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HEALTH AND SAFETY COMMISSION

CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)

POSITION PAPER ON REVISION OF THE CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS (CDM) 1994 AND THE CONSTRUCTION (HEALTH, SAFETY AND WELFARE) (CHSW) REGULATIONS 1996

Summary

This paper reports on progress and recent developments with HSE's revision of the CDM/CHSW Regulations, supporting Approved Code of Practice (ACoP) and guidance; and seeks CONIAC agreement to a task and finish Working Group to manage development of industry-produced guidance on the revised Regulations

Issue

1. This paper reports on progress and recent developments with HSE's revision of the Construction (Design and Management) (CDM) Regulations 1994 and the Construction (Health, Safety and Welfare) (CHSW) Regulations 1996, and the supporting Approved Code of Practice (ACoP) and guidance. It also explains the policy decision to shift the planned implementation date for the revised Regulations from 1 October 2006 to Spring 2007.

Timing

2. Routine. HSE issued a Press Release on 28 February, announcing the revised CDM Regulations would be implemented in Spring 2007, rather than October 2006 as originally planned.

Recommendation

- 3 That CONIAC.
- endorses the need to have supporting industry guidance in place 3 months before the Regulations are in force (see paragraph 14);
 - agrees to a task and finish CONIAC Working Group to manage development of the industry-produced guidance (see paragraph 16);

- agrees to help with ensuring that the assumptions and conclusions in the revised RIA are sound (see paragraphs 17 and 18);
- notes the revised implementation timetable and discusses whether HSE should aim for an implementation date of 6 April 2007 or explore other possible options (see paragraphs 19 – 22).

Background

4. The current CDM Regulations address the health and safety requirements at temporary and mobile construction projects - including the way work is planned and managed. Since their implementation in 1995, concerns have been raised that their undue complexity, coupled with the bureaucratic approach adopted by many duty holders, obscures the underlying objectives. These views and underlying objectives were supported by an industry wide consultation in September 2002 – the *Revitalising health and safety in construction* Discussion Document (DD) – and resulted in HSC/E's decision to revise the current Regulations.

5. On 8 March 2005, the HSC agreed to publication of a Consultative Document (CD) containing proposals for a single set of Regulations, and supporting guidance, covering construction work in Great Britain. The proposals had been mentioned by Nigel Griffiths at the Construction Summit on 24 February 2005 (following early consultation with DTI), and were keenly awaited. They have been developed in line with Better Regulation principles, and will consolidate and revise provisions in the CDM/CHSW Regulations, which implemented much of the Temporary or Mobile Construction Sites Directive (TMCS) (1992/57/EEC).

6. The proposals also reflect the HSC, Strategic Forum for Construction and CONIAC views; and their commitment that the revision should improve the management of risk, and therefore move responsibility to those best placed to influence or manage it. Consequently, they aim to reduce bureaucracy and improve the general business management of construction projects, (which in turn should lead to improved health and safety management and increased profitability). The 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.

7. The CD was published on 31 March 2005, with formal public consultation ending on 29 July 2005 (informally extended to 31 August 2005 to accommodate late-comers). The consultation exercise was one of the most open, widespread and high profile undertaken by HSC/E, with considerable informal consultation, both before and after the formal consultation period. About 2500 people attended a series of 25

events around England and Wales, to learn about and discuss the proposals, organised in partnership with Constructing Excellence, the Institution of Civil Engineers (ICE) and CITB-ConstructionSkills. The Civil Engineering Contractors' Association organised similar events in Scotland.

8. The results of the consultation indicate strong overall support, from the key industry players, for the aims and structure of the proposals, although respondents felt more work was needed in some areas. Work is almost complete to analyse the responses in detail and, once this is done, a report on the consultation will be made public via the HSE Information Centres, website and online CDM webcommunities. The analysis work has been delayed because of the volume of responses, and the need to divert resources to deal with other high-priority policy work – principally responding to an enquiry from the European Commission (EC) in connection with implementation of the TMCS Directive. The proposals, i.e. draft Regulations, ACoP and Regulatory Impact Assessment (RIA) now need to be refined in the light of responses to the CD, and recent discussions with the EC, before the HSC makes its formal proposals to Ministers.

