

**THE CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2006**

**SMALL BUSINESS AND ONE-OFF/OCCASIONAL CLIENTS RESPONSIBILITIES**

**CONSULTATION AND REPORT  
THE HEALTH AND SAFETY EXECUTIVE**

**BY TIM KIND**

**April 2006**

## 1.00

## EXECUTIVE SUMMARY

- 1.01 In January 2006, the Health and Safety Executive (HSE) commissioned a three month appointment for the author to investigate and report on small and one-off/occasional client responsibilities under the Construction (Design and Management) Regulations (CDM).
- 1.02 The small businesses and one-off/occasional clients group surveyed appreciate the benefits of health, safety and well-being of the workforce, clients and other visitors in their workplace. However as they are responsible for their workplace, they expected third parties to exert similar responsibilities in situations under their' control. This included construction and work on building sites.
- 1.03 The challenge has been to capture the views of small businesses and one-off/occasional clients, which are not reliant on construction and health and safety for their business. Some organisations and businesses interfacing with clients have contributed views, which have been helpful to further understand the client issues.
- 1.04 Little evidence was found of a co-ordinated approach to integrating health and safety into regulations that impact on building works in the United Kingdom. There is a Better Regulation issue which needs to be resolved. A better regulation assessment will present the opportunity to enable and widen the scope of compliance by all clients, but particularly small business and one-off/occasional clients.
- 1.05 Whether in Government, the professions or commerce, an informed view with an overall expert knowledge of all the regulations impacting on construction activity could not be located. This reflected the fragmented nature of the regulations, where specialists operated within their own fields and clustered in chimney like structures, like Planning, Building Regulations or Health and Safety, having little in depth appreciation of the other regimes and how they impact on a single site. The construction industry reflected the regulations and, therefore, better regulation will result in a more efficient industry.
- 1.06 The Regulatory Impact Assessment (RIA) for the new Construction (Design and Management) Regulations (CDM) 2006 and the consultation reflected the chimney like structures. To the HSE's credit, the shortcomings in the consultation were recognised and further consultation commissioned, resulting in this report focusing on small and occasional clients and a parallel exercise for issues involving designers.
- 1.07 The organisations consulted, 'the Client Group' represent in the order of 10% of the small business sector, a number of which are represented on the HSE's own Small Business Trade Association Forum. Some of the organisations had responded to the original consultation through specialist subsections in construction or health and safety, but this consultation sought the views of the client group paying for the services of the sector. The consultation was supplemented by a random sample of small businesses directly, with input from the DTI Small Business Services consultative data base.
- 1.08 At an early stage of the consultation, it became apparent that many of those being consulted had little in depth knowledge of the existing CDM regulations

- and had little awareness of the new proposals. In these circumstances, it is questionable whether creating greater responsibilities on businesses unaware of the existing regulations will deliver the improvement in standards sought for the health, safety and welfare in the construction industry and whether it is the best or only solution.
- 1.09 The client group knew about the planning and building regulation systems sufficiently to appreciate specialist advice would need to be engaged to show compliance with the required regulations. It was known that planning permission would be required before any building could be undertaken. The general awareness did not extend to CDM.
  - 1.10 A high level of concern was expressed that the proposed new Construction (Design and Management) Regulations did not avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium sized undertakings, which is a key consideration under the Council Directive 92/57/EEC.
  - 1.11 Estimates of the cost burden varied between 5 and 50%, but the attribution of this was not clear. The spread seems to reflect a lack of a clear understanding of what was required and concerns that the smallest works would be affected disproportionately as baseline costs were charged, as opposed to assessing health and safety on-costs as a percentage of total costs. To some the cost reflected the increase in professional team fees, including the new role of co-ordinator, whilst to others there were costs associated with additional works and their own business's time costs. The author understands that the HSE has instructed consultants to specifically consider this aspect.
  - 1.12 The proposed new CDM regulations focus primarily on improving health and safety in design before construction and increasing client responsibilities, before, during and after construction. Through an assessment of better regulation, the need to eliminate omission or duplication in design for health and safety elements within different regulations would bring greater certainty and enable a step change for compliance by designers and clients.
  - 1.13 The premise that buildings in the United Kingdom can be unsafe when built and unsafe to build is a prerequisite of the need for the new CDM Regulations to improve design for health and safety. With limited exceptions, no building or structure can be built without planning permission. Under recent changes most types of planning application will need to be accompanied by a design and access statement. If there is a failure in the compliance system of design for health and safety required to secure planning permission, it seems reasonable for clients to assume that this is the point at which to address any shortcomings. This is a Better Regulation issue which should be resolved.
  - 1.14 Buildings and structures are designed to be compliant with the Building Regulations, which exist principally to ensure the health and safety of people in and around buildings. If there is a failure in the compliance system of design for health and safety in the building regulations system, it seems that this is the point at which to address any shortcomings. This is a Better Regulation issue.
  - 1.15 The concept, that the design of a building or structure should be confirmed safe to build prior to construction, is sound. As planning permission is required before construction, the timing of confirmation that a structure is safe to build suggests that this aspect should be addressed at this time. This is a Better

Regulation issue.

- 1.16 The requirements for large complex construction projects can be substantially different from the requirements of small businesses and one-off/occasional clients, which tend to seek delivery of the product contracted, compliant with all necessary regulations and at the price freely tendered. The dominant sentiment expressed was that a solution to any shortcomings amongst specialist and large companies involved in construction industry must not over burden the majority of businesses in the UK not involved regularly in works to their premises. A single integrated system of approvals is necessary, which is structured to meet the needs of all stakeholders. This is a Better Regulation issue.
- 1.17 For works readily understood as construction, where a contractor had sole control and the client would need permission to enter a construction site, the consensus amongst the consulted group was the contractor should have sole responsibility. The client's responsibilities to the principal contractor and the professional team would extend to meeting the payments for the quote agreed and freely tendered, providing information requested and in the client's possession and checking items brought to his attention as a duty by others regulated under CDM.
- 1.18 The inclusion of the design requirements for health and safety at the time of planning and/or building regulations, as appropriate, would enable their inclusion in the documents package for the building quotes tendered and through this, the compliance mechanism. Contractors would quote on the same basis, thus eliminating the perception that health and safety is an optional specialist extra and expose 'cowboy' operators ignoring CDM.
- 1.19 The inclusion under CDM of works to existing buildings or structures not significant enough in their own right to warrant planning permission or building regulations approval, in isolation from being part of a larger construction project, for instance redecoration, was not widely understood and the necessity challenged. The perception was that CDM did not apply, as HSE has little profile outside manufacturing at this level and the process of Notification is not readily recognised. A Better Regulation enquiry could assess whether the inclusion in the Directive of these works could more adequately be met, in UK health and safety law, by the requirement that single activity minor works to the workplace are controlled through the Workplace Regulations. These were more widely understood by the client group consulted, as part of their day to day management of health and safety.
- 1.20 The requirement and significance of Notification was not considered clear. If the enforcing authority for construction needs to have building works of a certain size specifically brought to its attention, this in itself indicates a detachment from the regulatory process recognised by most businesses in the UK, namely planning and building regulations. A system of automatic transfer of information, most if not all of which is in the public domain and available on-line, from an authorising authority to the enforcing authority would overcome the need for clients to have the responsibility. The enforcing authority would then be able to assess which works reasonably were above the threshold for Notification and notify the owners itself, thus eliminating doubt. Advising the enforcing authority that the construction phase was about to commence could be co-ordinated with the requirement to issue a building notice. Further consultation through the Better Regulation Executive could identify the most

efficient structure for smaller developments. Large and complex developments could operate within or outside the prescriptive process of the regulations.

- 1.21 The findings indicated that the client group consulted considered that, if the different regulatory systems impacting on one client with one site were properly co-ordinated, the need to be compliant to secure consent from the issuing authority would satisfy the design/pre-planned elements sought under the revised CDM. It would also assist if there was consistency of definitions and terminology in the different regulatory regimes, for instance 'development' in Planning, 'building works' in Building Regulations and 'construction' in CDM, but all referring essentially to one activity on one site.
- 1.22 If there was compliance with health and safety at the point that consents are granted, the need for the specific appointment of co-ordinator would be reduced, as the health and safety aspects of design, not included within the planning and building regulations systems, would be integrated within a single system.
- 1.23 For the appointment of a co-ordinator to have worth to the client group consulted, the client responsibilities need to be substantially or solely transferred to the co-ordinator. The potential new appointments of Co-ordinator under CDM and Appointed Person under the Building Regulations to secure compliance with different regulations impacting in similar ways on the same building works would be unnecessarily burdensome. This is a Better Regulation issue.
- 1.24 The client group considered competence was for the construction industry, those receiving payment from the client to deliver, to prove and, in default, as a statutory duty of contract. It was not generally considered reasonable for clients to have ultimate unlimited liability in default, with little knowledge of construction or the industries many diverse specialist skills, to extract and assess competencies each time an instruction is placed with no existing clear standards to refer to and under criminal liability. The client group are most reliant on proof of competence from the contractor for the smaller jobs under the Notification threshold, where appointments are optional and it is unclear when works to business premises become construction sites. A co-ordinated structure of readily identifiable certification should be developed by the industry, under the control of a single Government body. The construction industry is so diverse that no single body has sufficient influence to form the necessary overall structure for self regulation. A number of structures exist in specific skill areas, for instance CORGI for gas, but it is felt that they are not co-ordinated and are incomplete.
- 1.25 To summarise, the key issues arising from this assignment are:
  - i) The client group appreciated their own responsibilities, but expect others to do likewise, especially when carrying out construction work.
  - ii) It is for the construction industry to have an integrated structure of standards for compliance at every level and specialisation, which is easily recognised by clients, like CORGI is for gas. Contractors and advisers should be under a legal duty to confirm the qualification, at the point of first contact, before agreeing to quote for a job.

- iii) There is little evidence to suggest a co-ordinated regulatory approach for integrating health and safety into the various statutes and bodies interfacing with building work, in respect of design and pre-construction planning.
- iv) The original RIA for CDM 2006 and consultation with small and one-off/occasional clients was weak, but this report significantly addresses the issue.
- v) Those consulted had little in depth knowledge of the existing CDM regulations and less still of the proposals for 2006.
- vi) The regulations do not avoid burdening the development of SME's.
- vii) Relevant information should be conveyed between regulatory bodies and business relieved of the burden of Notification.
- viii) The notion that buildings designed under and authorised by the regulatory systems of planning and building regulations in the UK could be unsafe when built and unsafe to build needs further assessment.
- ix) CDM is marginalised through not being an essential part of a single integrated system of compliance and consent that regulates and authorises building work.
- x) A Better Regulation assessment needs to be undertaken for all regulations impacting on one client and one site.

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## **2.00**

### **BRIEF**

- 2.01 In July 2005 the consultation closed for the Revision of the Construction (Design and Management) Regulations (CDM) 1994, Construction (Health, Safety and Welfare) (CHSW) Regulations 1996, Approved Code of Practice (ACoP) and Guidance – (CDM 2006).
- 2.02 The Health and Safety Executive (HSE) subsequently identified that there was under representation in the responses to the consultation document from clients upon which responsibilities would be increased under the proposed revisions to the regulations, particularly from small business and one-off or occasional clients.
- 2.03 In December 2005 applications were sought to fill a three month appointment to consult small business and one-off clients and report on three areas, as follows:-
- 2.04
- Consult with the key Client intermediary bodies (particularly those representing smaller businesses who may be occasional clients) in order to better understand the concerns of this client group and identify ways in which these could be overcome.
  - Crystallise the key messages we (HSE) need to give to this client group prior to and during the launch.
  - Identify how best these messages should be delivered and by whom.
- 2.05 The full brief is attached in Appendix 1. A proposal was sought.
- 2.06 The proposal was agreed and is contained in Appendix II. The timescale of three months was acknowledged as being extremely tight. The appointment was confirmed in late January.

## **3.00**

### **METHODOLOGY**

- 3.01 A structure for consultation was agreed with the HSE's Head of Construction Policy, Richard Boland, with review meetings every two weeks.
- 3.02 A list of organisations to approach was agreed and included the HSE's Small Business Trade Association Forum. The organisations are listed in Appendix III, together the other bodies associated with the construction industry approached for their input as having experience at the interface with small business and one-off/occasional clients.
- 3.03 It was appreciated that a benefit would be if some direct contacts could be made with businesses and how to achieve this was acknowledged as problematic, particularly in the tight timescale. The writer approached the Department of Trade and Industry's (DTI) Small Business Service to approach its consultative database.

## 4.00

## EXECUTION

- 4.01 Immediately following verbal agreement of the appointment, some organisations were approached by telephone to seek briefing meetings. It became apparent that outside the specialist areas of construction and health and safety, there was little or no awareness of CDM, so a consultation on the changes proposed had no firm base from which to work.
- 4.02 It was acknowledged that, for the target group to be encouraged to contribute to a response, confirmation of the existing situation had to be addressed first. Secondly, a standardised format of questions was required to lead those responding through the regulations and for consistency of response.
- 4.03 Additional input was required to extract only and summarise the Clients role and responsibilities under the existing CDM regulations, on a back to basics principle and to summarise the proposed changes. This was undertaken in close liaison with HSE Construction Policy and, through the exercise itself, a number of drafting and presentational issues were highlighted in the revisions proposed. A matrix for response in the form of a questionnaire was developed. This necessarily delayed the consultation process which commenced late February. The summaries and questionnaire are attached in Appendix IV, together with the extract from the Consultation Document addressing Guidance to Clients, which was also included in the package.
- 4.04 Meetings were offered to all the representative organisations listed. These were arranged by agreement and where this did not prove possible, telephone conferencing calls were set up. Therefore, all bodies listed were approached and requested to respond. Out of 27 approached, some form of written response was received from 14, of which 11 completed the questionnaire. The last responses were received at the end of March.
- 4.05 The responses are set out in Appendix V. From the organisations, the responses to the YES/NO questions are shown in percentage terms. Separately, the comments from each organisation are tabulated under each question separately.
- 4.06 The comments from the sample individual business responses are tabulated in Appendix VI in the same format as for the organisations. The database used did not pre-select small business or one-off/occasional clients and, therefore, included businesses within the industry serving the client group. The responses from businesses indicating involvement in the construction or health and safety sectors are not included, as they fell outside the client group for consultation. The views expressed, however, have contributed to the issues and solutions identified in this report. The core sample was too small and lacked spread to act as a meaningful statistical base.

## **5.00**

## **REPORT**

### **5.01 TASK 1**

**5.02 Consult with the key Client intermediary bodies (particularly those representing smaller businesses who may be occasional clients) in order to better understand the concerns of this client group and identify ways in which these could be overcome.**

5.03 Details of the consultation are confirmed under Execution earlier in this report.

5.04 On the questionnaire the European Commission's definition of small business by number of employees at 50 or under was used and included as an item for response in the questionnaire. Organisations were made aware that the responses were from the perspective of small business and one-off/occasional who might be a client, rather than medium and large businesses or those whose business activity was reliant on construction work and health and safety expertise.

5.05 Some organisations in the construction industry with members having direct contact with the client group consulted were also approached to highlight issues experienced and assist in identifying possible solutions.

5.06 One-off and occasional clients were a challenge to contact, as these could be any business in the United Kingdom. Large and medium sized businesses, particularly those with personnel dedicated to property maintenance and health and safety outside their business sector, and smaller specialist businesses, dependent on construction, property development and providing services and expertise in the field of Health, Safety and Welfare, were avoided. The assistance of the DTI Small Business Service was secured and its consultation database used. The recipients were not pre-selected for the client group to be consulted. The comments contained in Appendix VI are indicative and give additional insight.

5.07 The contribution from the accountancy professional bodies is valuable as, not only are the majority of accountancy practices substantially small businesses and/or one-off or occasional clients for building works, but their members' client base is substantially the same sector.

## **6.00**

## **CONCERNS**

### **6.01 General**

6.02 The Businesses and organisations approached understood and appreciated the role and contribution to their members businesses of the health and safety to their business activity in their own work environment. The health, safety and well-being of their clients, staff and other contracted parties are recognised as important to the overall business offer.

6.03 The organisations' members sought to operate 'on a level playing field' and wanted those subverting accepted practices to be dealt with appropriately.

Substandard and sometimes illegal practices were felt to undermine legitimate business activities. The symptoms have been recognised within the construction industry and HSE, particularly in respect compliance with CDM 1994. The challenge is how to ensure all quotes for works to buildings are tendered on the same basis.

- 6.04 The overriding concern from the client group consulted was that businesses do not have control outside their own workplace environment and, therefore, do not expect to be liable for aspects outside their control, such as construction sites. Additionally, responsibility for health, safety and well-being is not considered the sole liability of the business owner as employer. Individual responsibility is considered equally important.

### **6.05 Construction (Design and Management)**

- 6.06 From those consulted, it is apparent that many small businesses and one-off/occasional clients are unaware of all or some aspects of the current CDM 1994 and, consequently, had no base upon which to assess the revisions proposed. A number of the client group consulted suggested a campaign of awareness of the existing regulations, and their operation, would substantially bring the results sought by the revisions. The consultation found as follows:-

- 6.07
1. Awareness of the current CDM 1994 regulations was poor. 55% considered their full membership were aware of the regulations.
  2. There was little in depth understanding of the regulations, existing or revised. Less than a third of the organisations considered their members understood the client duties under the current CDM.
  3. The change in responsibilities and the implications from Employer in the workplace to Client for work undertaken to the business premises under CDM was not widely appreciated. 73% considered the difference unclear.
  4. The need for an additional regulatory regime to planning and building regulations under CDM 2006 applicable to the same building works, together with the change in status between civil and criminal law for apparently different health and safety aspects of the same design, was found confusing and unnecessary.
  5. The implications to various business insurance policies for the client group was of concern: civil law - covered, criminal law – not covered.
  6. The definitions, including construction site, project, design, competence and notification, created uncertainty, as the commonly understood meanings differed in extent from those defined in CDM and were considered too open ended and unclear.

## 7.00

## WAYS TO OVERCOME CONCERNS

### 7.01 General

- 7.02 Businesses have knowledge of the Planning and Building Regulations systems. Planning and Building may be separate legal structures under different Acts of Parliament, but there is a general understanding, for example, that Planning Permission will be followed by the need for Building Regulations approval. Both systems are known to be administered by the Local Authorities. It is less well-known that the overseeing Government Department is the Office of the Deputy Prime Minister (ODPM).
- 7.03 Planning Permission is the document that allows all but the very smallest construction to be built. A plan-led system sets out what can be built and where in England. The ODPM sets national planning policy. Draft plans are prepared by local authorities. Most new buildings or changes to existing buildings or the local environment need planning permission from the local authority. National planning policies are set out in new-style Planning Policy Statements (PPS), which are gradually replacing Planning Policy Guidance notes (PPG). National policies are also laid out in Minerals Planning Guidance and Policy Statements (MPG/MPS), Marine Minerals Guidance (MMG) and Circulars. Circulars include Building Regulations, Hazardous Substances, Disabled Persons, changes of use. For a full planning permission to be granted, detailed drawings and full support material is submitted all of which will need to be compliant with planning policy including many regulations. From the ODPM's planning portal a list of Circulars, together with a list of good practice guides, including safer places, is included in Appendix VI.
- 7.04 It is at the time a full planning application is being processed that overall compliance in design is assessed from drawings and details submitted and value judgments are made. For permission to be granted, conditions may be required. To be considered mainstream, compliance in design for all health and safety considerations under CDM would benefit from being included at this point in time. Any additional costs would be incorporated at this appraisal stage before, for instance, Section 106 agreements are settled, which involve payments to the councils for works benefiting the community. Any conditions attached to the planning permission could be supplemented in detail as part of, or along side, the Building Regulations Approval process (Appendix VII) and any conflicts between the different regulatory regimes eliminated.
- 7.05 To best achieve 'a level playing field', especially as between contractors and their quotations, all the regulatory requirements need to be assessed at the same critical points in an integrated system of approvals. The major critical point is planning permission.
- 7.06 Businesses are aware the responsibilities to health and safety within their business environment and are familiar with the insurance policies they hold. Apart from manufacturing industries, where the HSE is the enforcing authority, most businesses awareness and contact over health and safety matters is with local government as the enforcing authority.
- 7.07 The client group consulted generally considered the construction industry should be responsible for health, safety and welfare of the working environment under its control, namely construction sites, whilst they retained

control over the business environment under their control.

