at <http://www.hse.gov.uk/research/rrhtm/rr555.htm> and <http://www.hse.gov.uk/RESEARCH/rrhtm/rr538.htm>

Integration of Planning/Building Control and CDM regimes

25. Communities and Local Government (CLG – previously the Department for Communities and Local Government) is currently undertaking a review of the building control system. Through a letter from Geoffrey Podger to the CLG Minister, Angela Smith, HSE has already indicated its willingness to engage in the Review and provide information about its regulatory role for the construction industry. In addition, HSE's Chief Inspector of Construction met with CLG's new Deputy Director of Sustainable Buildings and agreed the importance of future co-operation. HSE officials have also continued to liaise with CLG and last met on 4 May to discuss issues relating to the Review of Building Control. There was a shared view that the Planning, Building Control and CDM 2007 regulatory regimes were all seeking to influence the same audience although they addressed different issues, employed different means of ensuring compliance and were controlled by different criteria. True integration of the regimes could only be a very long-term aim, if it is possible at all, but, in the shorter term, there were opportunities to establish closer links. CLG advised that they would be developing a Consultative Document (CD) to be published in October 2007 and would welcome HSE's input. Once the CD discussion was concluded, they would meet with HSE to consider the emerging views and next steps. HSE continues to consider options for closer working of the regimes.

Consultation

26. HSE's Construction Sector has contributed to and agreed this paper.

Action

27. CONIAC is asked to note the information provided and to raise points at the meeting if appropriate.

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11 May 2007

Message from Stephen Williams: Chief Inspector of Construction

As you know from previous messages, the CDM Regulations 2007 (CDM2007) were debated in the House of Commons yesterday. I promised to keep you informed of the outcome.

The CDM 2007 Prayer Debate was a considerable success as far as HSE and all supporters of the CDM 2007 Regulations are concerned and in our efforts to improve health and safety in the construction industry.

There was very strong support of HSC/E's widespread consultation on the CDM proposals, and of the Regulations themselves as an example of sensible, proportionate regulation. Nick Raynsford, in particular, made it clear that the construction industry strongly supported the Regulations, and that it was unfortunate that the Early Day Motion had given some very negative and inappropriate messages and had also led to uncertainty about the Regulations' future. He also underlined the positive impact on the health and safety culture of clients and safety practitioners working together and "leading from the top", one of the key underlying CDM 2007 principles.

Andrew Selous, on opening for the Conservatives, made it clear that they had never intended to seek annulment of CDM 2007, but felt there were additional measures that could be taken to improve health and safety in construction. His address concentrated on familiar issues already raised, i.e. perceived disproportionate burdens on small or occasional construction clients, need for provision of supporting guidance, desire for integration between the Planning, Building Control and CDM regimes, and concerns over increased liability. In essence, he sought from the Minister:

- An update on action that will be taken to ensure the fullest possible integration between the Planning, Building Control and CDM regimes;
- A review of the effectiveness of CDM 2007 after a year or so; and
- Information on further support available to help SMEs.

In responding, the Minister (Anne McGuire) referred to the work already being done by HSE in these areas, making the point that it was not possible to provide a specific timetable for integration, as work would need to be done across the range of stakeholders, looking carefully at all the issues. She added that a review of CDM 2007 would be undertaken after two to three years. (As many of you will be aware, this fits with HSE's usual evaluation processes, and follows on from the CDM baseline research already conducted by Bomel Ltd.)

She went on to refer to the current availability of simplified, clarified ACoP advice for SME clients; the industry guidance (with which some of you have been involved); information available on the HSE website; and the planned re-issuing of the HSE Information Sheet.

At a time when the industry is booming, the CDM 2007 regulatory framework was cited as being timely, and of critical importance in supporting increasing numbers of new entrants to the industry, particularly migrant workers - many of whom may be used to lower standards of health and safety than we aspire to here.

The debate culminated in a unanimous affirmative vote in response to the question being debated, i.e. whether the Committee had considered the CDM 2007 Regulations.

I would like to take this opportunity to thank you for your invaluable input and support over the lifetime of the project and for the robust and public defence of the CDM 2007 aims and principles over the past few weeks. Also over recent weeks, I discussed the issues personally with many of you and am very grateful for the support you gave. I also thank you on behalf of the Construction Policy Team, who have been at the heart of CDM for so long, and who really appreciated your proactive input and support.

It falls to us all to continue to vigorously promote the CDM principles, both through words (and more importantly) through actions. I look forward to seeing you all again in the not too distant future.