Recent developments

TMCS Implementation Issues

9. Although the CDM/CHSW Regulations are the UK's main vehicles for implementing the TMCS Directive, 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 2005. The EC has written to the UK (and other Member States) as part of a Europe-wide review of the Directive, seeking clarification of several aspects of current implementation. Very different transpositions of the Directive in Member States prompted the inquiry, and the main focus is around the roles of the co-ordinator and client.

10. HSE needs to ensure that the Directive is properly and proportionately implemented, as discussed with the HSC (HSC/05/02) and HSE's Challenge Panel (11 November 2005). The UK has provided a detailed response to the EC's enquiry, and officials from HSE's Construction Division and the EC met in Luxembourg on 26 January 2006 to discuss related issues. Work is now underway to refine the proposed Regulations in the light of those discussions. HSE's view is that we must get the Regulations right, not only in implementing the Directive, but in ensuring they reflect the Better Regulation principles of proportionality, accountability, consistency, transparency, and targeting (which the EC has taken steps to give life through its Action Plan on Better Regulation). We believe the proposals strike the right balance and satisfy the Better Regulation Executive's tests of good regulation.

Regulations

11. Although delayed by the need to prepare a detailed response to the EC enquiry, work to produce a post-consultation draft of the revised Regulations has begun. CONIAC CDM WG meetings were held in September, October and December 2005, and February 2006 – when the WG considered what needed to be done to prepare for a successful launch of the new package.

12. There are a number of key changes proposed by the new combined package, and HSE has recruited two industry secondees to help address concerns over the Regulations identified during the consultation. Tim Kind (Senior Policy Adviser with the Forum for Private Business) is working on issues associated with small/one-off clients and David Watson (a chartered engineer with WSP) on issues relating to the proposed changes to designer duties. They will be aiming to crystallise the key messages we need to give clients and designers when the new Regulations are launched; identify how best these could be delivered (and by whom); and identify any barriers to compliance and how to overcome them.

ACoP and guidance

13. On 6 December 2005, the HSC discussed a paper (HSC/05/123) reporting on the emerging findings from the consultation. The paper sought a steer as to whether the revised Regulations should be supported, as now, by a mixed ACoP and guidance package (preferred by industry), guidance only (as illustrated in the CD) or by a short ACoP and industry-produced guidance (HSE's recommended option). The HSC opted for a "shortish" ACoP with industry-produced guidance.

14. The CDM WG met on 5 December 2005, to discuss the proposed structure and content of an ACoP (if agreed by the HSC), and broadly reached agreement on this. HSE's Construction Policy Team has since prepared a first draft of the ACoP, which was tabled at the CDM Working Group meeting on 17 February 2006, for discussion at the subsequent meeting on 21 March. To comply with Cabinet Office/Small Business Service (CO/SBS) guidelines, the ACoP must be publicly available 3 months before the revised Regulations come into force. To ensure comprehensive underpinning of the CDM package, HSE believes that the industry-produced guidance should also be available then. Does CONIAC agree?

15. As part of the preparations for the ACoP, an extraordinary meeting of the CDM WG (with additional CONIAC representatives) was held on 24 January 2006 to discuss content for the chapter on competence assessment. Discussions focused on recommendations made in John Carpenter's recent report "*Developing guidelines for the selection of designers and contractors under the Construction (Design and Management) Regulations 1994*" (Research Report 422 published on 20 January 2006)¹, particularly assessment of co-ordinator competence. A report on the discussions will be made to the 30 March 2006 CONIAC meeting (M1/2006/5 refers), and recommendations arising from the discussion will be made to the Strategic Forum for Construction's Health and Safety Committee.

16. Conscious of the need to avoid a plethora of unilaterally developed, conflicting and confusing industry produced guidance, the CDM WG has considered how best to take the work forward. The WG felt that to convene a specific task and finish CONIAC WG, under the Chairmanship of Kevin Fear (CITB-ConstructionSkills), might be the most appropriate means – and envisaged that HSE's Construction Sector CDM Team would work closely in partnership with that WG to help manage the development process. The CDM WG would maintain a watching brief, to ensure that the over-arching principles of the CDM review were reflected in the work of the ad hoc guidance WG. Does CONIAC agree with these proposals?