## **7.08 CONSTRUCTION DESIGN AND MANAGEMENT**

### **7.09 Awareness of the current CDM 1994 regulations was poor**

- 7.10 Small business and one-off/occasional clients do not see the need to be aware of CDM 1994 as minor works in their workplace were not considered construction and were perceived to not fall within the current Construction (Design and Management) Regulations - (CDM 1994). There is an issue of clarity over when any works are currently included or not included
- 7.11 Knowledge about Construction Design and Management Regulations is less well known and when the regulations might apply even less well known. The HSE is generally known as an organisation in the area of health and safety and there is some understanding that it is the authority for construction sites especially if something goes wrong. However, there was less understanding that the government departments overseeing HSE were the Department of Health and ultimately the Department of Work and Pensions. There was less understanding still of the Construction, Design and Management Regulations, a title in which there is no reference to health, safety or wellbeing, and that the enforcing authority is HSE. Without a high level of awareness, the current regulations are not properly effective. The lack of effectiveness appears to be a main driver to increase the client responsibilities under the proposed new regulations. However, increasing client responsibilities may not be the most effective way of increasing health safety and welfare on construction sites for the client group.
- 7.12 For works that are perceived as construction and therefore covered by CDM 1994, it is likely a third party who should have knowledge will be engaged and contractual documents tend to include details about health and safety responsibilities including CDM. The liabilities of the client were generally considered acceptable, if not welcomed. The overriding sentiment expressed was that those contributing and benefiting from payments into the construction industry should be responsible for the environment under their control and those operating within that environment.
- 7.13 The issue of clarity between what is included and excluded as construction works and Notification, together with the significance, was generally misunderstood in the client group, if there was any awareness at all.
- 7.14 For those in the client group consulted with some awareness of CDM, minor works, involving less than 5 workers on site and or less than a 30 day period, were perceived as not regulated by CDM 1994, as Notification was not required and HSE was not visible. Consequently, HSE's interest as the enforcing authority did not register. This general misunderstanding persisted even amongst those that were comparatively well informed, for instance in manufacturing.
- 7.15 Knowledge and familiarity with CDM was greatest from those in the industrial sector where the enforcing authority was already HSE and there was established contact and an existing channel through which to seek and receive advice.
- 7.16 There is a need for the situation to be much clearer. Consideration could be

given to 'legalising the perception' by leaving works below the notification threshold under the Workplace Regulations. The smallest works are the biggest problem area. For the small business and one-off/occasional clients, it is an unrealistic expectation to have to rely on poorly informed contractors, at the smaller end of the commercial construction industry, to inform clients of their client duties in law. These contractors tend to grow out of the domestic market, which engages the influx of foreign labour from within the European Union and elsewhere with little or no knowledge of the UK regulations. There is a persuasive argument for excluding small single discipline jobs from CDM and leaving the client duties generally under the workplace regulations. Discussions with the European Commission would clarify whether there was a matter of principle that the Directive can only be discharged through CDM in UK law.

#### **7.17 Little in depth understanding of the regulations, existing or revised**

- 7.18 CDM 2006 is improving clarity about the Notification threshold for those aware of the regulations. The difference in perception remains about what constitutes construction and how it is defined in the regulations. The drafting of CDM 2006 needs to make it very clear that all construction work as defined in the regulations falls under CDM and that it is only the level of regulation that changes upon Notification, which remains at 30 days and/or 500 person days.
- 7.19 The word 'construction' in colloquial terms to many in the client group consulted does not include decoration, maintenance or cleaning as single activity jobs, rather than as part of larger building works. There is a plain English and definition issue here. Construction tends to be conceived as a bigger undertaking requiring permission from an authority, most notably Planning Permission and Building Regulations approval.
- 7.20 It is generally accepted that construction is different from normal workplace activity and is a specialist area that requires different treatment. This is essentially the difference between a working environment which is substantially the same from day to day and a construction site where the environment is constantly changing. However, the point at which works to a building change, in the perception of a business person from a supplementary workplace activity into construction work, is not widely appreciated. The increase in safety awareness generally, whereby barriers are erected to exclude all but the specialist contractor for almost every activity in or to a building, has contributed to the confusion over when a construction site is created and CDM 2006 would become operable for those aware of the regulations.
- 7.21 Business people not regularly in contact with the building industry tend to have a perception about what is construction. This primarily relates to activity behind a fixed hoarding, under a building contract for which the local authority has given permission in some way. It is readily identified when remote from the workplace, but far less clear when the workplace remains open and parts may become re-designated as construction sites for the purposes of CDM.
- 7.22 This perception has relevance also to the level of care and responsibilities for health, safety and welfare when building work is undertaken. If the client remains in the workplace and building works are undertaken within the overall boundaries of the businesses 'ownership' then there tends to be a propensity to share existing facilities in an agreed way. When the construction site is remote from the client employers' workplace environment, then the perception

of responsibility shifts away from the client to the sole or principal contractor.

7.23 CDM needs to achieve a similar level of perception to business that planning and building regulations have, namely sufficient knowledge to know specialist skills need to be engaged at the time of need. CDM is not integrated within the structures normally dealt with by Building Control Departments of local authorities, which for many businesses may be first point of enquiry. It is questionable whether there is sufficient awareness amongst the local authorities officers of the relevance of CDM, let alone whether this knowledge would in any way be conveyed to a potential applicant for planning or building regulations. This is a challenge to be met.

**7.24 Change in responsibilities and the implications from Employer in the workplace to Client for work undertaken to the business premises was not widely appreciated**

7.25 Where skilled advisers outside the employers' own business have been engaged, plans drawn up, permissions acquired and building contracts entered into, the change from employer in the workspace to client for building works is generally understood. However, the additional liabilities appertaining to CDM are less understood. Standard building contracts, for instance the JCT (Joint Contracts Tribunal) suite of contracts, do refer to CDM and reference to employer duties are included.

7.26 For minor works and activities not perceived as construction, for example decorating, where little or no permissions are required or sought, and instructions are possibly given direct by the employer, either in writing or even verbally, the change in status is little understood and the relevance of CDM little known.

7.27 The change in status from employer to client and the consequential impact on liabilities caused some concern within the client group.

7.28 In terms of a business being made aware of their client duties clear majorities favoured the contractor (64%) and the adviser (73%) as provided in the draft regulations. Significantly, a strong view was expressed that clients should be advised of their duties from Planning Permission (73%) and Building Regulations Approval (82%). At this time compliance was required of other regulations, including aspects bearing on health and safety, for example, structure, fire and electrical safety. An alternative proposed was that the HSE have its own approval system and become an authorising as well as enforcing authority.

**7.29 Need for an additional regulatory regime under CDM 2006 applicable to the same design of building works, together with the change in status between civil and criminal law for apparently different health and safety aspects of the same design, was found confusing and unnecessary**

7.30 For most works perceived as construction work to their premises the likelihood that planning permission and/or building regulation approval could be required from the local authority was known. In addition, it was also known that proposals would need to be compliant with the necessary regulations as a consequence. As this activity was a specialist area, it was generally acknowledged that skilled persons would be engaged to facilitate the works being undertaken.

- 7.31 There was an understanding that procedures would need to be followed, notices to be issued and complied with and penalties incurred if the regulations were not met.
- 7.32 There seemed little or no awareness that having become a client, to the professional team and under the building contract and having secured planning permission before building works commenced and being compliant with the building regulations in civil law, also meant additionally becoming a client under CDM for the same design under a different regulatory system in criminal law.
- 7.33 In the fourth quarter of 2005 ODPM announced 143,000 planning decisions had been made by district planning authorities in England alone of which 69,500 were householder decisions. Therefore, potentially 73,500 decisions relevant to CDM had been made. Throughout the UK there are approximately 120 HSE Construction Inspectors. It is clearly impractical to monitor effectively health, safety and welfare on all commercial construction sites in the UK without significantly increased resources and/or the involvement of local authorities particularly in the area of prevention. The imbalance contributes to the perception that one 'can get away without doing it' and that the HSE is primarily an enforcing and prosecuting authority after a reportable incident has occurred. In effect, CDM is marginalised by not being an essential part of the core system of regulation understood by most of the client group consulted.
- 7.34 Even with greater resources available on the ground overall, ODPM is considering how to improve compliance with the building regulations by local authorities through introducing 'Appointed Persons'. The new CDM proposals introduce the role of 'Co-ordinator', which replaces and enhances the role of Planning Supervisor. There seems little need for two such positions. This is a Better Regulation issue.
- 7.35 The Building Regulations cover aspects of Health and Safety in design, including structure and fire safety, protection from falling, collision and impact, electrical safety. The list of the Parts of the Building Regulations is included in Appendix VII.
- 7.36 The ODPM on its website declares it is responsible for Building Regulations, which exist principally to ensure the health and safety of people in and around buildings. The regulations apply to most new buildings and many alterations of existing buildings in England and Wales, whether domestic, commercial or industrial. Further the ODPM site declares that Britain's Health and Safety Commission (HSC) and the Health and Safety Executive (HSE) are responsible for the regulation of almost all the risks to health and safety arising from work activity in Britain.
- 7.37 The HSE declares on its construction home page that it deals with all aspects of construction work in England, Scotland and Wales. Units are responsible, by way of example, for design and related issues and developing new construction legislation.
- 7.38 It is hardly surprising that there is some confusion in the client group consulted when unclear and apparently conflicting messages emanate from different agencies of Government.
- 7.39 There is a better regulation issue to be resolved, especially in the aspect of

Design. As more than one body of Government is involved, the Cabinet Office should be advised so that a satisfactory resolution can be established.

#### **7.40 Implications to various business insurance policies for the client group was of concern: civil law - covered, criminal law – not covered**

7.41 The client group consulted understood the necessity for carrying a range of insurance in the workplace environment. There was a perception and willingness that building workmen visiting the business premises could be covered by insurance policies generally held by the employer in the same manner as those members of staff on the payroll or other visitors to the business premises, including repairs to machinery or cleaning windows. There appeared little understanding that liabilities under CDM were under criminal law and that, as a consequence, the insurance policies held would not cover the liability the employer as client would be under for building work commissioned to the workplace. In certain instances, existing policies might cover a civil case for negligence and possibly some additional legal fees.

7.42 In a similar manner to planning and building control where design aspects of health and safety are regulated under civil law, the design elements, required by CDM prior to commencement of the building works, could be placed on a similar civil law status, reserving the actual physical activity under the construction contract to remain within criminal law.

#### **7.43 Perception compared with the reality of what activities are included within the regulations**

7.44 Start-up, micro (0 – 10 employees) and many small businesses (11 – 50 employees) more closely align to residential clients, which are specifically exempt from CDM 1994, than large commercial clients involved with building works on a regular basis.

7.45 The concept of minor decoration, maintenance and cleaning being construction, as defined in the regulations with the legal and insurance implications, was generally considered onerous and an unnecessary significant change from their responsibilities as clients for building works to their homes.

7.46 The definition of Project, with an undefined beginning and no end, caused concern. The time to confirm that a building project was safe when built and whilst being built was generally considered to be the point at which all considerations are brought together and a decision made. For most significant projects this was when an application for planning and/or building regulations, where appropriate, is processed. It was appreciated that the cost of rejection through the application not proving compliant was at the clients risk, but prior discussion with the regulating authorities should minimise this risk. If an application was not required for planning or building regulations, because the project was too small or subject to deemed consent, then the appropriate time of starting a project could be when a quote is tendered. Under these circumstances the contractor or adviser, if one was engaged, would need to confirm to the client that the works were compliant.

7.47 Design has a number of phases so far as this relates to clients, which essentially could be described as concept, detail and compliance. The concept phase is dependent on the client who is defining the scope and nature of the works. Once the concept has been defined the detailed work could

commence. When the detailed work was undertaken, the decision to proceed to seek appropriate approval(s) could be made. The compliance phase would be completed when the necessary consents are granted. The concept phase was considered inappropriate for CDM enforcement and, although designers would need the knowledge and to comply with relevant regulations, again CDM 2006 enforcement was not thought appropriate during the detail phase. It was considered that compliance with the design and pre-planned aspects of safe construction within CDM was most appropriate at the point of decision by the regulating authorities for planning and building regulation. The risk of attaining the required compliance standards would met by the client and the professional team through the contractual arrangements. No consent would be granted until the standards of compliance are met.

- 7.48 The majority view was that it was for the construction industry, those benefiting from the payment from the client, to prove competence. Where skilled advisers were engaged, they should be liable for their recommendations. The liability of the client should be limited to making the payments to the contract freely tendered, providing information requested and in the client's possession and checking items brought to his attention as a duty by others regulated under CDM. For work freely quoted, the contractor should be under a legal duty to cost in all compliance required, especially for minor works not needing local authority approval. Small business and one-off/ occasional clients generally considered that the whole construction sector should establish its own standards of competence for each discipline, which could be clearly understood by all clients for the level of work required. A structure of competence, easily recognised at every level by the client group, needs to be established and implemented by law, as the construction industry is so fragmented that no one organisation would seem to have sufficient influence to enable an overall structure of compliance. There are standards being set in certain aspects of the construction industry, for example by the Construction Industry Training Board (CITB) and the introduction of the voluntary CSCS card system for health and safety, but these initiatives need to be accepted industry wide and part of a single system, so they are instantly recognised by all in the same manner as CORGI is to gas fitting. The plumbing industry appears to be considering a licensing system.
- 7.49 As CDM was not generally known by small businesses and one-off/occasional clients outside those making a living in the sector, the notion of Notification or its implications really did not feature. This was considered an aid to the regulatory authorities and bureaucracy with little or no benefit to the industry or the client. An integrated and automatic system of information sharing between regulatory regimes was considered realistic in the era of online communication.
- 7.50 Although there is an appreciation that health and safety is an important aspect in the working environment, it is but one aspect among many for the client. Further, it is generally accepted that each business has health and safety responsibilities within its own environment. The construction industry has particular considerations, but others do also whether it is heavy industry, manufacturing or running a shopping centre with thousands of visitors daily. Small business and one-off/occasional clients accept the overall principle of having responsibility for health and safety matters within the environment under their control with their own staff, but generally do not consider they should have a liability for an environment not under their control or for staff not on their payroll. If an industrial client orders new plant which may be dangerous to manufacture, he does not generally expect a liability for the

health, safety and welfare for all that happens on the site or staff not in his employment and which could be hundreds of miles away. Several of the client group consulted expressed similar expectations in respect of building sites.

- 7.51 The extension of the liabilities for design concerned many consulted. It was considered that where health, safety and welfare is capable of being designed, and by implication this would be before any building works need to commence, then this should be assessed and only when compliant should planning permission and/or as appropriate full plans building regulations applications be approved.
- 7.52 There is a general concern that if the health, safety and welfare aspects of the design are of equal or greater importance than, for example, environmental issues, emissions, fire and structure, then these elements should be considered at the same time preferably under the same integrated regulatory regime and established as compliant before relevant consents are given.
- 7.53 The aspect of how it is constructed, in so far as it cannot be pre-planned when permissions are granted, is considered the legitimate responsibility of the sole or Principal Contractor who controls the construction site.

## **8.00 CONCLUSION**

- 8.01 The view of the majority of small businesses and one-off/occasional clients consulted is that in principle:
- 8.02
- i) The responsibility of the client is to issue instructions and letters of appointment to enable required building work to be undertaken that is compliant with relevant regulations and pay the costs including the contractors freely tendered.
  - ii) The responsibility of the designer should be to ensure the drawings, quotation and related documents are compliant with all regulations and included within all documents upon which a contractor relies to quote.
  - iii) The Principal Contractor should have responsibility for what happens on the construction site to timescale and to quotation.
  - iv) The responsibility of the industry is to openly prove the competencies in all sectors with a common overall structure of graded standards for all disciplines for the building works required.
  - v) The responsibility of the regulating authorities is to make sure permissions are only issued that comply with all regulations applicable to the building works.
  - vi) Client duties, including works not requiring planning permission or building regulations approval, to remain under workplace regulation and enforcement.
- 8.03 Although CDM 2006, as drafted, has a one solution fits all theme with the client having full liability in the last resort, the reality is there are several aspects which can be separately addressed.

- 8.04 To encourage and achieve a culture that health, safety and welfare is a central constituent of any and all activity within the construction process, it should be:
- i) Part of a single regulatory structure to the sector recognised by small businesses and one-off/occasional clients and not separate there from.
  - ii) Part of each constituent aspect of all skills and competencies within all contributors to the industry that benefit from the client's payment, from the labourer to the finished product. Health and safety at every level should not be an additional specialisation under a separate regime.
- 8.05 Compliance with Planning and Building Regulations is decided by the Local Authorities under the ultimate authority of ODPM under civil law, whilst CDM is enforced by HSE through the Department of Health and ultimately the Department for Work and Pensions under criminal law.
- 8.06 Health and safety compliance, particularly aspects of design and methods of erection that can be pre-planned, should be integrated within the system of checks and balances of approvals, compliance and penalties, which is the Planning and aligned Building Regulations system. Something that can be designed and pre-planned should not be a criminal matter, especially when other important aspects of design are not. Criminality should be left to where there is a serious breach and/or wanton disregard as to how a pre-planned activity is executed.
- 8.07 As the costs and benefits for any building works are being assessed during the process leading to securing a planning permission, the design criteria and resource allocation appertaining to health, safety and welfare could be integrated as part of this overall assessment process. This would allow the design aspects of health and safety to be considered along side and at the same time as other complimentary and sometimes conflicting regulatory requirements, for instance disability and conservation issues. Consents should not be given unless all relevant aspects are compliant with all the necessary criteria impacting on one site. Contamination issues are addressed at planning and environmental and emissions are now incorporated within Building Regulations. Health, safety and welfare detailed design and pre-planned criteria could be treated in the same way. This would leave the operation of how construction is executed on site under CDM 2006 within the control and responsibilities of the sole or principal contractor.
- 8.08 Building Regulations are not necessarily prescriptive, but full plans approval could be structured so as to take account of health, safety and welfare regulations that are elements of design and capable of pre-planned organisation before site works start. Small business and one-off/occasional clients would then know the design was compliant with health and safety regulations. Should a client, particularly larger clients, subsequently instruct alternative proposals on a non-prescriptive basis, the liability would clearly then rest with the decision makers and those endorsing the alterations.
- 8.09 It was not considered good regulation to have one client with one site, but more than one system of control. More than one regulatory system addressing

similar and possibly conflicting criteria invariably leads to confusion and misunderstanding. The Better Regulation Executive should be requested to consider and pronounce on the matter.

- 8.10 Consideration should be given to defining construction work under CDM 2006 to be building work for which planning and/or building regulations approval is required. All other works could remain under workplace regulations overall. This should fulfil the EU Directive, whilst allowing business to operate under its established and familiar systems. Under these circumstances, the treatment of demolition not requiring permission would need to be addressed as part of better regulation.
- 8.11 Concern was expressed that the increased burden on clients under CDM 2006 did not meet the test under EU Directive 92/57/EEC 24 JUNE 1992 to “Avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings”.

## **9.00 ISSUES AND OPTIONS FOR SOLUTIONS**

### **9.01 One business, One building project, One integrated regulatory structure/framework for compliance**

9.02 Possible solutions for consideration are identified below. This is not considered exhaustive, but a starting point for wider consideration, possibly under a Better Regulation assessment.

### **9.03 ISSUE 1**

#### **9.04 How to stop buildings and structures that are unsafe in design from being built?**

#### **9.05 General Solution:**

9.06 Only allow buildings and structures to be built that are compliant with all safety requirements.

#### **9.07 Timing:**

9.08 The principle element of timing in allowing most buildings and structures to be built, especially for most small businesses and one-off occasion clients, is full planning permission:

Before full planning permission it cannot be built.

After full planning permission it can be built.

9.09 An alternative or supplementary element of timing is securing building regulations approval and compliance. Building Regulations approval can be obtained through a full plans application prior to construction starting, which is the safest route for small businesses and one-off/occasional clients to manage risk, and a building notice has to be lodged at least 48 hours before building works commence. Consideration could be given to extending this period to allow more time for assessment by the regulatory authority, particularly for more complicated building works.

#### **9.10 Designed to be safe when built:**

9.11 It is unclear how the business person in the role as client, especially the small business and one-off/occasional clients, can ensure what is to be built is compliant with the design elements in the proposed CDM 2006 regulations and be safe when built.

9.12 There is a lack of clarity about what health and safety design requirements fall exclusively within CDM 2006 that are not contained in other regulations, particularly those assessed under planning and building regulations approval requirements. The use of different words and definitions in different regulatory regimes for essentially the same product also confuses eg development - planning, building works – building regulations and construction – CDM.

9.13 Under planning law, most development cannot start to be built without planning permission. For permission to be granted, a process of compliance has to be

undertaken prior to the authorising authority deciding.

- 9.14 Planning: Individual planning permissions are granted under powers conveyed by the Town and Country Planning Act 1990 ([http://www.opsi.gov.uk/ACTS/acts1990/Ukpga\\_19900008\\_en\\_1.htm#tcon](http://www.opsi.gov.uk/ACTS/acts1990/Ukpga_19900008_en_1.htm#tcon)) for “Development” and will comply with the requirements of the local authorities’ Plan prepared under powers from the same Act. The powers are extensive and cover many aspects of building, including the environment, hazardous substances, disabled persons and safety from crime. There is limited reference specifically to safe development. Approval for compliant development is granted by elected councillors as Planning Permission.
- 9.15 Under the Building Act, “Building Works” have to be compliant as a minimum standard with the Building Regulations and formal approval can be secured prior to work commencing on site through the full plans application process.
- 9.16 Building Regulations: Under powers conveyed under the Building Act 1984 (<http://www.odpm.gov.uk/index.asp?id=1130483>), regulations may be made the purpose of securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings, with respect to the design and construction of buildings and the provision of services, fittings and equipment in or in connection with buildings. The current regulations are the Building Regulations 2000 (as amended) and they promote standards for most aspects of building construction, including structure, fire and electrical safety. Approval of works and implicitly compliance with the regulations is given by the building control executive of the local authority at critical stages of the building process. On completion, compliance can be certified by the issue of a building completion certificate.
- 9.17 CDM applies to all design work carried out for construction purposes (including demolition and dismantling). Design in relation to any structure includes drawing, design details, specification and bill of quantities (including specification of articles or substances) in relation to the structure and under the proposals will include all calculations prepared for the purpose of a design. There is no approval system from the enforcing authority or an authorising authority. No application has to be made. There is a requirement to Notify the enforcing authority, the HSE, for works expected to take more than 30 days. Most businesses do not primarily assess building works in these terms.
- 9.18 Construction (Design and Management) Regulations 1994: Under powers conveyed by the Health and Safety at Work etc Act 1974 (<http://www.healthandsafety.co.uk/haswa.htm>) [Note: the act is not accessible online from the Office of Public Sector Information (OPSI) or HSE and the accuracy of this site is unknown] provisions can be made for securing the health, safety and welfare of persons at work, for protecting others against risks to health or safety in connection with the activities of persons at work, for controlling the keeping and use and preventing the unlawful acquisition, possession and use of dangerous substances, and for controlling certain emissions into the atmosphere; to make further provision with respect to the employment medical advisory service; to amend the law relating to building regulations, and the Building (Scotland) Act 1959; and for connected purposes.