¹ Available at <http://www.hse.gov.uk/research/rrhtm/401-500.htm>

Regulatory Impact Assessment (RIA)

17. Once the final content of the proposed Regulations has been resolved, a final RIA will need to be prepared and circulated to the Cabinet Office Regulatory Impact Unit (CORIU) and Small Business Service (SBS) for scrutiny. (This may lead to CORIU requiring further work and/or consideration of the RIA by the Ministerial Panel for Regulatory Accountability (PRA).)

18. The final RIA will take account of information received in response to the CD (HSE specifically asked for views on whether the cost/benefit calculations were reasonable, and if not, for hard data to support more reasonable calculations). It will also be informed by the outcome of baseline research being undertaken on HSE's behalf by Bomel, who are tasked with producing an interim report by 31 March 2006. Once the RIA is revised, HSE will need CONIAC's help with ensuring that the assumptions and conclusions are sound. Is CONIAC content with this approach?

Postponing the revised CDM Regulations implementation date

19. The CDM project's challenging timetable had aimed for the revised Regulations to commence on 1 October 2006, with the revised ACoP publicly available from 1 July 2006. Consequently, since publication of the CD, the construction industry has been gearing up for implementation of revised construction legislation from 1 October 2006, with increasing rumours, recently, of slippage to 6 April 2007.

20. Earlier oral reports to CONIAC from HSE's Construction Division advised on the recent EC related developments, which have influenced HSE's progress in finalising the legislative package. Several key post-consultation issues have also impacted on development of the package, and therefore its timetable - not least the HSC's decision that there should be a supporting HSC ACoP, with industry-produced guidance. HSE and the CONIAC CDM WG believe that it is imperative that the industry, particularly small businesses, has sufficient time to get to grips with the changes. It is therefore equally important that, to facilitate this process, there is a sound and consistent industry guidance package (as well as the ACoP) available at least 3 months before the Regulations are effective.

21. Apart from producing the supporting ACoP and guidance, a good deal of work remains to be done before the package can be finalised to the required standard - including taking account of the secondees' findings regarding designer and client duty issues raised during consultation, and the Bomel research being undertaken to inform the RIA. To avoid losing momentum, and to deal with the rumours, a swift decision needed to be taken on whether a 1 October 2006 implementation date remained viable, or whether industry needs and expectations, the HSC/E aims and objectives for the CDM review, and wider Government policies, e.g. Better Regulation would be best served by postponing until Spring 2007. Having considered the prevailing factors, HSE's Construction Division - with the support of the CONIAC CDM WG, decided that postponement was appropriate.

22. Given this decision, Central Government Common Commencement Dates (CCDs) for legislation mean an implementation date of 6 April 2007. This will coincide with significant changes to the tax system arising from reform of the Construction Industry Scheme. Exceptionally, and if the industry demands it, there may be

scope for HSE to plead an exemption due to special sectoral needs and introduce the Regulations on some other date. Does CONIAC think that we should explore this possible option further or settle for an April 2007 date?

Consultation

23. HSE has developed the CDM proposals in partnership with CONIAC, particularly its CDM WG. Both will again be consulted in due course, along with key HSE stakeholders. Should the proposals change substantially from those in the CD, there may need to be further public consultation on some or all aspects, but we do not envisage a need for this at present. Were this to be the case, it would also be likely to result in scrutiny by HSE's Challenge Panel, HSC's Small Business Trade Association Forum (SBTAF), CORIU, Ministerial PRA and the SBS – not to mention Department of Trade and Industry (DTI), Office of the Deputy Prime Minister (ODPM), Office for Government Commerce (OGC) and the HSC.

Action

24. CONIAC is asked to:

- endorse the need to have supporting industry guidance in place 3 months before the Regulations are in force (see paragraph 14);
- agree to a task and finish CONIAC Working Group to manage development of the industry-produced guidance (see paragraph 16);
- agree to help with ensuring that the assumptions and conclusions in the revised RIA are sound (see paragraphs 17 and 18); and
- note the revised implementation timetable and discuss whether HSE should aim for an implementation date of 6 April 2007 or explore other possible options (see paragraphs 19 - 22).

25. HSE's Construction Division will be preparing a business realisation plan, covering work from now to ultimate achievement of the revision's objectives, and will update CONIAC on that in due course.

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