### **9.19 Options for solution**

- 9.20 HSE becomes an authorising as well as enforcing authority for CDM.
- 9.21 Compliance before construction work commences is authorised by another authority with HSE as the enforcing authority.
- 9.22 Introduce into existing authorising and compliance structures some form of requirement for the CDM Design criteria to be met either as a pre-condition or a condition to be fulfilled before the start of construction work.

### **9.23 ISSUE 2**

#### **9.24 How to stop buildings and other structures from being built that are unsafe to build?**

- 9.25 It is not apparent that either Planning or Building Regulation regimes adequately address this issue, but how a structure is to be built is important.
- 9.26 The new CDM Regulations propose that the client's team have a duty to reasonably ensure that through design construction is capable of being built safely prior to commencement of the building works. There is no authorising procedure to secure compliance, just a responsibility.

### **9.27 Options for solution**

- 9.28 Assess how an authorisation and compliance mechanism can be established by HSE.
- 9.29 As the capability assessment has to be undertaken prior to construction, it is by implication capable of being pre-planned. Therefore, as far as design is concerned, it could be an input required as part of the overall planning approval process and, for instance, a full plans building regulations application.
- 9.30 A method statement could be a requirement for planning, in much the same way that environmental reports are required.
- 9.31 Similarly, some form of input could be required within the Building Regulations approval system, most probably through the full plans option, so that small businesses and one-off/occasional clients can be assured of compliance. This could be supplemented by industry guidance for established practices and endorsed by HSE.

### **9.32 ISSUE 3**

#### **9.33 How to stop buildings and other structures that are**

- i) Safe when built**
- ii) Safe to build**

#### **from being built unsafely?**

- 9.34 It is primarily CDM that regulates what actions happen on a construction site.
- 9.35 Planning and Building Regulations primarily address how the built environment will be when completed. It is unclear whether there are any specific requirements in these regulations bearing directly on the process of

construction on site but, as part of a better regulation assessment, clear demarcations should be clarified.

### **9.36 Options for solution**

9.37 For those small businesses and one-off/occasional clients with little or no involvement in the construction industry, it is a primary option that those specialists in the construction process, receiving payment for their skills from the client, should have a legal commitment to act safely and abide by the authorised industry standards applicable to their skills set and only quote on this basis.

9.38 In default of a contract stating otherwise, control of the construction site in law should be the sole responsibility with the Principal Contractor, either as sole contractor or as the contractor with responsibility to control other contractors.

9.39 A clear statement as part of CDM that a breach of the regulations by the client would include imposing alterations or restrictions above those freely contracted. A builder developer could be both a client and principal contractor, as well as fulfilling other roles identified in CDM. Small businesses and one-off/occasional clients, not already part of the construction industry, favoured an arms length approach to something they would pay for to the quote tendered, but not otherwise be directly involved in the day to day management.

9.40 It is clear that, whilst small businesses and one-off/occasional clients appreciate they have a responsibility to pay for quotations freely tendered, the general feeling is that this is where the client responsibility for what happens on the construction site stops, on the understanding that:

- i) The client does not impose outside influence themselves, or through their adviser(s), via enforced design alterations.
- ii) The client has a duty to check when those aspects to check are conveyed to the client by their direct contact for the undertaking, whether it is contractor, adviser or co-ordinator, under duties stated in the regulations.
- iii) The client responsibility would extend to checking that a health and safety plan exists, not the content, unless the client is specifically requested by other duty holders under CDM 2006 for details that he might have. One option could be for the industry to have a standard form of enquiries, to which specific questions could be added, in a similar manner to legal enquiries for a conveyance.

The guidance should be clear and directly match the regulations. Some feedback considered the guidance from the original consultation did not reflect fully the extent of the responsibilities under the regulations.

### **9.41 ISSUE 4**

#### **9.42 Notification**

9.43 The need for Notification in the UK seems to be a requirement of the regulatory regime itself, illustrating short comings in the overall framework of regulation governing building work. As CDM is detached from the mainstream framework of compliance and approval centred on planning and building regulations structures, the enforcing authority is substantially unaware of most building

works without Notification.

- 9.44 Opinions in the client group were equally divided between about whether the trigger for the process of Notification, where work is scheduled to last longer than 30 working days or the volume of work to exceed 500 person-days and the standard transposed from the Council Directive, was best for the United Kingdom. 30 working days was understood as a statement, but was not amongst the main criteria considered at the inception of new building works by the client group consulted, where size and cost were amongst the main considerations.
- 9.45 The client group generally considered Notification a technical issue best left to the experts engaged to undertake the works.

#### **9.46 Options for solution**

- 9.47 Do not make Notification a client liability.
- 9.48 Integrate the triggers to Notify within the overall framework of consent and compliance recognised for building works.
- 9.49 Introduce an electronic system whereby every planning and building regulation application is automatically forwarded to HSE. HSE could then make the assessment whether the works are Notifiable or not. For Notifiable works the HSE could then Notify the interested parties and at the same time confirming the duties required of each duty holder. Confirmation by local authorities to the HSE that a Building Notice had been served would confirm construction work was about to commence and situation had become live.
- 9.50 Encourage the inclusion of Notification duties and procedures within and as part of standard building contracts and employers' insurance policies.

#### **9.51 ISSUE 5**

#### **9.52 ROLES AND DEFINITIONS UNDER CDM 2006**

##### **9.53 General**

- 9.54 The client group consulted found much of the detailed definitions difficult to quantify. The common or perceived meanings of certain words and phrases differed from the specific definitions under the regulations. There is a clear English consideration here.
- 9.55 As there is no reference in the title of the regulations to health and safety, there was not an immediate link that construction, design and management was actually concerned with health and safety.
- 9.56 Consideration should be given to having the title of the regulations more clearly describing the objective. CDM may now be understood by the construction industry, but to the client group consulted it had little meaning and no direct correlation to health and safety for building works.

##### **9.57 Co-ordinator**

- 9.58 As the client group did not recognised that there was a system of competence

in existence for a co-ordinator and there was no professional type status, the whole concept was an unknown and confusion about how it would relate to established roles like project manager.

- 9.59 For the client group consulted, there was a concern amongst some that the role of co-ordinator was needed more to meet the requirements of the enforcing authority than for the client.
- 9.60 For the role of co-ordinator to be of worth to the client, the co-ordinator needs to take over the responsibilities of the client, on condition the client pays the co-ordinator on the terms agreed and the other costs fairly and properly tendered. For smaller works especially, the responsibilities of the co-ordinator should be combined with that of the sole or principal contractor or the adviser if a professional is engaged. This would mean the necessary competencies of the co-ordinator, to the level required for the particular building works commissioned by a client, being included as a legal obligation within the skills set of advisers and contractors engaged, not as a completely detached additional profession.

#### **9.61 Designer**

- 9.62 The new proposed regulations increase the responsibilities of the designer and client in the area of design. They extend the concept of a project to both before and after construction, primarily in the area of what can be pre-planned. Health, safety and welfare that falls within design criteria and/or can be pre-planned should be included in some form at the time Planning Permission and Building Regulations approval is being processed. No works to a building that are unsafe when built and cannot be built safely should be allowed to be undertaken by the overall system of approvals.
- 9.63 Method statements confirming that something to be constructed can be built safely should be produced before the authorities allow it to be built. Such statements could form an important part of the health and safety file. A significant breach of a method statement could then be identified as an offence and used as a basis of prosecution. Any changes required to the method statements could fall within the overall planning and/or building regulation systems of notice and approval under civil law. Any serious breaches of the approved method statements would remain under health and safety law as criminal action.

#### **9.64 Compliance**

- 9.65 Small business and occasional/one-off clients tended to rely on those in the building industry to provide compliance with regulations as part of the service being paid for. There was resistance from the majority of clients that rely on a service provided by the industry to be over burdened with regulation and responsibilities, so that a small number of rogue specialist clients could be more easily prosecuted more severely.
- 9.66 The general feeling was that it was for those providing the service to prove competence as a requirement of contracting to undertake the works. It was not generally considered appropriate for the client having to go to lengths in an area unfamiliar to him to satisfy himself of competence through his own devices through a structure he would need to devise on his own, under ultimate risk as the person of last resort in the event of a failure.

## **9.67 Client**

- 9.68 The definition of client was unclear and vague. In a corporate structure, it is unclear whether employees overseeing building works would assume the mantle.
- 9.69 For small businesses having work undertaken on their homes, it is unclear from CDM 2007 that they would be exempt, as the definition of client is so wide. To alleviate confusion, some representatives of the client group suggested that the domestic client should be defined as the person(s) responsible for paying council tax.

## **10.00 TASK 2**

### **10.10 Crystallise the key messages we need to give to this client group prior to and during the launch**

#### **10.11 Key messages prior to launch**

- 10.12 Business people engaging anyone to undertaken work to their premises will soon have greater responsibilities to those undertaking the work.
- 10.13 The new revised regulations for health, safety and welfare for building works are the Construction (Design and Management) Regulations 2006.
- 10.14 The Regulations come into force on .... 2007.
- 10.15 Plan ahead to avoid later shocks/disappointment.
- 10.16 If you are not skilled in building works, you will be required to instruct some one to act for you called a co-ordinator.
- 10.17 The Health and Safety Executive are the enforcing authority for Health, Safety and Welfare on construction sites and you must Notify them for works expected to last for 30 days or more.
- 10.18 Want to find out more, then call the [helpline or visit the website (?)] for independent advice.

#### **10.19 Key messages during launch**

- 10.20 The new revised regulations for health, safety and welfare for building works are the Construction (Design and Management) Regulations 2006.
- 10.21 The Regulations come into force on .... 2007.
- 10.22 When you instruct work to be undertaken to your premises and allow access for building workers only to part of your premises, you are creating a construction site and your responsibilities change: Be aware of the changes and take the necessary actions.
- 10.23 Employer responsibilities in the workplace become Client duties for construction sites.
- 10.24 The Health and Safety Executive are the enforcing authority for Health, Safety and Welfare on construction sites and you must Notify them for works expected to last for 30 days or more.
- 10.25 Breaching the Regulations is a criminal offence.
- 10.26 Get advice and avoid disappointment.
- 10.27 You are responsible to have confirmed the competency of those undertaking work on a construction site on your behalf.

10.28 You need to reasonably ensure all works are designed safely before any works start.

### **11.00 TASK 3**

#### **11.01 Identify how best these messages should be delivered and by whom**

11.02 Messages are both general and not specific:  
General awareness: For the present and future point in time.  
Specific: At the point of need.  
The same source could fulfil both functions.

11.03 The most effective delivery mechanism is at the point of need.

11.04 The primary points of need are when  
Planning permission is sought.  
Confirmation of compliance with building regulations is required.

11.05 The secondary points of need are when any advice is sought, experts appointed and contractors instructed.

11.06 Initial advice can be sought from many diverse sources, depending on the initial drivers from financial and tax implications to spatial considerations and planning constraints. This could be described as the target audience for delivery.

11.07 The internet is an important and growing source of information and a comprehensive independently run web facility is required. The test of its efficiency could be whether the answers are given to questions asked during a 'Google' type search.

#### **11.08 Target 'audience' for delivery**

11.09 HSE – Clear industry drafted HSE endorsed guidance

11.10 All facets of the construction industry, professions and advisers

11.11 Organisations within the health and safety industry

11.12 HSE SBTAF

11.13 Trade and Business Associations

11.14 Small business and one-off/occasional clients

11.15 Local Authority Planning and Building Control Officers

11.16 Insurance sector

11.17 Accountants

11.18 Lawyers

11.19 Finance providers

- 11.20 Property professionals and advisers
- 11.21 Providers of standard building contracts
- 11.22 Department of Trade and Industry/Small Business Service
- 11.23 Regional Development Agencies
- 11.24 Business links
- 11.25 Relevant Departments of Government
- 11.26 Colleges and training establishments for the construction industry and in business studies

## APPENDIX I

### BRIEF

The Construction (Design and Management) Regulations 1994 are under revision with the Health and Safety Commission having issued a consultative document outlining proposed revisions in April this year.

The proposed regulations build on the established general principles of the existing CDM regulations and take account of responses to the 2002 Discussion Document *'Revitalising Health and Safety in Construction'* and other feedback from industry. They aim to improve the management of risk in construction by ensuring that responsibility is placed with those in the best position to influence or manage it.

The proposals recognise in particular the key role that clients have on the whole process, and Clients will be given a new duty to ensure that suitable project management arrangements are in place throughout the project life. It would not, however, be reasonable or sensible to expect clients to become experts in construction health and safety, or to take on the management of construction projects, and therefore the regulations propose a new role- that of the health and safety co-ordinator- to advise and assist the client.

The results of the summer consultation exercise indicate strong overall support for the proposed changes to the regulations. There is a general acceptance that duties on clients should reflect the amount of influence they have over projects. However, some respondents suggested that more work was needed in order to ensure that the duties do not create too great a burden on one-off or occasional clients.

HSE is offering an opportunity for a suitable industry candidate to work with us for a period of three months in order to:

- Consult with the key Client intermediary bodies (particularly those representing smaller businesses who may be occasional clients) in order to better understand the concerns of this client group and identify ways in which these could be overcome;
- Crystallise the key messages we need to give to this client group prior to and during the launch;
- Identify how best these messages should be delivered and by whom.

The secondee will work closely with HSE's Construction Policy team based in London, and normal travel/employers costs will be paid for the duration of the secondment.

## APPENDIX II

### PROPOSAL

**PROJECT:** For HSE Construction Division, assess the Potential Impact of the Revised Construction (Design and Management) Regulations 1994 on Smaller/One-off Clients.

**TIMING:** To Report in writing at the end of March 2006.

**TASK:** Over the three month period January to March 2006, consult with key Client intermediary bodies, particularly those representing smaller businesses who may be occasional Clients, in order for the Report to address:

1. Concerns of the Smaller/One-off Client Group
2. Identify solutions to overcome the concerns
3. Crystallise the Key Messages for launch
4. Identify how best to deliver the Key Messages

**MANAGEMENT:** Two weekly meetings with Richard Boland.

**ACCOMMODATION AND FACILITIES:** The task will involve working closely with Richard Boland and his colleagues with office working at Rose Court at a desk/work station in the Construction Division, together with meeting facilities, and out of office/home working. Details for HSE security clearance will be provided.

#### EXECUTION OF TASK:

Appraise material and documentation concerning the Task.

Using network of contacts in representative organisations and, in consultation with Richard Boland, select relevant and willing Client Intermediary Bodies with whom to consult.

Provide summary documentation of the issues to be considered by the Client Intermediary Bodies to secure engagement and an understanding of the issues of Health and Safety in Construction from a Client Group working outside its primary area of activity.

Invite, arrange and meet with a cross section of Client Groups in varying sectors.

Collate and analyse input from Client Groups.

Provide a Report based on the input from the Intermediary Client Groups to meet the Task.

## **APPENDIX III**

### **ORGANISATIONS CONSULTED**

HSE Small Business Trade Association members \*

#### **ORGANISATIONS CONSULTED**

Association of Chartered Certified Accountants  
Association of Convenience Stores  
British Chambers of Commerce\*  
British Printing Industries Federation  
British Property Federation  
British Retail Consortium\*  
Confederation of British Industry\*  
Country Land and Business Association  
Engineering Employers Federation\*  
Engineering Industries Association  
Federation of Small Businesses\*  
Forum of Private Business\*  
Institute of Chartered Accountants in England & Wales  
Institute of Directors\*  
National Care Homes Association\*  
National Hairdressers Association\*  
National Landlords Association  
National Society of Allied & Independent Funeral Directors  
Professional Contractors Group  
Rural & Industrial Design & Building Association\*  
Small Business Trade Association Forum (HSE)  
Wine & Spirits Trade Association

#### **INDIVIDUAL COMPANIES' DATABASE**

Small Business Service

#### **ORGANISATIONS CONSULTED FOR SPECIALIST INPUT**

Association of British Insurers  
Association for Project Safety  
Construction Clients Group  
Construction Confederation  
Federation of Master Builders  
Institution of Planning Supervisors  
Royal Institution of Chartered Surveyors

## APPENDIX IV

### REGULATION SUMMARIES

#### SUMMARY: PROPOSED CHANGES

#### AFFECTING “CLIENTS” DUTIES for ALL BUSINESSES HAVING WORK TO A BUILDING UNDERTAKEN

#### THE CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS (CDM 2006)

<http://www.hse.gov.uk/consult/condocs/cd200.pdf>

#### - WORKPLACE -

#### THE WORKPLACE (HEALTH, SAFETY AND WELFARE) REGULATIONS 1992

(WHSW Regs 1992)

[http://www.opsi.gov.uk/si/si1992/Uksi\\_19923004\\_en\\_2.htm](http://www.opsi.gov.uk/si/si1992/Uksi_19923004_en_2.htm)

COMMENT: All business have Health and Safety responsibility for their premises towards employees and others affected by their work activities.

(Add to the definition of “workplace”)

(c) a place, including a place within domestic premises, where construction work is being undertaken

**Reg 24  
Additional  
Definition**

Regulations apply to every workplace except, as defined:

(a) a ship

a Construction site in which the only activity being undertaken is construction work (defined CDM 2006)

COMMENT: In effect, the employer is responsible for the Health, Safety and Welfare of all entering his workplace, including areas where construction work is being undertaken, except where a defined area – a construction site - becomes expressly under CDM Regs 2006.

COMMENT: This amendment clarifies and eliminates doubts from previous drafting, so there is no ‘gap’ between definitions of “Workplace” and “Construction Site”.

COMMENT: In the situation of Construction, in essence an area of workspace is separated off and:

1. “Employer” becomes “Client”
2. “Workplace” becomes a “place” where construction undertaken [within which a “project” is undertaken].
3. Enforcing Authority changes from Local Authority to Health and Safety Executive

**- CONSTRUCTION SITES -  
THE CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2006  
(CDM 2006)**

[http://www.opsi.gov.uk/si/si1996/Uksi\\_19961592\\_en\\_1.htm](http://www.opsi.gov.uk/si/si1996/Uksi_19961592_en_1.htm)

The Regulations will apply in Great Britain (and outside Great Britain to some extent). **Reg 3**

## **CLIENT**

“Client” is a person who in the course or furtherance of a “business”: **Reg 2  
Add to  
Definition**

- i) seeks or accepts the services of another, or
- ii) carries out a “project” himself.

“Business” is a trade, business or other undertaking, whether for profit or not. COMMENT: Includes Charities. **Reg 2  
New  
Definition**

One or more clients can agree in writing for one of them to be the client, rendering the other clients not subject to any duty. **Reg 6  
New Option**

COMMENT: Clients can appoint an Agent under CDM 1994. Option is not allowed under new CDM 2006.

COMMENT: Domestic Client is not defined.

## **CONSTRUCTION**

“Construction Work” means the carrying out of any building, civil engineering or engineering construction work: **Reg 2  
Essentially  
the same as  
current CDM  
Regs 1994**

Includes:-

site preparation, de-commissioning, demolition or dismantling of a structure, construction, alteration, conversion, fitting out, commissioning, renovation, repair, upkeep, redecoration or other maintenance (including cleaning which involves the use of water or an abrasive at high pressure or the use of corrosive or toxic substances)

Excludes:

Site survey, exploration for or extraction of mineral resources.

“Construction Site” includes any place where construction work is being carried out or to which the workers have access, but does not include a workplace within it which is set aside for purposes other than construction work.

**Reg 2  
New Defined  
term**

“Construction phase” means the period of time starting when construction work in any project starts and ending when construction work in that project is completed.

**Reg 2  
New Defined  
term**

“Construction phase plan” means a document recording the health and safety arrangements, site rules and any special measures for the construction work.

**Reg 2  
New Defined  
term**

## **PROJECT**

“Project” means a project which includes or is intended to include construction work

**Reg 2  
Existing  
Definition  
Add to  
Definition**

and includes all planning, design, management or other work involved in a project.

## **DESIGN**

“Designer” means any person (including a Client, contractor or other person referred to in these Regulations) who, in the course or furtherance of a business,—

**Reg 2  
Add to  
Definition  
includes  
client**

(a) prepares or modifies a design; or

(b) arranges for or instructs any person under his control to do so,

relating to a structure or to a product or mechanical or electrical system intended for a particular structure; and a person is deemed to prepare a design where a design is prepared by a person under his control.

“Design” includes drawing, design details, specification and bill of quantities (including specification of articles or substances) relating to a structure, and calculations prepared for the purpose of a design.

**Reg 2  
Add to  
Definition**

## CO-ORDINATOR

“Co-ordinator” means the person appointed as a co-ordinator under regulation 8(1);

**Reg 2  
New Role  
and  
Definition**

COMMENT: The requirement applies for Projects that are Notifiable.

Regulation 8(1) The Client shall:

**Reg 8  
New Client  
responsibility**

- a) appoint a person (“the co-ordinator”), before design work, or planning or other preparation for construction work is begun, to perform the functions specified in regulation 13(1); and
- b) ensure so far as is reasonably practicable that the functions are performed.

COMMENT: Regulation 13 (1) specifies the functions of a co-ordinator, including compliance, co-ordination, appointments, providing information due, Health & Safety file and advising and assisting the client to comply with their duties.

COMMENT: Appointment is instead of Planning Supervisor under CDM 1994.

## NOTIFICATION

A Project is Notifiable [in a prescribed form] to the Health and Safety Executive (HSE) if the construction phase is likely to involve construction work for a client of more than:

**Reg 2  
Same as  
current CDM  
Regs 1994**

- a) 30 days
- b) 500 person days

COMMENT: Planning Permission and Building Regulations, through Building Inspectors/Control Officers, remain under the control of the Local Authority.

## CLIENT DUTIES

### FOR ALL WORKS NOT NOTIFIABLE

No person on whom these Regulations place a duty [including Client] shall:

- a) Appoint or engage a co-ordinator, designer, principal contractor or contractor unless he has taken reasonable steps to ensure that he is competent;
- b) Accept such appointment or engagement unless he is competent;
- (c) Arrange for or instruct a worker to carry out or manage design or construction work unless he is—
  - (i) Competent; or
  - (ii) Under the supervision of a competent person.

**Reg 4  
Carries forward the existing requirements of CDM 94 (Reg 8) and CHSW 1996 (Reg 28)**

Client shall take reasonable steps to ensure that arrangements are made, and maintained throughout the project, for managing it which are suitable to ensure:

- 1) Construction work can be carried out and Structural work can be used without risk to health or safety; and
- 2) Welfare of the persons carrying out the construction work.

Including

- a) Allocation of resources (including time) to
  - i) Design of a structure;
  - ii) Planning and preparation for construction work
  - iii) Construction work itself,which are, so far as the client in question can reasonably determine adequate; and
- b) Arrangements for
  - i) Review and revision of the arrangements
  - ii) Review of the suitability and compatibility of designs and for any modification
  - iii) Ensuring that persons are appointed as co-ordinator and principal contractor or engaged as designers or contractors in a suitable sequence and in good time
  - iv) Planning for and monitoring of construction work
  - v) Ensuring that the duties in regulations 5 and 16 are performed
  - vi) Communication.

**Reg 7  
New Reg, but makes explicit a duty which already exists on clients in the Management of Health and safety at Work Regulations 1999 (Regs 11 and 12)**

No co-ordinator, designer, contractor shall commence work in relation to a project unless

**Regs 13,14 & 19**

- i) He has made the client aware of his duties
- ii) For notifiable projects, Co-ordinator [except co-ordinator] has been appointed for the project; and
- iii) For notifiable projects, Notice of the project has been given to the HSE.

**Add to Regs**

#### **FOR NOTIFIABLE PROJECTS**

Client shall appoint the positions and ensure they are suitably filled throughout the contract:

**Reg 8  
Altered  
Regulation**

- i) A coordinator and ensure so far as is reasonably practicable that the functions are performed
- ii) A principal contractor

The client shall ensure that notice is given to HSE in the prescribed form:

**Reg 9  
Extended  
Regulation**

- i) Before design work or planning or other preparation for construction work is begun (this will change- to allow 'concept design work' to take place before notification.
- ii) Containing specified particulars as are available
- iii) After the appointment of the principal contractor, containing any information not already notified

The notice shall be signed by or on behalf of the client or, if sent by electronic means, shall otherwise show that he has approved it.

Client shall ensure designers, principal contractor and contractors are promptly provided by the co-ordinator with all the information in the client's possession, or prepared by the co-ordinator, or which is reasonably obtainable (or with such of the information as is relevant to the person to whom the co-ordinator provides it), including:

**Reg 10  
New  
Regulation**

- i) any such information in a health and safety file
- ii) any such further information about or affecting the site or the construction work
- iii) information provided by a designer, to other designers and contractors
- iv) the minimum notice which will be allowed to the principal contractor, and the contractors directly appointed by the client, for planning and preparation before construction work begins,

which is relevant to the following purposes:

a) to secure so far as is reasonably practicable the health, safety of persons engaged in the construction work and the health and safety of persons liable to be affected by the way in which it is carried out

b) without prejudice to sub-paragraph (a), to assist the persons to whom information is provided under this regulation to:

- i) Perform their duties and functions under these Regulations

Determine the adequacy of the resources allocated and arrangements to design, preparation and construction.

Client shall ensure that the construction phase does not start unless:

- i) Principal contractor has prepared a construction phase plan which is sufficient to enable the construction work to start without undue risk to health or safety
- ii) Welfare Facilities requirements are complied with.

**Reg 11  
New Reg**

**Sch 2**

Client shall ensure that the co-ordinator is provided with all the health and safety information likely to be needed during any subsequent works for inclusion in a record ("the health and safety file")

**Reg 12  
New Reg**

a) Where a single health and safety file relates to more than one project, site or structure, or where it includes other related information the client shall ensure that the information relating to each site or structure can be easily identified.

b) The client shall take reasonable steps to ensure that after the construction phase the information in the health and safety file:

- i) Is kept available for inspection by any person who may need it to comply with the relevant statutory provisions; and
- ii) Is revised as often as may be appropriate to incorporate any relevant new information, including information specified in the Control of Asbestos at Work Regulations 2002.

It shall be sufficient compliance by a client who disposes of his entire interest in the site if he delivers the health and safety file to the person who acquires his interest in it and ensures that he is aware of the nature and purpose of the file.

**Reg 4  
New Reg**

## APPENDIX IV (cont)

### CURRENT LEGISLATIVE POSITION FOR BUILDING WORKS IN UK

#### SUMMARY POSITION FOR BUSINESSES "CLIENTS ROLE"

##### - WORKPLACE - WORKPLACE (HEALTH, SAFETY AND WELFARE) REGULATIONS 1992 (WHSW 1992)

[http://www.opsi.gov.uk/si/si1992/Uksi\\_19923004\\_en\\_2.htm](http://www.opsi.gov.uk/si/si1992/Uksi_19923004_en_2.htm)

#### EMPLOYER DUTIES

Every Employer shall ensure that every Workplace, modification, extension or conversion which is under his control and where any of his employees works complies with the Regulations [when completed]. **Reg 4**

"Workplace" means any premises or part of premises which are not domestic premises **Reg 2**

Include:

- i) Maintenance of workplace, including equipment, devices and systems. **Reg 5**
- ii) Sanitary conveniences & washing facilities. **Regs 20 & 21**
- iii) Accommodation for clothing & changing clothing. **Regs 23 & 24**
- iv) Facilities for drinking water & rest and to eat meals. **Regs 22 & 25**

Excluding:

**Reg 2**

A modification, an extension or a conversion of any of the above until such modification, extension or conversion is completed.

##### - WORKPLACE AND CONSTRUCTION SITE - WORK AT HEIGHT REGULATIONS 2005 (WaH 2005)

<http://www.opsi.gov.uk/si/si2005/20050735.htm>

COMMENT: These regulations apply to both the "Work place" and "Construction Site" and regulate all work undertaken above ground/floor level, including below ground.

COMMENT: These regulations apply where a person steps above normal floor level or a purpose build stairs.

**- CONSTRUCTION SITE -  
COUNCIL OF THE EUROPEAN COMMUNITIES  
DIRECTIVE 92/57/EEC 24 JUNE 1992**

[http://www.zgwrp.org.pl/ue/poradnik/dokumenty/01\\_prawo/ps/Warunki%20pracy/1992-57-EEC/tekst-ang/directive.doc](http://www.zgwrp.org.pl/ue/poradnik/dokumenty/01_prawo/ps/Warunki%20pracy/1992-57-EEC/tekst-ang/directive.doc)

This is the European Directive, under the Treaty establishing the EEC, known as the TMCS [Temporary and Mobile Construction Sites] Directive, regulating Construction Sites in UK and EU.

**- CONSTRUCTION SITE -  
CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 1994  
(CDM 1994)**

[http://www.opsi.gov.uk/si/si1994/Uksi\\_19943140\\_en\\_1.htm](http://www.opsi.gov.uk/si/si1994/Uksi_19943140_en_1.htm)

The Regulations will apply in Great Britain (and outside Great Britain to some extent). **Reg 3**

**CLIENT**

"Client" means any person for whom a project is carried out, whether it is carried out by another person or is carried out in-house. **Reg 2**

**CONSTRUCTION**

"Construction work" means the carrying out of any building, civil engineering or engineering construction work: **Reg 2**

Including:

Construction, alteration, conversion, fitting out, commissioning, renovation, repair, upkeep, redecoration or other maintenance (including cleaning using water, abrasive at high pressure or classified substance - corrosive or toxic) de-commissioning, demolition or dismantling of a structure.

Excluding:

Exploration for or extraction of mineral resources

**PROJECT**

"Project" means a project which includes or is intended to include construction work. **Reg 2**

## **DESIGN**

"Designer" means any person who carries on a trade, business or other undertaking in connection with which he— **Reg 2**  
(a) prepares a design, or  
(b) arranges for any person under his control (including, where he is an employer, any employee of his) to prepare a design, relating to a structure or part of a structure;

"Design" in relation to any structure includes drawing, design details, specification and bill of quantities (including specification of articles or substances) in relation to the structure;

## **PLANNING SUPERVISOR**

The client shall appoint a "planning supervisor" for Notifiable Projects, or projects where there will be more than 5 people at any one time. **Regs 6 & 2**

## **DOMESTIC CLIENT**

"Domestic Client" means a client for whom a project is carried out not being a project carried out in connection with the carrying on by the client of a trade, business or other undertaking (whether for profit or not). **Reg 2**

COMMENT: Domestic clients are excluded from the CDM Regs 1994.

## **CLIENTS AGENT**

"Agent" in relation to any client means any person who acts as agent for a client in connection with the carrying on by the person of a trade, business or other undertaking (whether for profit or not). **Reg 2**

## **CLIENT DUTIES**

### **FOR ALL WORKS NOT NOTIFIABLE**

Client may appoint an agent or another client to act as the only client in respect of a project with all the responsibilities of the client **Reg 4**  
Provided:

- i) Reasonably satisfied that the person has the competence
- ii) The person makes a declaration in prescribed form to HSE

## FOR NOTIFIABLE PROJECTS

### Before Construction

Client for each Project

**Reg 6**

After he has such information about the Project and the Construction Work including:

**Reg 8 & 9**

- i) be reasonably satisfied on Competence, and
- ii) adequate Resources will be allocated for each appointment

Shall respectively appoint:

- i) Planning Supervisor for the project
- ii) Principal Contractor for construction
- iii) and ensure the appointments remain filled for the construction phase
- iv) (Designer to prepare a design)- not actually required by CDM, but all designers who work on the project must comply with the duty on designers.

Provided requirements of competency and resources are met, Appointments can be combined, as follows:

- i) Planning Supervisor and Principal Contractor
- ii) Client as Planning Supervisor or as Principal Contractor or as both.

No person [including Client] shall arrange for a Designer to prepare a Design unless he is reasonably satisfied that the Designer has the competence to prepare that Design.

**Reg 8**

Any reference to a person having competence [Planning Supervisor, Designer or Contractor] shall extend only to his competence to:

- i) Perform any requirement
- ii) Conduct his undertaking without contravening any prohibition, imposed on him by or under any of the relevant statutory provisions.

Client shall ensure, so far as is reasonably practicable, construction does not start unless a health and safety plan has been prepared for the project in prescribed form and kept available during construction.

**Regs 10 & 12**

Client shall ensure that the Planning Supervisor for any Project carried out for the Client is provided (as soon as is reasonably practicable but in any event before the commencement of the work to which the information relates) with information about the state or condition of any premises at or on which construction work included or intended to be included in the Project is or is intended to be carried out. **Reg 11**

The information required to be provided is information which is relevant to the prescribed functions of the planning supervisor which the client has or could ascertain by making enquiries which it is reasonable for a person in his position to make.

## APPENDIX IV (cont)

### EUROPEAN UNION DIRECTIVE CONSTRUCTION SITES

#### SUMMARY POSITION FOR CLIENT DUTIES

Note that the Directive sets out the general principles which the UK Government must then bring into effect in UK law. The main Directive covering construction work is the Temporary and Mobile Sites Directive (see below), and this is currently implemented in UK law through the Construction (Design and Management) Regulations 1994 (CDM) and the Construction (Health Safety and Welfare) Regulations 1996 (CHSW). These are the regulations which are currently being revised.

#### - CONSTRUCTION - COUNCIL OF THE EUROPEAN COMMUNITIES DIRECTIVE 92/57/EEC 24 JUNE 1992

[http://www.zgwrp.org.pl/ue/poradnik/dokumenty/01\\_prawo/ps/Warunki%20pracy/1992-57-EEC/tekst-ang/directive.doc](http://www.zgwrp.org.pl/ue/poradnik/dokumenty/01_prawo/ps/Warunki%20pracy/1992-57-EEC/tekst-ang/directive.doc)

Under Treaty Establishing The European Economic Community

Construction Sites constitute an area of activity that exposes workers to particularly high levels of risk. **Article 118a**

Requires for Construction Sites:

1. Minimum requirements.
2. Guarantee the safety and health of workers.
3. Avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.
4. Improved coordination:
  - i) Project preparation stage.
  - ii) Work is being carried out.

**Article 118a**

COMMENT: In 4 above the reference to coordination not exclusive to Health and Safety.

Authorities responsible for safety and health [UK – HSE] must be informed [UK - notified] before the beginning of the works **Article 118a**

Exempt:

1. Work scheduled to last less than 30 days
2. Less than 20 workers are occupied simultaneously
3. Volume of work schedule is less than 500 person days

COMMENT: Notification is simply to inform authorities where construction work is taking place.

## **CLIENT**

“Client” means any natural or legal person for whom a “project” is carried out. **Article 2**

Note: “project” not defined.

## **CONSTRUCTION**

“Construction Site” means any construction site at which building or civil engineering works are carried out **Article 2**

Excludes: drilling and extraction in the extractive industries.

Includes: Fitting-out, Repairs, Dismantling, Maintenance, **Article 1**

Painting and cleaning work. **Annex 1**

## **CLIENT DUTIES**

Client shall:

1. Take account of the general principles of prevention concerning safety and health during the various stages of designing and preparing the project, in particular: **Article 4**

i) when architectural, technical and/or organizational aspects are being decided, in order to plan the various items or stages of work which are to take place simultaneously or in succession,

ii) when estimating the period required for completing such work or work stages.

**Article 3**

2. Appoint one or more coordinators for health and safety matters (for any construction site on which more than one contractor is present). (Member States may, after consulting both management and the workforce, allow derogations).

3. Ensure a safety and health plan is drawn up, prior to setting up of a construction site. **Article 3**

4. Communicate a notice to the competent authorities before work starts. The notice to be displayed on site. **Article 3**

Appointment of coordinator

i) Does not relieve the client or project supervisor the responsibilities conveyed to Coordinators.

ii) Shall not affect the principle of employers' responsibility as provided for by Directive 89/391/EEC on workplace health and safety.

**Article 7**  
**Client retains responsibility**

“Coordinator for safety and health matters at the project preparations stage” means any natural or legal person entrusted by the client and/or project supervisor, during preparation of the project design, with performing the duties referred to in Article 5.

**Article 2**

“Coordinator for safety and health matters at the project execution stage” means any natural or legal person entrusted by the client and/or project supervisor, during execution of the project, with performing the duties referred to in Article 6.

**Article 2**

**APPENDIX IV (Cont.)**

**GUIDANCE TO CLIENTS  
- EXTRACT FROM CONSULTATION DOCUMENT -**

## Clients

1. Clients have substantial influence and contractual control and must exercise this responsibly to ensure that a competent construction team is appointed and that it can work together effectively to identify, reduce and manage risks associated with the construction work. Their decisions and approach, determine:
  - a) the time, money and other resources available for projects;
  - a) who makes up the team, their competence, when they are appointed and who does what;
  - b) whether the team is encouraged to co-operate and work together effectively;
  - c) whether they have the information that they need about the site and any existing structures;
  - d) the arrangements for managing and co-ordinating their work.
2. Because this is so important clients<sup>1</sup> are accountable, under CDM<sup>2006</sup>, for the impact their approach has on the health and safety of those working on or affected by the project. However, the Regulations also recognise that many know little about construction health and safety, so **clients are not required or expected to plan or manage projects themselves**. Nor do they have to develop substantial expertise in construction health and safety, unless this is central to their business. Clients must ensure that various things are done, but are not normally expected to actually do them themselves and, therefore, need help from the project team.
3. Clients must make sure that there are reasonable management arrangements throughout the project to ensure that:
  - the construction work can be carried out reasonably safely; and
  - fixed workplaces (eg offices, shops, factories, schools) will be safe to use; and
  - there are suitable welfare facilities.
4. To help them develop these arrangements, for notifiable projects clients have to appoint:
  - a co-ordinator to advise them and assist with their duties – mainly in the design and planning stages; and
  - a principal contractor to manage the construction phase.
5. Getting the right people for these roles is particularly important for clients with little construction or health and safety expertise, as they need to be able to rely on their support and advice.

*With great  
power,  
comes great  
responsibility*

### Who are clients?

#### [Regulation 2](#)

6. A client is an organisation or individual for whom a construction project is carried out, whether by others or in house. This can include, for example, local authorities, school governors, insurance companies and project originators on Private Finance Initiative (PFI) projects. [Domestic clients](#) are a special case and do not have duties under CDM<sup>2006</sup>.

#### Example (i)

A developer funded improvements and alterations to the highway as a part of a major shopping development. The improvements and alterations had to satisfy the requirements of the highway authority.

In this case the developer engaged all the contractors, and was the only client, but the highway authority was still a designer.

<sup>1</sup> Domestic clients have no legal duties under these Regulations. See paragraph 58.

7. In some circumstances it may not be immediately obvious who is legally the client and there can sometimes be more than one client involved in a project. **To avoid confusion, this needs to be resolved by those involved at the earliest stage possible.** Take into account who:

- ultimately decides what is to be constructed, where, when and by whom;
- commissions the design and construction work (the employer in contract terminology);
- initiates the work;
- is at the head of the procurement chain;
- engages the contractors.

8. If there is still doubt, then all of the possible clients can appoint one of them as the only client for the purposes of CDM<sup>2006</sup>.

9. Clients must always:

- e) check that the designers, contractors and other team members that they propose to engage are competent, adequately resourced and appointed early enough for the work they have to do;
- f) allow sufficient time for each stage of the project, from concept onwards;
- g) ensure there are suitable communication and management arrangements for the whole project, from concept onwards. (This does not mean managing the work themselves, as few clients have the expertise and resources needed and it can cause confusion.) Designers and contractors should be able to advise for non-notifiable projects where no co-ordinator is required;
- h) co-operate with their project team.

10. In the case of [notifiable projects](#) they must also:

- a) appoint a co-ordinator right at the start of the design work to advise and assist them with their duties;
- b) provide the co-ordinator with information:
  - likely to be needed by designers, the principal contractor and other contractors to plan and manage their work; and
  - about the mobilisation period;
- c) ensure that HSE is notified, usually by the co-ordinator;
- d) appoint a principal contractor to plan and manage the construction work – if possible early enough for them to advise on buildability and maintainability; and
- e) ensure that the construction phase of notifiable projects does not start until:
  - the principal contractor has prepared a suitable health and safety plan; and
  - there are suitable welfare facilities;

#### Example (ii)

A client recognised that welfare facilities were required from the very beginning of the construction phase. This meant services had to be installed early.

She arranged, with the utilities, for these services to be installed at the very start of the construction phase. To ensure that services would be available from the start of the construction phase, arrangements were made with utility companies for enabling works to be done before the principal contractor arrived on site in conjunction with the principal contractor.

This reduced the lead-time required before construction could begin.

#### Example (iii)

A designer specified tilt and turn windows to reduce risks during window cleaning. The client overruled this on the grounds of cost. The designer pointed out that the client was taking over his duties under reg.13, and needed to address how the risk to window-cleaners could be minimised and how the duties under the [Workplace Regulations](#) could be complied with.

- f) make sure the health and safety file is reviewed, updated or prepared at the end of the construction work. This must then be kept available for any future construction work or to pass on to a new owner.
11. If a client does not make these appointments they are legally liable for the work that the co-ordinator and principal contractor should do, as well as for not making the appointments.
12. **Clients can also, intentionally or unwittingly, take on additional responsibilities.** If they specify materials or methods of working they may well be liable as designers in relation to those specific matters. They will also legally be contractors, if they directly manage or carry out construction work. If so, it is important that they understand and fulfil such duties as set out in the remaining chapters and Schedules 2 and 3 of the Regulations.

## Management arrangements

### *Regulation 7*

13. Clients must make sure that there are suitable arrangements for managing projects so that the work can be carried out safely and without risk to health. These should address:
- a) their requirements about the way the project is to be run (eg fencing of the site, movement of vehicles or permit to work procedures) taking account of any risks to the public and the client's or site occupier's employees or customers;
  - b) the resources, roles, functions and responsibilities of members of the project team, how they inter-relate and, where relevant, the timing of appointments;
  - c) how communication, co-ordination and co-operation (eg between designers and contractors) will be facilitated and encouraged;
  - d) how and when the design, elements of it and design changes, are to be reviewed to check that the requirements of regulation 14 have been addressed and that the different design elements work together. This is normally best addressed as part of a buildability, maintainability, usability review which addresses practicality and costs as well as health and safety;
  - e) the format of the health and safety file (to ensure it is suitable for the client), how, when and by whom information is to be provided for it;
  - f) how the project will be monitored (usually by the co-ordinator before construction starts and the principal contractor afterwards) and reviewed; and
  - g) the interface with any other projects on the same or neighbouring sites.
14. The most important thing is that all key tasks are clearly allocated and everyone understands what they have to do, when and in what order. Key aspects of the arrangements should be recorded in the information pack but they should be written simply, clearly, and concisely. For low risk projects (including most non-notifiable projects) a simple table that sets out who does what, is likely to be all that is needed.
15. In notifiable and higher-risk projects clients are likely to need help from someone with practical and health and safety expertise of such work to develop the arrangements. Co-ordinators should be able to do this work for clients. The gateway approach provides a useful framework. Particular attention is needed where the project involves high-risk work like asbestos removal or demolition.
16. The arrangements may be included in other documents, for example the health and safety plan or contracts, but must not be obscured by other items. However it is done, all of the tasks must be appropriately and clearly allocated. (Further general guidance on health and safety management is provided in 'Successful health and safety management' HSG(65)).

17. In addition to their duties under CDM<sup>2006</sup> clients may also have duties under [HSWA](#) regarding the health and safety of their own employees, other workers or members of the public. They need to ensure that the management arrangements take account of such duties. The results of any monitoring can also provide good evidence of competency for any similar future projects.

### **Combining related projects**

#### [Regulation 6](#)

18. Where there are several related projects with different clients (eg constructing and fitting out a shop) it can make management easier if they are combined and treated as a single project. The Regulations therefore allow several clients to agree to treat their joint projects as one, so that one of them will be treated as the only client from then on. But the other clients still have to ensure the competence of any of their own appointees, co-operate with others involved in the project and provide any relevant information.

### **Appointments – general**

#### [Regulations 4, 7 and 10\(1\)\(d\)](#)

19. When appointing co-ordinators and principal contractors or engaging designers and contractors clients have to consider a wide range of factors including:

- their competency to carry out the work to the necessary/required standards<sup>2</sup>;
- the resources (eg staff, equipment and, particularly, time) needed to plan and do the work properly.

20. **Clients must not take on these tasks themselves unless they are competent and have adequate resources**, including time, to do so properly. This may be easy with simple projects, eg painting interior walls, which are only 2-3 metres high, using non-toxic paints. However, most construction work requires much more expertise in both health and safety and practical management.

21. Clients also need to consider the timing of their appointments to ensure that appointees:

- have sufficient time to plan prepare and mobilise; and
- can contribute to developing designs and plans – eg designers and contractors can discuss designs to ensure that they are buildable and maintainable and contractors can be involved in developing the construction phase plan.

### **Appointment of the co-ordinator**

(Notifiable projects only)

#### [Regulations 4 and 8\(1\)](#)

22. A client must appoint a competent, adequately resourced co-ordinator before the design work starts for high-risk and notifiable projects. This is a new role, which has been developed from that of the Planning Supervisor. It is intended to provide clients with an empowered health and safety advisor who is pivotal in ensuring an effective and cohesive project team. Their main purpose is to help clients to carry out their duties. Under the [Management Regulations](#), clients must also appoint competent persons to assist them with their legal duties. The appointment of the co-ordinator is likely to fulfil this duty as well, as they should be able to advise the client on all of the construction related issues.

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<sup>2</sup> These Regulations only require competence and resources in relation to health and safety, but clients concerns are much wider and it is more sensible to address this as part of the wider issue of competence and resources to do the work to the expected standards, eg quality and timescale.

**23. Clients must make sure that all of the co-ordinator's tasks, as set out in regulation 13, are carried out properly.**

24. Early appointment is crucial for effective planning and management arrangements to be established, implemented and monitored from the start. In addition, the greatest potential for improving health and safety is at the concept and scheme design stages. As a scheme moves into the detailed design stage, it becomes more difficult to make fundamental changes that eliminate hazards and reduce risks associated with early design decisions.

25. This is why CDM<sup>2006</sup> requires co-ordinators to be appointed *before design work, or planning or other preparation for construction work is begun* to allow them to:

- a) advise clients generally, but particularly on the competence and resources of their appointees;
- b) notify HSE about the project;
- c) ensure that design work (including that during the construction phase) and early planning is properly co-ordinated;
- d) develop effective management arrangements for the project;
- e) locate the information needed for designers and contractors (the Information Pack) and advise the client if surveys need to be commissioned to fill significant gaps;
- f) advise the client on the suitability of the initial construction phase plan;
- g) produce or update a relevant, user friendly, health and safety file suitable for future use at the end of the construction phase.

26. There can be significant advantages in having a completely independent co-ordinator because their advice is not coloured by other practical or financial interests. However, they may combine this work with another role, for example, project manager, designer or principal contractor as long as the co-ordinator is competent and has sufficient independence to carry out their tasks effectively.

27. More information on the duties of co-ordinators is contained in the section of the guidance headed co-ordinators.

### **Arranging design work**

#### *Regulations 4, 7 and 14*

28. Clients must employ only competent designers. Clients often employ more than one designer, for example architects, civil, structural and services engineers. In such cases they all need to know who does what and the timing of the appointments needs to enable the design work to be co-ordinated from an early stage.

29. Nominating one designer as the 'lead designer' is often the best way to ensure co-ordination and co-operation during design work which involves a number of designers. This 'lead designer' may be appointed as a co-ordinator under regulation 8, but the co-ordinator's duties are wider than just design co-ordination and suitable arrangements must be made to carry out all of the co-ordinator's tasks.

#### **Example (iv)**

On a large contract for a bank, worth several million pounds, the co-ordinator was appointed late and given less than 48 hours to prepare the information pack.

This meant that there was insufficient time to properly consider the plan. Work was delayed because the contractor had no information about the underground services to be found on site. In addition the co-ordinator was not able to influence the design.

30. Clients who specify materials or methods of working may well be liable as designers in relation to those specific matters. In addition where they employ designers who are based outside Great Britain they are responsible for ensuring that the design complies with regulation 14. The co-ordinator should be able to help.

31. More information on the duties of designers is contained in the section of the guidance headed Designers.

### **Appointment of the principal contractor**

(Notifiable projects only)

*Regulations 4, 8(2), 16 and 17*

32. Clients must appoint one competent, adequately resourced principal contractor to plan, manage and monitor the construction work. This can be an organisation or an individual and is usually the main or managing contractor. A principal contractor's key duty is to manage the construction phase to ensure the health and safety of everybody affected by the work. The client's arrangements and other appointees should not compromise the ability of the principal contractor to do this.

33. The principal contractor must be appointed as soon as the client knows enough about the project to select a suitable contractor. Early appointment allows the principal contractor, and indeed other specialist or maintenance contractors and facilities management experts to make a substantial contribution to ensuring the buildability and maintainability of a project. This helps, not only to eliminate and reduce risks to health and safety, but also to avoid interruptions, delays and other problems, which can add significantly to the whole life cost of a project.

34. Early appointment is also essential for the principal contractor to have sufficient time to develop an adequate construction phase health and safety plan and to arrange for appropriate resources, including welfare facilities, to be available when work commences on site. (Making sure that suitable welfare facilities are provided when work starts on site is a specific duty on both the client and principal contractor.)

35. **There can only be one principal contractor at any time** to ensure clear lines of management. To ensure continuity, clients should normally keep the same principal contractor for the whole project from site clearance and preparation to final completion. Exceptions to this include:

- preliminary works, eg involving demolition or site preparation work, where there is a substantial delay between site clearance and the start of new construction work;
- separate projects for different clients, eg for a building shell and subsequent fitting-out work.

36. More information on the duties of principal contractors is contained in the section of the guidance headed Principal Contractors.

37. Notifying HSE about appointments

(Notifiable projects only)

*Regulation 9*

38. The client must make sure that HSE is notified of the project and appointments (usually by the co-ordinator) at the very start of the design work. The principal contractor's details can be provided later, if necessary, provides further detail.

## Information

### *Regulation 10 and 13(2)*

39. Clients must provide the project-specific information needed by designers and contractors to identify hazards, including those arising from previous work, site conditions, and activities on or near the site. This includes hazards that clients already know about or suspect, for example because they are covered in information already in the client's possession. Clients must also provide information that can be obtained by making sensible enquiries, including surveys and other investigations when necessary. (In the case of notifiable projects, co-ordinators normally advise the client as to what is needed and arrange for relevant parts to be given to designers and contractors.)

40. Clients must not leave it to contractors to discover such hazards. The information provided, must be sufficient to ensure that significant risks during the work can be anticipated and planned for. It must be provided, as in the information pack<sup>3</sup>, in time for designers and contractors to take account of them when preparing to bid for or plan their work. It must point out those issues that designers and contractors could not reasonably be expected to anticipate or identify, but not obvious hazards. lists topics that need to be considered.

41. Clients who already have a health and safety file from earlier work under CDM<sup>2006</sup> or CDM<sup>94</sup>, or have previously carried out surveys or assessments, including under the Control of Asbestos at Work Regulations 2002 may already have all, or much, of the information needed. However, they also need to ensure that contractors are provided with relevant information provided by designers under regulation 14(5). (Clients who do not have maintenance or repair responsibilities for the premises must obtain information about risks, due to any asbestos that may be present, from whoever has such responsibilities in the area affected by the planned work.)

42. Information about sites or existing structures, which will be needed when work begins, should be obtained as early as possible. Information about relevant underground services should be obtained from utility companies and other service owners. Where their exact location is crucial it is important to verify it with cable-location or other detection equipment. It is rarely necessary to locate services using trial excavations before work on site starts.

43. This information needs to be in a form that is convenient, ie clear, concise and easily understood, but it can be included in other documents, for example the specification, providing the relevant health and safety issues are fully covered.

44. Clients also have to tell principal contractors and contractors they choose themselves the minimum notice that they will be given before they are expected to start construction work. This is to ensure that they have sufficient time to plan and

### Example (v)

A client proposed to build a new ferry terminal. The client informed the co-ordinator about the operation of the nearby liquefied petroleum gas terminal.

The design and health and safety plan took account of the potential impact of shipping operations on the construction project, and enabled risks to the LPG operations to be identified and minimised.

### Example (vi)

A client was aware that there could be high levels of arsenic in the soil in their locality. He arranged for tests to be carried out and found significant levels.

The risk at such levels was made clear and the need to develop appropriate risk control measures was made clear in the co-ordinator's information pack.

<sup>3</sup> See paragraph **Error! Reference source not found.**

prepare – eg mobilise their workforce and equipment. (See also Regulation 7(2)(a)(ii) and (b)(iii).)

### **Planning the construction phase**

#### *Regulations 7(2) and 11*

45. Proper planning of the whole project is essential for effective risk management. It makes delays or increased costs due to unforeseen problems far less likely, and helps identify measures to reduce the risk of injury. Planning and preparing for construction can require considerable work. Clients must allow adequate time and tell contractors the minimum notice they will be given to mobilise.

46. In the case of notifiable projects, clients must ensure both that suitable welfare facilities are provided and that the plan is set out in writing before the construction phase begins. Clients, usually through the co-ordinator, must ensure that the plan is suitable, project-specific and sets out:

- the framework for managing and monitoring health and safety standards on site, including the emergency procedures, arrangements for communications and provision of welfare facilities;
- the key health and safety issues for the early stages of the project.

47. CDM<sup>2006</sup> only requires clients to ensure that there is a suitable plan before construction begins; they do not have to approve the plan. The co-ordinator normally advises on its suitability.

48. Once the construction phase has begun, neither clients nor co-ordinators have a duty, under CDM<sup>2006</sup>, to check that the plan is updated; this is the responsibility of the principal contractor. However, the client has to ensure that there are appropriate monitoring arrangements; this is normally the responsibility of the principal contractor.

### **Completion and handover**

49. One of the most important stages in a project is when it nears completion and is handed over to the client. It is rare for all construction work to be completed before handover. Sometimes clients, in their eagerness to have things up and running, assume control when a great deal of construction work remains.

50. It is also tempting to cut back on management resources at this stage. However, risks to employees and others not engaged in construction work can increase substantially as they visit the site or spend more time there. The risks to the construction workers can also increase, due to the presence and work of others not directly engaged or experienced in construction work.

51. To minimize such risks, the management of this phase needs to be considered well in advance of completion and handover to address:

- the nature, scope and duration of any finishing off work;
- how this work will be managed and by whom;
- how the site will be split up, and access controlled, to safeguard construction workers as well as clients' employees and/or members of the public.

#### **Example (vii)**

A row of single storey brick built garages was to be demolished. The site was to be completely fenced off. The information pack stated that there were no hazardous substances or services to the garages. It provided details of the access route to the garages and stated that in recent months children had been playing in the area.

The principal contractor and demolition contractor agreed that no other information was needed.

## **The health and safety file (Notifiable projects only)**

### *Regulation 12*

52. The health and safety file (*the file*) is a source of information to reduce the risks and costs involved in future construction work including cleaning, maintenance, alterations, refurbishment and demolition. Clients therefore need to ensure that the file is available for inspection in the event of such work. It is a key part of the information which the client, or the client's successor, must pass on to anyone preparing or carrying out work to which CDM<sup>2006</sup> applies.

53. At the end of the construction phase, normally at practical completion, the file must be finalised and given to the client by the co-ordinator. In some cases, for example where there is partial occupation or phased handover of a project it may be needed earlier to inform other work. For this to happen, clients need to make appropriate arrangements at the beginning of the project to collect and compile the information that is likely to be needed for the file as work progresses. Clients also need to agree the timing and a suitable, user-friendly format with the co-ordinator.

54. The file can provide significant benefits to the client by minimising the cost of future work. It is therefore well worth the effort to ensure it is kept up to date, even when work not subject to CDM<sup>2006</sup> is carried out.

55. Particular types of clients

## **PFI, PPP and similar forms of procurement**

56. Difficulties can arise if management of the project and design issues are not addressed during the early stages of PFI / PPP projects. By the time a contract is awarded, addressing them is likely to be ineffective and expensive. Because of the wide variety of projects and approaches adopted it is difficult to provide definitive guidance, but HSE believes the following principles should be applied:

- a) The Government is committed to act as an exemplar in matters of health and safety.
- b) The project initiator<sup>4</sup> should ensure that effective arrangements for the management of the project are implemented, from project concept, so that:
  - o all those with an influence on health and safety exercise that influence responsibly;
  - o a co-ordinator is appointed before design work begins – including development of the specification, where relevant; and
  - o developing designs address health and safety issues from concept stage – even where there is no commitment to a particular design.
- c) The role and responsibilities of the client can transfer from one party to another as the project proceeds. (This is normally the case when the Special Purpose Vehicle (SPV) is appointed or when a preferred bidder is appointed with full responsibility for the specification and delivery of a project.) Any such transfer must:
  - o be clear to, and agreed by, all those involved;
  - o clearly recorded;
  - o provide the practical authority and control needed to discharge the client's duties.
- d) Even after such a transfer the project initiator will:
  - o pass on any relevant information in their possession;

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<sup>4</sup> Normally a public body, eg a government department, local authority or health authority.

- exercise any remaining contractual control responsibly;
- co-operate with others involved in the project.

57. Project originators are legally the client at the start and must take the initiative<sup>5</sup>. Because the co-ordinator has to be appointed and HSE notified before design work starts, this normally falls to the project originator, as does responsibility for setting out the management arrangements. The project originator cannot wait until someone else, eg the SPV, takes over.

### **Work done for domestic clients**

58. Domestic clients are people who have work done on their own home, or the home of a family member that does not relate to their trade, or business. It is the type of client that matters, not the type of property. Local authorities, housing associations, charities, landlords and other businesses may own domestic property, but they are not domestic clients. If the work involves a business attached to domestic premises, such as a shop, the client is not a domestic client.

59. Domestic clients have no duties under CDM<sup>2006</sup>. Co-ordinators and principal contractors don't have to be appointed or health and safety plans or files produced on projects for such clients. Sometimes groups, who would otherwise be domestic clients, form companies to administer construction work. A common example of this is a company formed by leaseholders of flats to undertake maintenance of the common structure. In such a case, the company is a client with a client's duties.

### ***Is work done for a domestic client exempt?***

60. **No!** Work for domestic clients is not exempt from CDM<sup>2006</sup>. Designers and contractors still have their normal duties. Only the client is exempt.

61. Designers and contractors working for domestic clients have to manage their own work and co-operate with the others to safeguard the health and safety of all involved in the project. They cannot assume that their client will manage it properly or provide suitable work equipment, eg if they borrow the client's ladders. The requirements in Schedules 2 and 3 and other health and safety law still apply.

62. Insurance and warranty claims

63. An insurance company arranging for construction work to be carried out under the terms of an insurance policy is the client for the purposes of CDM<sup>2006</sup>. However, where the insured arranges the work and the insurance company reimburses them the insured is the client.

64. If the insurer specifies designers or contractors for certain aspects of the work, then they are responsible for establishing that they are competent.

65. It is common, with insurance-related work, for agents to be appointed to act on behalf of either the insured or insurer. These agents resolve claims and may co-ordinate the remedial works. Such agents may legally be clients with all the relevant duties.

66. Where remedial work is carried out under a home warranty scheme, such as those provided by the National House Building Council (NHBC), it is the provider of the warranty, eg NHBC, which is the client for the purposes of CDM<sup>2006</sup>.

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<sup>5</sup> If the project only involves the provision of a service and does not explicitly require construction, the SPV or tenderer proposing a solution including construction is legally be the client from the outset.

## **Developers**

67. In some instances, domestic clients may buy a house or flat before the whole project is complete, for example where house builders develop a site with a view to selling a number of homes. In such cases the purchaser may have an interest in the property, but it is still the developer who arranges for the construction work and is legally the client.

68. Builder-developers are often both client and principal contractor, although they may appoint another contractor as principal contractor. They may also be a designer or co-ordinator. They must comply with CDM<sup>2006</sup> in all their roles.

## **What clients don't have to do**

69. Clients are not required or expected to plan or manage construction work themselves.

## APPENDIX V (i)

### HEALTH AND SAFETY QUESTIONNAIRE for proposed Construction Design and Management (CDM) 2006 Regulations

#### Business Organisations Representing Over 10% of Small Business Sector And One-Off and Occasional Clients

#### RESULT OF RESPONSES from

- Association of Chartered Certified Accountants
- British Chambers of Commerce
- British Property Federation
- British Printing Industries Federation
- Country Land and Business Association
- Engineering Employers' Federation
- Forum of Private Business
- Federation of Small Business
- Institute of Directors
- National Hairdressers' Federation

No.	QUESTION	YES %	NO %	N/K %
<b>1.0</b>	<b>PROPOSED NEW REGULATIONS (CDM 2006) for Clients Role</b>			
<b>1.1.0</b>	<b>LEGAL RESPONSIBILITES</b>			
1.1.1	How would you seek to be advised of your legal responsibilities for Health, Safety and Welfare for a Project to your existing or new business premises? Comment:			
1.1.1	1. By the Contractor	64	27	9
1.1.1	2. By the body you instruct to advise on the project	73	0	27
1.1.1	2. i) What is the nature of the body above? eg Architect, Chartered Surveyors, Civil Engineers.			
1.1.1	2. ii) Name of body:			
1.1.1	3. As a condition of Planning Permission	73	18	9
1.1.1	4. As a condition of Building Regulations	82	9	9

1.1.1	5. Other – please state:			
1.1.1	6. If your answer to either 1.1.1.3 & 4 is YES, how would you wish to be advised about CDM Regulations for project not requiring Planning Permission or Building Regulations approval? Comment:			
1.1.2	In what way would you seek to be informed of your legal responsibilities for a project and construction phase? Comment:			
1.1.3	Do the CDM 2006 discourage or inhibit you/your members from commissioning building, renovation or repair work to your premises?	36	09	55
<b>1.2.0</b>	<b>DEFINITIONS</b>			
1.2.0	Under the proposed regulations, do you understand the meaning of the following: -			
1.2.1	A Project	36	64	0
1.2.1	i. Start of a Project	18	82	0
1.2.1	ii. Finish of a Project	18	73	9
1.2.1	iii. Scope: Before Construction Phase	18	82	0
1.2.1	iv. Scope: During Construction Phase	45	45	9
1.2.1	v. Scope: After Construction Phase	9	91	9
1.2.2	A Construction Site	27	64	9
1.2.3	The type of work included in a Project CDM 2006	18	64	18
1.2.4	The difference between Workplace and Construction Site	18	73	9
1.2.4	1. Do proposed changes in 1.2.1/4 make the duties clearer for CDM 1994? See below if unclear about current regulations.	0	73	27
1.2.5	If your answer is NO to any point in 1.2.1, what are the aspects about which you are unclear?			

<b>1.3.0</b>	<b>CLIENT</b>			
1.3.1	Do you consider the definition of Client clear?	36	55	9
1.3.1	If NO, what are the aspects about which you are unclear? Comments:			
1.3.2	Do you consider the "Client Duties" clear for Health Safety and Welfare in respect of the:			
1.3.2	1. Project	18	64	9
1.3.2	2. Design	18	73	9
1.3.2	3. Construction Phase	18	73	9
1.3.2	4. Health and Safety File	27	64	9
1.3.2	5. Appointments:			
1.3.2	5. i Co-ordinator	27	64	9
1.3.2	5. ii Designer	64	27	9
1.3.2	5. iii Principal Contractor	73	18	9
1.3.2	6. Assessment of Competence by Client of each duty holder	9	73	18
1.3.2	7. Post Construction	18	73	9
1.3.2	8. Notification	36	45	18
1.3.3	If your answer is NO to any part of 1.3.2 above, what are the aspects that should be revised? Comment:			
1.3.4	What is your response to being responsible for checking (Reg 4: "taking reasonable steps to ensure") that welfare facilities are provided on the Project for workers not in your direct employment? Comment:			

<b>1.4.0</b>	<b>CO-ORDINATOR</b>			
1.4.1	Do you consider the role of Co-ordinator is sufficient to help a Client in the discharge of his duties under the Regulations?	18	82	
1.4.2	If NO, what aspect should be revised? Comment:			
1.4.3	Do you consider appointments in 1.3.2.5 above should be kept separate?	18	45	36
1.4.4	If NO, what changes might apply? Comment:			
1.4.5	Are you clear about the qualifications required to prove competence of a coordinator and costs?	0	91	9
1.4.6	If NO, what suggestions have you to meet your requirements?			
1.4.7	Are the new regulations clear about the relationship between the client and coordinator and that the client's duty is see that the contractors and other appointees meet their obligations?	27	73	0
1.4.8	If NO, what suggestions have you to meet your requirements? Comment:			

<b>2.0</b>	<b>CURRENT REGULATIONS (CDM 1994) for Clients Role (If required see summary attached below, both UK &amp; EU)</b>			
2.1	Were you/your members aware of the current CDM 1994 Regulations, when giving instruction for works to be undertaken to your/their business premises?	55	18	27
2.2	Do you/your members know when the CDM 1994 Regulations apply?	45	27	27
2.3	Do you/your members understand the Client Duties under the Current Regulations?	36	45	19
2.4	If your answer is NO to any point in 2.1, 2.2 & 2.3 above, what are the aspects which are unclear? Comment:			
2.5	Do you/your members have access currently to a competent health and safety advisor either internally or externally who can assist you in general Health and Safety compliance?	55	27	18
2.6	If NO, would you know where to access support? Comment:			

<b>3.0</b>	<b>GENERAL COMMENTS</b>			
3.1	In your opinion, do the new regulations avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium sized undertakings?	0	100	0
3.2	Are you aware that below the Notification threshold only part of the regulations will apply, but above the notification threshold all of the regulations apply- including those requiring appointments and a written health and safety plan?	73	18	9
3.3	Do you know how and where to acquire the required knowledge to comply with your obligations under the new regulations?	0	91	9
3.4	If NO: what are your suggestions? Comment:			
3.5	Is the trigger for Appointments [30 days/500 hours of work/less than 5 workers on-site] the best level.	45	45	9
3.6	If NO: what should the trigger be? Comment:			
3.7	Do you/your members feel able to meet your duties to ensure that proper arrangements are made for Health and Safety below the trigger for the Appointments, including a coordinator?	9	82	9
3.8	What is your estimation of costs to your business to comply with the client duties in the new regulations? Estimated/Approximate percentage of Cost of Works: Comment:	% 5 – 50		
3.9	What is your view on the amount of legislation that as a client you would have to comply with under the new regulations? Delete those not applicable:-  Happy,    About Right,    Concerns,    Worried	Happy About Right Concerns Worried Undecided		0 0 28 36 36
3.10	If you have any further comments on any aspect of the regulations, please use this space: Comment:			

## APPENDIX V (ii)

### HEALTH AND SAFETY QUESTIONNAIRE for proposed Construction Design and Management (CDM) 2006 Regulations

#### Business Organisations Representing about 10% of Small Business Sector And One-Off and Occasional Clients

#### COMMENTS ARISING FROM QUESTIONNAIRE

- Association of Chartered Certified Accountants
- British Chambers of Commerce
- British Property Federation
- British Printing Industries Federation
- Country Land and Business Association
- Engineering Employers' Federation
- Forum of Private Business
- Federation of Small Business
- Institute of Directors
- National Hairdressers' Federation

No.	QUESTION
1.0	<b>PROPOSED NEW REGULATIONS (CDM 2006) for Clients Role</b>
1.1.0	<b>LEGAL RESPONSIBILITES</b>
1.1.1	<b>How would you seek to be advised of your legal responsibilities for Health, Safety and Welfare for a Project to your existing or new business premises? Comment:</b>
	<b>ACCA</b>
	Small businesses need to receive simple standardised guidance on their legal responsibilities when they first engage a professional (or contractor) for a project. Different projects have different first contact points so all professions need to be able to provide this guidance.
	<b>BRC</b>
	Large members would normally have an in-house team that would know the processes. SME members would ask their membership organisation or the HSE or a consultancy. Also, possibly the contractor.

	<b>FPB</b>
	We seek a single simple to understand regulatory frame work for all works to buildings. Our members appreciate the planning and building approval process and ALL regulations should be confirmed as having been complied with through this process when an application is required whether it be health and safety, fire escape, environmental, emissions or fabric and structural integrity. Where permission is not required from the authorities because the job is relative minor and straight forward, like decoration or maintenance, we consider the contractor providing the quote should be legally required to be competent and provide proof/certification with the quotation to the client.
	<b>IoD</b>
	Through permissions in the normal regulatory framework for building work eg planning permission, building regulations, but otherwise by HSE endorsed information sheets presented by any of the building trades as a requirement when a quote is requested/given.
	<b>ICAEW</b>
	<p>We have reservations about any law or regulation which affects such a large sector of the UK economy imposing ultimate liability for any failure for building work, when many are unaware of that liability. There is a better regulation concern here.</p> <p>Our members accept that Health, Safety and Welfare are important and take seriously their responsibilities for their staff and visitors alike within their own business workspace. However, like for any service provision supplied to them, they expect that supplier to provide the product at the agreed price at the suppliers own liability. Conversely, our members provide their services to their clients for a price at their risk for which they have insurance cover – Professional Indemnity Insurance. Our members expect that same criteria be applied for the provision of building services, whether maintenance and decoration or larger works requiring planning permission and related approvals.</p> <p>The key aspect must be compliance with all regulations at the point of approval.</p>
1.1.1	<b>2. i) What is the nature of the body above? eg Architect, Chartered Surveyors, Civil Engineers.</b>
	<b>ACCA: ALL</b>
	<b>CLA</b>
	Usually members will use Ch Survs or Architects
	<b>EEF</b>
	Any of the professional bodies

1.1.1	<b>2. ii) Name of body:</b>
	<b>CLA</b>
	RICS, RIBA
	<b>FPB</b>
	RIBA, RICS & others like IoB
1.1.1	<b>5. Other Bodies – please state:</b>
	<b>ACCA</b>
	Any possible contractor, professional or public sector body who may provide services that fall under the regulation as a ‘project’ should be able to provide standardised guidance.
	<b>CLA</b>
	Need to make it a professional responsibility so clear duty of surv or architect to advise client on his responsibility
	<b>FPB</b>
	By the Contractor – If the job, like decoration or maintenance, did not warrant a professional adviser  The HSE to provide its own permissions procedure, so any client would know its project was compliant with HSE enforcement criteria ahead of the works being undertaken.

1.1.1	<b>6. If your answer to either 1.1.1.3 &amp; 4 is YES (Planning/Building Regulations), how would you wish to be advised about CDM Regulations for project not requiring Planning Permission or Building Regulations approval? Comment:</b>
	<b>ACCA</b>
	It should be incumbent on service providers to ensure that clients are aware of their responsibilities through approved standardised advice.
	<b>BCC</b>
	Seek independent advice or follow HSE advice.
	<b>BRC</b>
	By the contractor
	<b>EEF</b>
	From Co-ordinator
	<b>FPB</b>
	By HSE standard terms to be included in any acceptance of instruction by all contractors and/or professional advisers and imposed by law.
	<b>FSB</b>
	Through guidance information.
	<b>IoD</b>
	By HSE endorsed standard terms by the contractor or professional adviser
	<b>ICAEW</b>
	At the smaller end of service provision, where no statutory approvals are required e.g. external repair and maintenance, the service providers should be under a legal obligation to prove competence to the client and their quote must include all their costs of compliance as of legal obligation. This would provide a level playing field, both within the industry and from which our members as clients could fairly assess the quotes. For any works requiring Planning Permission or Building Regulations approval it must be implicit and as a condition before either is issued that the applications are fully compliant with ALL regulations to the specific application. If Health, Safety and Welfare are to be one of the primary aspects of any works, then it must be included within the existing frame work of approvals e.g. planning permission for design aspect.

<b>1.1.2</b>	<b>In what way would you seek to be informed of your legal responsibilities for a project and construction phase?</b> <b>Comment:</b>
	<b>ACCA</b>
	Small businesses seek information from many sources, however much like consumers, they rely on the service provider to inform them of their responsibilities, few have access to in-house expert advice and fewer have the funds required to seek additional advice at a disproportionate cost.
	<b>BPIF</b>
	A large proportion of the BPIF's 2,171 members obtain H&S advice from the BPIF. Currently, the BPIF's online H&S resource page lists the HSE guidance document 'Use of Contractors', which explains the joint responsibilities of client and contractor.
	<b>BRC</b>
	By the contractor
	<b>CLA</b>
	Through the client's professional advisers
	<b>EEF</b>
	From Co-ordinator
	<b>FSB</b>
	Guidance that is easily understood and targeted towards small businesses. The guidance should be relevant to the project and issued automatically when details of the project are submitted for approval
	<b>IoD</b>
	By HSE endorsed standard terms by the contractor or professional adviser
	<b>ICAEW</b>
	If our members pay the bills for quotes freely given in a competitive environment, it should be up to the industry and the regulatory framework to be self sufficient. Competency for any aspect of the work required to complete the project should be inherent within the system. If the system is not functioning properly, we do not consider it should be up to our clients to be burdened with rectifying it at their specific liability.

<b>1.1.3</b>	<b>Do the CDM 2006 discourage or inhibit you/your members from commissioning building, renovation or repair work to your premises?</b>
	<b>ACCA</b>
	Assume that the additional requirements to hire a coordinator and other additional responsibilities under the regulation will bring significant extra costs to bear on small businesses. Small businesses have extremely tight margins and are fairly averse to committing to carry out renovation work under the present circumstances. Additional costs will almost certainly discourage small businesses from carrying out 'projects.' Aside from cost implications the potential for legal liabilities and a duty to ensure the welfare of the contractors will also discourage small businesses from commissioning work.
	<b>BCC</b>
	Think there is not great awareness so little impact
	<b>BPF</b>
	Smaller and members that are only occasional clients may face significant delays as they catch up with their requirements under the new regulations
	<b>BPIF</b>
	Members interviewed were deeply concerned at the potential cost of the new duty on clients for several reasons: <ul style="list-style-type: none"> <li>i. The cost of appointing a co-ordinator would be considerable, if this person must have extensive knowledge of construction H&amp;S regulations and be independent of the appointed contractor. Simple market dynamics suggest that the small number of individuals with such specialised knowledge would be able to charge a premium for their services, if the use of a co-ordinator is written into law for all construction projects.</li> <li>ii. The impact on the insurance rates of companies carrying out works is likely to be considerable.</li> <li>iii. The cost in terms of management time taken for the client to carry out its duties in respect to articles 10-12.</li> </ul> <p>An increased cost would clearly require project plans to provide a greater return on investment, which would prevent projects being carried out. One member commented: "It's hard enough to finance building projects as it is; this would create huge new problems for us."</p>
	<b>BRC</b>
	For SME members, YES; for Large members, maybe not.
	<b>EEF</b>
	No – doubt it

	<b>FPB</b>
	<p>There are undoubtedly additional costs involved in the whole process, from the requirement to engage a co-ordinator, through insurance implications to additional administration and legal implications. Some necessary works may not be undertaken because it is not economically viable. .</p> <p>Our members do not consider it just or viable to have a liability for work they are commissioning outside their own industry expertise other than to pay the bill under the contractual terms agreed.</p> <p>The FPB considers CDM 2006 should only apply when planning and building regulations are required and any notification should be an automatic procedure as a condition of approval.</p>
	<b>FSB</b>
	<p>They could do depending on the project. The FSB is concerned that the legislation will not be straightforward for a small or one-off client to understand, they may find the legislation and guidance difficult to relate to their particular project. We also have fears that the Regulations would add costs to the project</p>
	<b>IoD</b>
	<p>Doubt whether members out side the industry are aware of liability, if not advised. If advised, it would be viewed as an additional cost in viability</p>

1.2.0	<b>DEFINITIONS</b>
1.2.0	<b>Under the proposed regulations, do you understand the meaning of the following: -</b>
1.2.5	<b>If your answer is NO to any point in 1.2.1(Defining Project and Construction) what are the aspects about which you are unclear?</b>
	<b>ACCA</b>
	I am able to understand the terminology but feel that the start and finish of a project is not codified. I feel that they should be defined with an onus on the start and end of a project being related to the agreement of contracts. Without this codification I feel there are too many grey areas. Similar can be said for the definition of a construction site and the scope of the regulations.
	<b>BCC</b>
	Not user friendly for non experts
	<b>BPF</b>
	A Project – though the definition is clear, it is very, very broad in its context.
	i. Start of a Project – the start of a project is not clearly defined; more is needed on this issue, at present it could be at the point that a project is conceived, prior to any calculations or understanding of viability are undertaken. This would significantly add to the ‘entry costs’ of projects and may lead to many small and medium sized expansions/developments not commencing.
	ii. Finish of a Project – There is no defining point at which a project is completed, which means that a client is potentially liable for the project in perpetuity.
	iii. Scope: Before Construction Phase
	iv. Scope: During Construction Phase
	v. Scope: After Construction Phase – There is a passing comment in the Health & Safety log book section, but apart from this, the requirements of the regulations are unclear.
	A Construction Site –
	The type of work included in a Project CDM 2006
	The difference between Workplace and Construction Site Though it is clear, the scope again is very broad, and ensuring that all those that participate in such activities are aware of their responsibilities may be challenging. And those that do know may be discouraged from undertaking them.

	<b>CLA</b>
	A Project No. all this is technical stuff and clients will need it to be explained to them, which is why the professions must lead.
	<b>BPIF</b>
	Co-ordinator must be appointed before design work; planning or preparation for construction work is begun. Does this mean that the co-ordinator must be involved in initial discussions before the project has been agreed by a company's directors?
	<b>BRC</b>
	Unsure when a project starts or finishes and what a construction site will actually look like. Client liability when/if the project ever finishes also unclear.
	<b>CLA</b>
	The respective role of the architect or surveyor who appoints a planning supervisor when required is relatively clear under current regs. We see the new regs as well meaning but very hard to understand in relation to works for smaller clients or on a one off basis, where they will rely on a professional advisor and not be in any position to take direct responsibility for appointing "co-ordinators" themselves. There is a fatal lack of clarity.
	<b>FPB</b>
	It is unclear how/when a normal working environment changes into a construction site or a project. Is a construction site created as soon as a workman puts up a temporary barrier?  The FPB considers CDM 2006 should only apply when planning, building regulations or licences are required for building works and any notification should be an automatic procedure as a condition of approval.  The end of the construction phase should be clearly defined eg handover. Either the employer has overall responsibility or the principal contractor and the change from one to the other needs to be clear. The confused situation in the regulations as drafted needs to be rectified.
	<b>FSB</b>
	What has to be done during these phases and where do responsibilities lie?  Regarding the type of work included in a project CDM, would the 're-decoration' also include a repainting job? If so, it seems like an onerous regulation to have to follow and not in line with better regulation principles.  There could be circumstances in which the line between a workplace and construction site are blurred.

	<b>IoD</b>
	It seems a project starts before an architect or builder are instructed and construction includes maintenance and decoration not considered construction in the normal understanding of the word. It is unclear about what liabilities a client would have after the building has been completed.
	<b>ICAEW</b>
	We are concerned that the concept of a project, as defined in the draft regulations, is highly bureaucratic. The key aspect must be compliance with all regulations at the point of approval. Therefore, we do not consider the new function of co-ordinator needs to be appointed before even a concept has been decided. Additionally, we do not consider our members and their clients should have an open end commitment to the completed works thereafter, as the person of last resort in any action that might have occurred in the construction process, as appears to be the case with the regulations as drafted.
	<b>RICS</b>
	<p>Significantly greater responsibilities are also bestowed upon the <b>client</b> including the requirement that they must ensure that the co-ordinator carries out his/ her duties. Unfortunately the lack of clear definitions of roles and authority, particularly where there is an overlap between the new of role Co-ordinator and the existing roles of Project Manager, Building Surveyor and Lead Designer, in the proposals could make it difficult for the client to understand and subsequently comply with this requirement effectively and efficiently. How can a client be expected to ensure that the co-ordinator carries out his/ her duties if it is not clear what those duties are and how they align with those of other consultants on the project? RICS recommends that as a minimum a set of duties is clearly established for the co-ordinator that ringfences this role from other consultants' responsibilities.</p> <p>The proposals stipulate that the client is to appoint a Project <b>Co-ordinator</b> (herein referred to as the 'co-ordinator'), or otherwise take on the responsibilities themselves, to manage a project prior to any design work being undertaken. The co-ordinator, who will replace the Planning Supervisor, is not only to supply guidance to clients through the design, use and maintenance of a project but is also to liaise with designers and clients to ensure that hazards specific to that project are identified and will be the final decision maker.</p> <p>As we highlighted in our response to the proposals these new arrangements raise serious questions over who will ultimately be held liable at the end of the process; the client or the co-ordinator? The <b>legal implications</b> of this are substantial and the lack of clarity worrying.</p>

<b>1.3.0</b>	<b>CLIENT</b>
<b>1.3.1</b>	<b>Do you consider the definition of Client clear?</b>
<b>1.3.1</b>	<b>If NO, what are the aspects about which you are unclear? Comments:</b>
	<b>ACCA</b>
	<p>Whilst many small businesses are owner-operated some are not. If an employee contracts and organises a project, is that employee the client? If it is the business that is the client then who is liable the owner or the employee? Similar could be said for charities that often include many trustees.</p> <p>Unsure as to who is the Client with reference to the landlord tenant relationship? Is the 'Client' the landlord who orders and pays for the work or is it the tenant who represents the workplace?</p>
	<b>CLA</b>
	Clearly the HSE wants the building owner to take responsibility for health and safety, but we regard this as misjudged. Building owners are not safety experts, and only the largest will employ specialists in house. It is silly to try to put responsibility on a group that has no expertise. The project manager, be he architect, surveyor or engineer should hold the clear responsibility for advising his client and ensuring the works are carried out safely, appointing a planning supervisor or specialist adviser as necessary.
	<b>FPB</b>
	It is unclear whether this is a business owner or includes an employee. It is unclear whether the furtherance of business includes all businesses or is targeted at developers and other people in the building/property industry. Further this brings uncertainty to whether this includes work to a business persons house. If works to our members own homes is to be excluded from these regulations this should be clearly stated. The FPB considers this could be simply done by defining works to ones own home being excluded with the definition of home being defined as where the person paying for the work is the payer of the council tax.
	<b>ICAEW</b>
	The definition of whom or what is the 'client' is unclear, particularly within a corporate structure.
<b>1.3.3</b>	<b>If your answer is NO to any part of 1.3.2 (Client Duties) above, what are the aspects that should be revised? Comment:</b>
	<b>ACCA</b>
	It is very unclear as to who a coordinator is and what qualifications they

	must have to be considered competent. It is unreasonable to expect small business owners to be knowledgeable enough to judge the competences of each post holder. Whilst they are able to abrogate this responsibility to the coordinators, the client must still judge the coordinators competency?
	<b>BCC</b>
	Needs to be clearer for non experts to the industry
	<b>BPF</b>
1.3.2	1. Project Though the duties are reasonably clear, they are dotted about the regulations – even when broken-down to illustrate just the client responsibilities, and this can lead to some confusion.
1.3.2	2. Design With design and construction phase, by blankly stating that it is the client's responsibility to allocate significant resources for persons delivering all of these. Further understanding of this is needed.
1.3.2	3. Construction Phase During the construction phase itself, clients will not be able to access the site without prior notification to the foreman/site manager, this therefore raises the question as to whether the client is the correct person to have responsibility for the regulations at this stage.
1.3.2	6. Assessment of Competence by Client of each duty holder See answer to 1.4.6 below
1.3.2	7. Post Construction The only mention is the handing over of the Health and Safety File to subsequent owners.
1.3.2	8. Notification It is not entirely clear how notification will take place.
	<b>BRC</b>
	Puts an entirely new and disproportionate burden on retailers
1.2.3 .6	How on earth can a domestic householder judge the competence of an HSE professional? Is he to be held liable if he is taken in by a crook?
	<b>CLA</b>
	The HSE has designed a scheme that simply does not fit the real world in respect of smaller schemes and ordinary owners. It faces the wrong way, and should be addressed at professionals
	<b>EEF</b>
	They've not changed very much, but what changes there have been need to be clearly spelled out to clients.

	<b>FPB</b>
	The client duties should be to check the necessary approvals have been secured, only if the coordinator role has not been filed, and pay the price reasonably tendered including the requirements within the regulatory approvals where necessary, by a contractor proving competence by certification for the nature of the work he quoted for.
	<b>FSB</b>
	<p>It is not clear what exact documentation should be contained in the Health and Safety file. More information should be given in the guidance.</p> <p>It is unlikely that the client would be aware of the regulations so how would they be in a position to assess competence of each duty holder? It is not clear what would constitute 'reasonable steps' to ensure competency.</p> <p>Post construction – not enough information supplied.</p> <p>It is not clear how a small or one-off client should go about the process of notification. This should be included in the guidance.</p>
	<b>IoD</b>
	Members outside construction have inputs to the various phases, but rely on those they pay for compliance.
	<b>ICAEW</b>
	At the smaller end of service provision, where no statutory approvals are required e.g. external repair and maintenance, the service providers should be under a legal obligation to prove competence to the client and their quote must include all their costs of compliance as of legal obligation. This would provide a level playing field, both within the industry and from which our members as clients could fairly assess the quotes. For any works requiring Planning Permission or Building Regulations approval it must be implicit and as a condition before either is issued that the applications are fully compliant with ALL regulations to the specific application. If Health, Safety and Welfare are to be one of the primary aspects of any works, then it must be included within the existing frame work of approvals e.g. planning permission for design aspect.
	<b>RICS</b>
	<p>According to the proposals not only must the client carry out such tasks as appointing a co-ordinator and ensuring they carry out their duties but they also stipulate that “all projects would require . . . non-domestic clients to check the competence of all their appointees”. However there is currently no definition or criteria for competence or a list of those who would be deemed competent. How is a client therefore expected to ascertain who could be deemed competent?</p> <p>With such significant responsibilities now resting on the shoulders of the client it is vital that they are provided with the guides and tools by which to</p>

	carry out their duties. Currently clients would appear to be left in a knowledge wilderness with regulations dictating significant responsibilities on one side and undefined criteria on the other. The need for a clearer, more codified definition and assurance of competence is therefore imperative.
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<b>1.3.4</b>	<b>What is your response to being responsible for checking (Reg 4: “taking reasonable steps to ensure”) that welfare facilities are provided on the Project for workers not in your direct employment? Comment:</b>
	<b>ACCA</b>
	<p>Massive expansion of the duties of a small business and again the comparison between small businesses and consumers holds true. Small businesses do not have the resources or in-house knowledge to know the welfare requirements for the many different projects covered by this regulation. It is also unreasonable to expect them to learn or expend valuable resources on learning those welfare requirements. There is in particular no allowance for scale.</p> <p>Also question whether this is workable in a real-life situation. Firstly the time and resource constraints on small businesses are such that they can not be expected to monitor staff not in their employment and secondly small businesses are unlikely to question professionals on the discharge of their duties.</p>
	<b>BPF</b>
	It is difficult to see how the client is the most appropriate person to undertake this.
	<b>BPIF</b>
	<p>Members did not feel that they had any responsibility for workers employed by their appointed contractor. The only situation where members felt that they would have an interest in the construction workers’ health and safety was where work was occurring in very close proximity to the company’s own employers. Even then, the concern was that construction activities could endanger the client’s own employees.</p> <p>The current requirement that client has to be reasonably satisfied that the people he or she appoints are competent is the fairest way of ensuring that the client takes an interest in construction. The only thing the client can do is ensure that the experts he or she has appointed have the knowledge to abide by the law.</p>
	<b>BRC</b>
	Define “reasonable steps”. This appears to go much further than mere checking and could be a massive burden for the retailer

	<b>CLA</b>
	Happy that architect should advise what this means in practice.
	<b>EEF</b>
	Seems like good practice.
	<b>FPB</b>
	The regulatory authorities should be responsible. There must be one authoritative process for approvals as to compliance for each project. All required welfare requirements should be included within the approvals process. This would mean all involved in the building works would be on a level playing field to quote and the contractors quoting would then be responsible for running their own sites to their own costings. The FPB does not consider clients in businesses not specialising in construction or health and safety for a specific project should have a liability for the welfare of staff not in their direct employment.
	<b>FSB</b>
	This seems fair
	<b>IoD</b>
	We consider the current drafting in the regulation to go beyond checking.

<b>1.4.0</b>	<b>CO-ORDINATOR</b>
<b>1.4.1</b>	<b>Do you consider the role of Co-ordinator is sufficient to help a Client in the discharge of his duties under the Regulations?</b>
<b>1.4.2</b>	<b>If NO, what aspect should be revised?</b> <b>Comment:</b>
	<b>ACCA</b>
	It is not clear what qualifications a coordinator must have. Also it is unclear whether the coordinator must conduct permanent monitoring of the site so as ensure the welfare of the persons carrying out the work on behalf of the client is maintained.
	<b>BPF</b>
	The regulations, or any associated guidance or best practice notes, need to be extremely clear as to how these are to be undertaken.
	<b>CLA</b>
	This is inventing a new role. It should be dropped. The co-ordinator role should be a responsibility of the project manager/ architect/ surveyor/ engineer.

	<b>FPB</b>
	<p>The requirement of client towards a co-ordinator is to perform his duties goes far beyond helping. The liability in the draft regulations is far more than just a requirement to help. The client would require the coordinator to take responsibility. That is what the client would be paying for. If a client without knowledge of the building industry is deemed as not being able to rely on the industry to provide the product safely and that his competence is insufficient to judge the competence of the specialist providing the service, the coordinator needs to take full responsibility, subject only to his bill being paid in accordance with his quote.</p> <p>However, we do not consider there should be the need for a separate role or indeed creation of a whole new profession to fulfil the regulations requirements as to competency. The necessary competencies should be included within each facet of the services provided within the overall process. All architects, surveyors, civil engineers, principal contractors, etc must, as part of their competency requirements, prove their competence to the client for the aspect of project they are being paid to undertake at the time the appointment is made.</p>
	<b>FSB</b>
	It is not clear what the where the cut off in responsibilities is between the client and the coordinator. It appears that the client is always responsible but if they have to appoint a co-ordinator because they have little or no knowledge of the requirements of the regulation, how can they be ultimately responsible?
	<b>IoD</b>
	Our members require those they instruct to take responsibility, not just advice.
<b>1.4.3</b>	<b>Do you consider appointments in 1.3.2.5 above should be kept separate?</b>
<b>1.4.4</b>	<b>If NO, what changes might apply? Comment:</b>
	<b>ACCA</b>
	Separation of posts will add to the costs encountered by small businesses. Ability to combine roles will enable the market to provide flexible appropriate offerings for small businesses.
	<b>BPIF</b>
	The role of the co-ordinator is redundant.
	<b>FPB</b>
	The role of coordinator for smaller building works should be an integral part of the competence required by the designer and/or principle contractor. For

	larger works where there are many different functions being undertaken, including project management, etc, the competence and role of coordinator, who should have overall control of all management of the project including the professional team and contractors, should be an integral part of the skill of the person or profession undertaking the function.
	<b>IoD</b>
	The professional and/or principle contactor should be competent to coordinate their fields of operation – off site and on-site.
<b>1.4.5</b>	<b>Are you clear about the qualifications required to prove competence of a coordinator and costs?</b>
<b>1.4.6</b>	<b>If NO, what suggestions have you to meet your requirements?</b>
	<b>BPF</b>
	As there is very little as to what is considered to be competent in the proposals, it is very difficult to comment on what should be included. The obvious points however are for HSE to define what is meant by competency i.e. membership of a professional body, a qualification attained to a specific level, prior experience or all of the above.
	<b>BRC</b>
	What is a coordinator? It is an unknown and poorly defined role.
	<b>CLA</b>
	We do not want a new profession, adding to building costs. We would prefer the existing professions took this on board in their Continuing Professional Development.
	<b>EEF</b>
	Need to avoid the situation where Planning Supervisors were only there by name and didn't have the necessary construction and safety experience.
	<b>FPB</b>
	A coordinator is a completely new role without a recognised professional body and thus unknown. Our members recognise the professions like RIBA, RICS, ICE and the competencies must be included within the recognised professions as specialist skills to be clearly identified. With all relevant regulations having to be approved through one process ie planning and building regulations, the professions would be required to include the required competencies. This is happening as a natural consequence of the environmental and emissions regulatory requirements being included under building regulation L. The FPB considers health & safety of equal importance and the system of compliance should be the same for both. Two different regulatory systems for the same works leads to potential confusion and conflict. This is not good law and conflicts with the Government's policy of Better Regulation.

	<b>FSB</b>
	It would be useful for the client to have an easy to understand check list that he can give to the co-ordinator to fill in to demonstrate competency.
	<b>IoD</b>
	The profession of coordinator is unknown and unproven and consequently cannot discharge satisfactorily the liability falling upon the client.
<b>1.4.7</b>	<b>Are the new regulations clear about the relationship between the client and coordinator and that the client's duty is see that the contractors and other appointees meet their obligations?</b>
	<b>BPF</b>
	It is fairly clear on this, but again, the responsibility is very broad, and one has to question if the client is best positioned to delivery on all of these obligations?
<b>1.4.8</b>	<b>If NO, what suggestions have you to meet your requirements? Comment:</b>
	<b>CLA</b>
	Yes they are clear enough, but the whole project is muddle headed and pointing the wrong way. How can a client take on these proposed professional duties and responsibilities with no training or experience? It must be possible for the client to appoint a professional to do this for him, and to take the responsibility.
	<b>EEF</b>
	Needs to be spelled out in simple advice tailored solely for clients.
	<b>FPB</b>
	Under the new proposed regulations, the client has full unlimited liability. He can only mitigate this liability through appointments, but no matter what accident might occur if any of the professionals or contractors are deemed to have failed in their duties, the client is totally exposed to prosecution on the test of competency if no other including the coordinator. Unless the coordinator takes full responsibility, the worth of the coordinator role is unproven.
	<b>FSB</b>
	See point made at 1.4.2 –  It is not clear what the where the cut off in responsibilities is between the client and the coordinator. It appears that the client is always responsible but if they have to appoint a co-ordinator because they have little or no knowledge of the requirements of the regulation, how can they be ultimately responsible?

<b>2.0</b>	<b>CURRENT REGULATIONS (CDM 1994) for Clients Role</b> (If required see summary attached below, both UK & EU)
<b>2.1</b>	<b>Were you/your members aware of the current CDM 1994 Regulations, when giving instruction for works to be undertaken to your/their business premises?</b>
<b>2.2</b>	<b>Do you/your members know when the CDM 1994 Regulations apply?</b>
<b>2.3</b>	<b>Do you/your members understand the Client Duties under the Current Regulations?</b>
<b>2.4</b>	<b>If your answer is NO to any point in 2.1, 2.2 &amp; 2.3 above, what are the aspects which are unclear?</b> <b>Comment:</b>
	<b>ACCA</b>
	A great number of small businesses are not aware of their requirements and so they rely on the professionals they instruct to provide them with advice regarding this.
	<b>BPIF</b>
	Construction work is a rare thing for a business to do. Members are concerned with day-to-day running of their business, and the long-term strategy of their business. Any construction work is peripheral to a company's concerns. The health and safety requirements of a construction site is of no interest whatsoever. This is why companies employ contractors and architects to deal with construction for them. Once a tender has been drawn up that ensures the competence of contractors, the client has done all that is within its knowledge to ensure the regulatory compliance of a site.
	<b>CLA</b>
	Clients are lead through the maze by their existing advisers
	<b>FPB</b>
	Our members have access to our health and safety helpline service, but those not in the construction, property or health and safety industries tend to rely on their professional advisers for specialist advice. Building works are generally considered a specialist area not core their normal business activities and infrequently undertaken. Decoration and maintenance are not immediately recognised as construction, so for minor works our members could be unaware of their liabilities. It is the FPB's concern that with the current regulations not being universally understood, the imposition of still more regulation and liabilities separate from the recognised system of approvals is unnecessary.

	<b>FSB</b>
	Duties and responsibilities, how to notify. How to determine competence.  A survey of the 195,000 FSB membership would probably give a mixed response.
<b>2.5</b>	<b>Do you/your members have access currently to a competent health and safety advisor either internally or externally who can assist you in general Health and Safety compliance?</b>
	<b>BPIF</b>
	BPIF members have access to a team of dedicated health and safety advisors to ensure their regulatory compliance and promote best practice. However, the team's activities are focussed on running a printing firm and do not extend to construction, just like our members. There is guidance on the BPIF website on managing construction: the HSE leaflet on the matter.
<b>2.6</b>	<b>If NO, would you know where to access support?</b> <b>Comment:</b>
	<b>ACCA</b>
	Small businesses would be able to access advisers through the various private companies that exist to meet their requirements. Other business information companies can provide recourse online and on paper. They will not tend to have an internal adviser and are unlikely to have an external contract with an adviser.
	<b>BPIF</b>
	Members expected that they would be able to get all they needed from their contractor. Beyond this, they would contact construction trade bodies for further advice.
	<b>CLA</b>
	Through their usual advisers, who at present bring in planning supervisors when required.
	<b>FPB</b>
	See 2.4 above - Our members have access to our health and safety helpline service, but those not in the construction, property or health and safety industries tend to rely on their professional advisers for specialist advice. Building works are generally considered a specialist area not core their normal business activities and infrequently undertaken. Decoration and maintenance are not immediately recognised as construction, so for minor works our members could be unaware of their liabilities. It is the FPB's concern that with the current regulations not being universally understood, the imposition of still more regulation and liabilities separate from the recognised system of approvals is unnecessary.

<b>3.2</b>	<b>Are you aware that below the Notification threshold only part of the regulations will apply, but above the notification threshold all of the regulations apply- including those requiring appointments and a written health and safety plan?</b>
	<b>FPB</b>
	YES - From the summary supplied but not the draft regulations themselves.

<b>3.0</b>	<b>GENERAL COMMENTS</b>
<b>3.4</b>	<b>If NO (Client: where to acquire the required knowledge to comply) : what are your suggestions? Comment:</b>
	<b>ACCA</b>
	Being confident of transferring all necessary information to all UK small businesses is a notoriously difficult area. It is therefore probably best if professionals and contractors are able to provide advice and guidance to clients.
	<b>BPF</b>
	Through the local authority.
	<b>BPIF</b>
	The guidance on the appointment of a co-ordinator is very vague, and raises a number of questions: <ul style="list-style-type: none"> <li>- Does the co-ordinator have to know current H&amp;S law in the construction industry? If not, what is the purpose of involving in the process, and paying for the time of, an individual who is not the contractor or the client?</li> <li>- Who is the co-ordinator meant to be? Members reported that they relied on their contractor (architect) to supervise the enforcement of H&amp;S standards on the construction site. Does the co-ordinator have to be independent of the contractor? How can the HSE justify the extra cost of appointing a secondary expert?</li> <li>- Where will these co-ordinators come from? Has the HSE considered that the people with the expertise to act as co-ordinators will be involved in the construction industry in other guises, and that these guises could conflict with the best interests of the client they are representing? There may be conflict between the contractor and the co-ordinator – how will these be resolved?</li> </ul>
	<b>CLA</b>
	Make it a duty on professional advisers

	<b>EEF</b>
	No - on behalf of our members, although they may come to ask us. See earlier responses re: professional bodies and co-ordinator.
	<b>FPB</b>
	The FPB offers a Health & Safety advisory service for members and details of all changes are incorporated as required with a major revision undertaken annually.
	<b>FSB</b>
	HSE will have to draw up a communications strategy to ensure that these regulations are communicated and presented clearly to both the business community and wider population.
	<b>IoD</b>
	The understanding comes from reading the provided summary. There is an additional cost from these regulations and this is bound to affect marginal projects. Our members rely on the industry itself to provide the necessary compliance, as they would expect to do so in their own industry.
<b>3.5</b>	<b>Is the trigger for Appointments [30 days/500 hours of work/less than 5 workers on-site] the best level.</b>
<b>3.6</b>	<b>If NO: what should the trigger be?</b> <b>Comment:</b>
	<b>BPF</b>
	Trigger should be higher, at present it would include lots of projects where the client would be unaware of their responsibilities. It may therefore cause a block on essential extensions/changes of use, affecting small and medium sized businesses dis-proportionately.
	<b>BPIF</b>
	This is a good opportunity to better coordinate with European regulations on construction which, in addition to exempting work lasting fewer than 30 days and taking fewer than 500 hours of work, exempts projects where fewer than 20 workers are employed simultaneously. Continuing with different definitions is surely contrary to the Better Regulation Agenda.
	<b>BRC</b>
	The number of contractors and length of time appear arbitrary.
	<b>EEF</b>
	Seems to have worked so far.

	<b>FPB</b>
	<p>If it is beholden on the client, it must be in terms he can understand and this probably can only be defined in monetary terms, say +/- £100,000 contact price + inflation. However, the FPB considers this should be the responsibility of the industry and authorities not the client/small business.</p> <p>Those of our members outside construction and health &amp; safety industries understand finance and the basic description of the works. The concept of how long it might take or the number of workmen a particular contractor might employ is not generally understood. It is only the contractor or professional advisers that might have these perceptions at an early stage. Therefore, the necessity for any notices and/or appointments should be deferred until after concepts have been agreed and the requirements should be enforceable only at the time a contract is struck or at the time the various regulatory approvals are sought.</p>
	<b>IoD</b>
	Our members understand finance and size but not how many site workers would be required for any building work. That is up to individual contractors.
<b>3.7</b>	<b>Do you/your members feel able to meet your duties to ensure that proper arrangements are made for Health and Safety below the trigger for the Appointments, including a coordinator?</b>
	<b>EEF</b>
	No CDM duties apply below the trigger level do they?

<b>3.8</b>	<b>What is your estimation of costs to your business to comply with the client duties in the new regulations? Estimated/Approximate percentage of Cost of Works: Comment:</b>
	<b>ACCA</b>
	It is almost impossible to know the full extent of the costs of the regulations will impose on small businesses, mainly because there is not a functioning market for coordinators and the cost implications of further changing responsibilities is not clear. I imagine their will be severe cost implications and the regulations will be disproportionately more expensive for small businesses.
	<b>BPIF</b>
	The cost of the appointment of a co-ordinator cannot be calculated until their scales of charges are made known. This can only occur once the HSE clarifies the extent of their required knowledge.
	<b>CLA</b>
	Planning supervisors can charge up to 6% of cost of works, but the added costs and delay of compliance with red tape can be significant. HSE

	requirements may add up to 10% on costs.
<b>3.10</b>	<b>If you have any further comments on any aspect of the regulations, please use this space:</b> <b>Comment:</b>
	<b>BPIF</b>
	Wish that the printing industry could ensure that such laws existed to penalise their customers for employing printers that cut costs by cutting regulatory corners. The construction industry may be statistically more hazardous than many other sectors of the UK economy; however, this does not justify placing the onus for health and safety onto employers who have no idea of requirements in the construction industry and expect their appointed contractor to cover these. It is the HSE's fault if their enforcement methods are not eliminating rogue contracting operators, and it is disgraceful that they are proposing to place the costs of their failures onto UK businesses.
	<b>EEF</b>
	Companies still have concerns. The regulations are not yet clear to them. They need to be clearly and simply explained.
	<b>FPB</b>
	The FPB consider that in the interests of Better Regulation that the Cabinet Office must consider whether the Government's own targets are being met in the construction sector. There are environmental/emissions regulations coming into effect this April, changes to fire regulations scheduled for October and these health and safety proposals scheduled for early 2007. This is on top of DDA. Small businesses are being overloaded with no single point of delivery and the confused messages have potentially dire consequences.
	<b>FSB</b>
	The majority of small businesses will not be aware of the requirements or responsibilities and will probably have difficulties in understanding them and relating them to their particular project. A tool, such as a simple flow chart that points the client in the right direction dependant on the project would be a good idea. This chart should be held by the contractors (as the client will normally go to a contractor to carry out the work) and make it a requirement for the contractor to give the chart to the client to enable them to follow the correct procedure.
	<b>IoD</b>
	Our members as clients with no specific knowledge in property or construction do not consider they should be responsible for the standards within the construction industry, in a tender has been correctly undertaken by the professional team.

	<b>ICAEW</b>
	<p>The ICAEW undertakes annual surveys of member's opinions on wider business issues. The 2005 survey revealed that the annual cost to the UK economy of administrative burdens is approximately £7bn and that 92% of this burden is carried by Micro and Small enterprises – the businesses who we believe will be most at risk by the proposed new regulations. We therefore strongly urge the Health &amp; Safety Executive reconsiders these proposals. As a result of this feedback from members the ICAEW has a regular dialogue with the Cabinet Office Better Regulation Executive on the government's Simplification Initiative as well as being broadly supportive of the Legislative and Regulatory Reform Bill currently going through parliament.</p>
	<b>RICS</b>
	<p>Current drafting implies that at one minute past midnight the proposals would come into force. Subsequently clients would be given no opportunity to understand the changes or to review and approve appointments and projects. When also taking into account the wider implications the proposals will have, including the need to review all current building contract forms (e.g. JCT, NEC, ECT etc), the time scale proposed will be wholly inadequate.</p> <p>RICS therefore believes that a statutory review or transition period must be included in the proposed programme of implementation to allow clients the necessary time to facilitate the appropriate changes.</p>
	<b>APS</b>
	<p>The focus should not be so much on informing the client but on making sure that the industry is capable of providing the necessary level of professional service.</p>
	<b>IPS</b>
	<p>Clients must take on/reorganise/and accept their responsibilities, rather than choose to ignore/hope they go away.</p> <p>Regardless of the onerous nature, the clearer the duty, the more likely that the duty will be actioned</p> <p>The challenge is how a client will be expected to ever read the clause in the first place unless the revised regulations are <u>widely</u> and <u>actively published</u>, in publications other than construction trade press. Although the duty will remain on the first construction professional in contact with the client to advise him/her accordingly.</p> <p>Many clients of the construction industry who commission only one off or occasional projects remain unaware of the implications of the CDM regulations particularly in respect of potential prosecution.</p> <p>Many clients were unaware of their explicit duty towards people entering their workplace, this was particularly so in respect of contractors and the like</p>

	from the photocopier repair man to the electrician changing the light fittings. The fundamentals of the extent of responsibility under the Workplace Regulations are perhaps not generally realised.
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<b>4.2.0</b>	<b>Do you consider business people have a responsibility to check (Reg 4: “take reasonable steps to ensure”) that the Health, Safety and Welfare of those engaged in a building project are properly catered for when a project is being undertaken on their behalf?</b>
<b>4.2.1</b>	<b>Comment:</b>
	<b>ACCA</b>
	Small businesses do not have the expertise to monitor projects undertaken on their behalf, for instance you can not expect a shopkeeper to know the details of health and safety law for scaffolders. Therefore, it is difficult to argue that they should be legally responsible for the health and safety of the employees of businesses they contract.
	<b>BCC</b>
	Checking – Yes: A Duty to ensure – No
	<b>BPIF</b>
	The old requirement that the client be reasonably satisfied that those he employs on a project have the competence to conduct themselves without contravening any statutory requirements or prohibitions can be classified as checking that the health and safety of those in a building project are properly catered for. The new requirement requires clients to tell contractors how to do their jobs. Printers know nothing about what a properly regulated construction site looks like, nor should they.
	<b>CLA</b>
	Yes, but they should be able to appoint a professional to take full responsibility for this on their behalf
	<b>FSB</b>
	This is the same as for any contractor on site, however if the site is cordoned off and entry controlled by the contractor then it should not be the clients responsibility for those within the controlled area.
	<b>IoD</b>
	Checking: Yes: Ensure: No
	<b>ICAEW</b>
	Our members accept that Health, Safety and Welfare are important and take seriously their responsibilities for their staff and visitors alike within their own business workspace. However, like for any service provision supplied to them, they expect that supplier to provide the product at the agreed price

	at the suppliers own liability. Conversely, our members provide their services to their clients for a price at their risk for which they have insurance cover – Professional Indemnity Insurance. Our members expect that same criteria be applied for the provision of building services, whether maintenance and decoration or larger works requiring planning permission and related approvals.
<b>4.6.0</b>	<b>If you/your members as Clients do not instruct the Contractor(s) direct, in what form do you instruct those that do? Comment:</b>
	<b>BCC</b>
	Usually an architect or surveyor
<b>4.7.0</b>	<b>Do the instructions under 1.4.0, 1.4.1, 1.5.0 &amp; 1.6.0 cover Health, Safety and Welfare?</b>
<b>4.7.1</b>	<b>If NO, how is Health, Safety and Welfare covered? Comment:</b>
	<b>IoD</b>
	Members expect those instructed to be compliant with the necessary regulations in their particular field and secure planning and building regulations and other approvals required from the regulatory authorities.

**APPENDIX VI**

**HEALTH AND SAFETY QUESTIONNAIRE  
for proposed  
Construction Design and Management (CDM) 2006 Regulations**

**COMMENTS from  
Individual Companies responding at random**

No.	QUESTION
1.0	<b>PROPOSED NEW REGULATIONS (CDM 2006) for Clients Role</b>
1.1.0	<b>LEGAL RESPONSIBILITES</b>
1.1.1	<b>How would you seek to be advised of your legal responsibilities for Health, Safety and Welfare for a Project to your existing or new business premises? Comment:</b>
	Communications Company
	<i>I would expect the contractor/architect to advise me.</i>
	Small Business
	<i>As a small business I would expect the contractor to make me aware of the necessity for these procedures or the adviser dependent on the size of the project</i>
	Management Consultancy
	<i>By the contractor &amp; design consultant.</i>
	Oil Depot
	<i>Professional Adviser</i>
1.1.1	<b>2. i) What is the nature of the body above? eg Architect, Chartered Surveyors, Civil Engineers.</b>
	Care Home
	<i>Architect</i>
	Car Dealership
	<i>Architect</i>

1.1.1	<b>2. ii) Name of body:</b>
	Insurance Brokers/Financial Services
	<i>Would be RIBA</i>
	Small Business
	<i>RIBA</i>
	SBS 17 – Laboratory
	<i>RIBA</i>
	Oil Depot
	<i>Surveyor</i>
1.1.1	<b>5. Other – please state:</b>
	Laboratory
	<i>Client – Architect Contract</i>
1.1.1	<b>6. If your answer to either 1.1.1.3 &amp; 4 is YES, how would you wish to be advised about CDM Regulations for project not requiring Planning Permission or Building Regulations approval? Comment:</b>
	Caravan Park
	<i>By Contractor</i>
	Internet Development
	<i>Contractor/Architect</i>
	Small Business
	<i>Within the approval letter</i>
	Security Installation
	<i>Not required if no planning or building regs</i>
	Management Consultants
	<i>By written advice</i>
	Car Dealership
	<i>Via Architects</i>

<b>1.1.2</b>	<b>In what way would you seek to be informed of your legal responsibilities for a project and construction phase? Comment:</b>
	Communications Company
	<i>Contractor/Architect</i>
	Insurance Brokers/Financial Services
	<i>Consult our own in house risk management division, architects and the HSE</i>
	Small Business
	<i>Within contract from contractor</i>
	Management Consultancy
	Ask the contractor
	Care Home
	through the architect
	Management Consultants
	<i>Civil Engineer or Architect</i>
	Laboratory
	<i>Via Architect</i>
	Car Dealership
	<i>Architect and Insurance Brokers</i>
	Oil Depot
	<i>Architect/Surveyor</i>
<b>1.1.3</b>	<b>Do the CDM 2006 discourage or inhibit you/your members from commissioning building, renovation or repair work to your premises?</b>
	Caravan Park
	<i>Depends if it creates extra work and cost</i>
	Communications Company
	<i>No – I have little awareness of these regs.</i>

	Small Business
	<i>Discourage until understood</i>
	Management Consultancy
	<i>Probably, if the regulations are as opaque as this form</i>
	Care Home
	<i>Not for me as any work at my home would be exempt due to less than 20 workers on site and less than 500 person hours.</i>
	Oil Depot
	<i>We hope not</i>
<b>1.2.0</b>	<b>DEFINITIONS</b>
<b>1.2.5</b>	<b>If your answer is NO to any point in 1.2.1(Defining Project and Construction) what are the aspects about which you are unclear?</b>
	Animation
	<i>If we redecorate inside or have a new roof do we have to do all that research/paperwork etc. If so it's already put me off.</i>
	Communications Company
	<i>At this point I am unlikely to familiarise myself with the terms – we have no current projects &amp; I would forget the definitions before we ever commission anything.</i>
	Management Consultancy
	<i>if you do not define the start and finish in the regulations, there isn't much hope for me to say whether I understood what the start/finish is in a legal sense</i>
	Security Controls Company
	<i>Total over regulation</i>

1.3.0	<b>CLIENT</b>
1.3.1	<b>Do you consider the definition of Client clear?</b>
1.3.1	<b>If NO (Clarity of definition of Client), what are the aspects about which you are unclear? Comments:</b>
	Car Dealership
	<i>Too many elements to the definition</i>
1.3.2	<b>Do you consider the “Client Duties” clear for Health Safety and Welfare in respect of the:</b>
1.3.2	<b>1. Project</b>
1.3.2	<b>2. Design</b>
1.3.2	<b>3. Construction Phase</b>
1.3.2	<b>4. Health and Safety File</b>
1.3.2	<b>5. Appointments:</b>
1.3.2	<b>5. i Co-ordinator</b>
1.3.2	<b>5. ii Designer</b>
1.3.2	<b>5. iii Principal Contractor</b>
1.3.2	<b>6. Assessment of Competence by Client of each duty holder</b>
1.3.2	<b>7. Post Construction</b>
1.3.2	<b>8. Notification</b>
1.3.3	<b>If your answer is NO to any part of 1.3.2 (Client Duties) above, what are the aspects that should be revised? Comment:</b>
	Animation
	<i>Most of it</i>
	Debit Company
	<i>I would have to seek advise from an H&amp;S Consultant to make sure we'd covered every aspect</i>
	Security Controls Company
	<i>The entire procedure is an absolute nonsense</i>

	Management Consultants
	<i>Clearer definition of Co-ordinator required</i>
	Laboratory
	<p><i>What are the 'reasonable steps' that have to be take? – Membership of a professional institute?</i></p> <p><i>Reg 7 does not establish any boundary between Client &amp; Main contractor, etc. with respect to responsibilities. Clients do not often have the necessary expertise to perform Reg 7 (or MoHASAW Regs 11 &amp; 12).</i></p> <p><i>Responsibility of Main Contractor – Client can check, but what can he do if not satisfied? Definition of "Welfare Facilities"?</i></p> <p><i>Surely the purpose of the client appointing a suitably qualified Co-ordinator is to avoid the client taking responsibilities for which he is not equipped. I do not think the client should have any of the above responsibilities.</i></p>
1.3.4	<p><b>What is your response to being responsible for checking (Reg 4: "taking reasonable steps to ensure") that welfare facilities are provided on the Project for workers not in your direct employment?</b></p> <p><b>Comment:</b></p>
	Animation
	<i>I have enough problems with now being responsible for fire, health &amp; safety, doing 'risk assessments' etc etc I think it is appalling to be expected to look after contractors as well. I would probably move to brand new premises rather than renovate this nice Victorian semi – just not worth the hassle and potential liability for things going wrong.</i>
	Caravan Park
	<i>Unfair</i>
	Communications Company
	<i>I would expect that Project workers be entitled to equivalent facilities as staff.</i>
	Insurance Brokers/Financial Services
	<i>As invitees on our premises we are have a moral legal and economic duty to provide for them</i>
	Debit Company
	<i>I'd do what I thought appropriate under the circumstances</i>
	Small Business
	<i>Unfair</i>

	Management Consultancy
	<i>More regulation and hassles</i>
	Care Home
	<i>Surely the contractor appointed to carry out the work this would be there responsibility?</i>
	Security Controls Company
	<i>Nonsense – It's the contractors responsibility.</i>
	Management Consultants
	<i>Reasonable</i>
	Car Dealership
	<i>This should not be the duty of the client. This is the duty of the contractor.</i>
	Oil Depot
	<i>If we are the Principal Contractor or owner of the site than OK.</i>

<b>1.4.0</b>	<b>CO-ORDINATOR</b>
<b>1.4.1</b>	<b>Do you consider the role of Co-ordinator is sufficient to help a Client in the discharge of his duties under the Regulations?</b>
	<b>If NO, what aspect should be revised? Comment:</b>
	Animation
	<i>don't know</i>
	Caravan Park
	<i>Seems to be an expensive waste of money for small projects</i>
	Communications Company
	<i>Don't know</i>
	Debit Company
	<i>Who is the Co-ordinator and who is the Client?</i>
	Management Consultancy
	<i>health and safety needs more than a coordinator- needs incentive for operatives to work safely</i>

	Security Controls Company
	<i>What is wrong with existing procedure?</i>
	Management Consultants
	<i>Brief too wide</i>
<b>1.4.3</b>	<b>Do you consider appointments should be kept separate? If NO, what changes might apply? Comment:</b>
	Communications Company
	<i>If competent to do so we see no reason why the designer and co-ordinator could not be the same person/company. However if these tasks were done by the principal contractor it could lead to a conflict of interests</i>
	Security Controls Company
	<i>There are very, very few problems at present – why change?</i>
	Management Consultants
	<i>Best under the control of one party</i>
<b>1.4.5</b>	<b>Are you clear about the qualifications required to prove competence of a coordinator and costs? If NO, what suggestions have you to meet your requirements?</b>
	Caravan Park
	<i>Think again about the role of co-coordinator - Is it needed?</i>
	Communications Company
	<i>I have no measure by which to judge this.</i>
	Security Controls Company
	<i>Who needs a co-ordinator? Stop this entire project.</i>
<b>1.4.7</b>	<b>Are the new regulations clear about the relationship between the client and coordinator and that the client's duty is see that the contractors and other appointees meet their obligations?</b>
	<b>If NO, what suggestions have you to meet your requirements? Comment:</b>
	Animation
	<i>less waffle, more practical advice</i>

	Communications Company
	<i>Don't know</i>
	Care Home
	<i>Not really but would that not be made clear to the client and covered by his builder contractor.</i>
	Security Controls Company
	<i>The ideas are confused, lacking credibility, costly and wholly irrelevant to the needs of business and construction.</i>
	Laboratory
	<i>Should it not be the co-ordinators responsibility?</i>

<b>2.0</b>	<b>CURRENT REGULATIONS (CDM 1994) for Clients Role (If required see summary attached below, both UK &amp; EU)</b>
<b>2.1</b>	<b>Were you/your members aware of the current CDM 1994 Regulations, when giving instruction for works to be undertaken to your/their business premises?</b>
<b>2.2</b>	<b>Do you/your members know when the CDM 1994 Regulations apply?</b>
<b>2.3</b>	<b>Do you/your members understand the Client Duties under the Current Regulations?</b>
<b>2.4</b>	<b>If your answer is NO to any point in 2.1, 2.2 &amp; 2.3 above, what are the aspects which are unclear? Comment:</b>
	Animation
	<i>had never heard of it</i>
	Caravan Park
	<i>All</i>
	Communications Company
	<i>Probably, but I would have to employ them specifically</i>
	Debit Company
	<i>I don't know anything about CDM 1994 Regulations</i>
	Small Business
	<i>I was completely unaware of the current regulations</i>

	Management Consultancy
	<i>never read the regulations – assume they apply from 1994</i>
	Care Home
	<i>well I think I understand but no doubt there are areas that I would no nothing about</i>
	Security Controls Company
	<i>Why change?</i>
<b>2.5</b>	<b>Do you/your members have access currently to a competent health and safety advisor either internally or externally who can assist you in general Health and Safety compliance?</b>
	<b>If NO, would you know where to access support? Comment:</b>
	Security Controls Company
	<i>Do not want responsibility- It is the Government's job to reduce red tape – not increase it. CDM 1994 regulations are perfectly adequate.</i>

<b>3.0</b>	<b>GENERAL COMMENTS</b>
<b>3.3</b>	<b>Do you know how and where to acquire the required knowledge to comply with your obligations under the new regulations?</b>
<b>3.4</b>	<b>If NO: what are your suggestions? Comment:</b>
	Caravan Park
	<i>via contractor</i>
	Small Business
	<i>ACAS / Business Link / Contractors Schemes</i>
	Management Consultancy
	<i>the word threshold does not exist in the SBS 6 Guidance paper</i>
	Care Home
	<i>through District council planning dept?</i>
	Laboratory
	<i>No rationale advance to alter the current system</i>

<b>3.5</b>	<b>Is the trigger for Appointments [30 days/500 hours of work/less than 5 workers on-site] the best level.</b>
	<b>If NO: what should the trigger be? Comment:</b>
	Animation
	<i>no idea</i>
	Caravan Park
	<i>Seems a bit low.</i>
	Communications Company
	<i>Don't know</i>
	Care Home
	<i>Its in plain language and easily under stood</i>
	Management Consultants
	<i>Depends on Scope and value of work</i>
<b>3.8</b>	<b>What is your estimation of costs to your business to comply with the client duties in the new regulations? Estimated/Approximate percentage of Cost of Works: Comment:</b>
	Animation
	<i>just won't do the work</i>
	Caravan Park
	<i>Don't know</i>
	Insurance Brokers/Financial Services
	<i>As this is will be used to increase costs</i>
	Management Consultants
	<i>Use external advisers</i>
	Car Dealership
	<i>Cost is an issue, but I am more concerned about the excessive time.</i>

3.10	<b>If you have any further comments on any aspect of the regulations, please use this space:</b> <b>Comment:</b>
	Caravan Park
	<i>Why is it necessary to change the regs.</i>
	Communications Company
	<i>There seems to be an expectation that even though I have not yet commissioned a Project nor expect to for the foreseeable future, that I am conversant with a highly technical document which does not relate to my business in any way. In addition, were it not for this consultation, I may not actually have discovered the liability at all.</i>
	Insurance Brokers/Financial Services
	<i>the main concern is that of knowledge levels of the regulations by prospective clients. Although relatively straight forward to people who regularly come into contact and know about them there are many more who don't. People could and probably do start building work projects without notification or appointment of competent people purely through ignorance of the law.</i>
	Security Controls Company
	<i>This is an absolutely naive proposal which will increase costs dramatically, increase red tape enormously and add absolutely nothing to the well being of those involved in the work.</i>
	Laboratory
	<i>I think a flow-chart would be helpful for different types of project, showing who is responsible for which duties.</i>
4.2.0	<b>Do you consider business people have a responsibility to check (Reg 4: "take reasonable steps to ensure") that the Health, Safety and Welfare of those engaged in a building project are properly catered for when a project is being undertaken on their behalf? Comment:</b> .
	Communications Company
	<i>I believe that they need to be aware that there may be issues, but that this is not an area of their expertise, or even experience</i>
	Insurance Brokers/Financial Services
	<i>It is our job to manage third parties on our site as the very nature of the tasks they perform may expose them to hazards which the ordinary visitor is not exposed to. In addition the activities they are performing may pose additional risks to others already within the premises</i>

	Small Business
	<i>Surely should lie with the contractor</i>
	Management Consultancy
	<i>H&amp;S is everyone's concern</i>
	Security Controls Company
	<i>Contractors responsibility</i>
	Management Consultants
	<i>But I also expect contractors to co-operate</i>
	Car Dealership
	<i>This should be the responsibility of the contractor</i>
	Oil Depot
	<i>Should be regarded as a basic right.</i>
<b>4.3.3</b>	<b>What is the nature of the project(s)? Comment:</b>
	Caravan Park
	<i>Construction of sewage treatment plant, new road etc,etc</i>
	Insurance Brokers/Financial Services
	<i>Conversion of a detached motor vehicle workshop in to office space together with erection of a covered way to link with the existing offices</i>
	Management Consultancy
	<i>refit dry wall</i>
	Security Controls Company
	<i>Roof replacement Interior remodelling</i>
	Management Consultants
	<i>Relaying Gas supply</i>
	Laboratory
	<i>Insurance restitution of premises following fire damage</i>

	Oil Depot
	<i>Rebuild of business premises</i>
<b>4.4.0</b>	<b>Do you/your business instruct the contractor yourself? If NO, who instructed or instructs the contractor? Comment:</b>
	Insurance Brokers/Financial Services
	<i>The architect</i>
	Car Dealership
	<i>architect</i>
<b>4.5.0</b>	<b>What form(s) of contract if any are used? If no written contract, please state. Comment:</b>
	Caravan Park
	<i>Usually based on contractors written quotation</i>
	Communications Company
	<i>A specification of the finished work required.</i>
	Insurance Brokers/Financial Services
	<i>JCT</i>
	Small Business
	<i>Verbal</i>
	Security Controls Company
	<i>JCT</i>
	Management Consultants
	<i>Written and agreed</i>
	Laboratory
	<i>Written contract used</i>
	Oil Depot
	<i>None</i>

<b>4.6.0</b>	<b>If you/your members as Clients do not instruct the Contractor(s) direct, in what form do you instruct those that do? Comment:</b>
	Insurance Brokers/Financial Services
	<i>By letter to the architect</i>
	Management Consultancy
	<i>designers/project managers</i>
	Laboratory
	<i>In writing</i>
	Car Dealership
	<i>No written contract for smaller jobs.</i>
<b>4.7.0</b>	<b>Do the instructions under 4.4.0, 4.4.1, 4.5.0 &amp; 4.6.0 cover Health, Safety and Welfare? If NO, how is Health, Safety and Welfare covered? Comment:</b>
	Insurance Brokers/Financial Services
	<i>we ensure sufficient facilities are provided before commencement of building works</i>

## APPENDIX VI

### PLANNING

<http://www.planningportal.gov.uk/england/professionals/en/1011888239009.html>

#### Information from the planning portal

Your local planning authority is responsible for deciding whether a development - anything from an extension on a house to a new shopping centre - should go ahead.

Local planning authority usually means the district or borough council

The planning system is needed to control development in your area.

#### THE PLANNING AND COMPULSORY PURCHASE ACT 2004

##### Background

The first new Planning Act for more than a decade is a record-breaker: it took over 18 months to negotiate its passage through the Palace of Westminster and required special dispensation to be carried over from one Parliamentary session to another.

The Bill was introduced in the House of Commons in December 2002. It was re-committed to Commons Committee to allow the inclusion of significant new material relating to the removal of crown immunity and compulsory purchase and carried over to the current session.

It received Royal Assent on 13 May 2004.

Regulations implementing the parts of the Act reforming development plans will come into force afterwards.

The remaining sections of the Act will be implemented by further regulations and development orders.

#### POLICY DOCUMENTS

The Office of the Deputy Prime Minister determines national policies on different aspects of planning and the rules that govern the operation of the system.

National planning policies are set out in new-style Planning Policy Statements (PPS), which are gradually replacing Planning Policy Guidance notes (PPG).

National policies are also laid out in Minerals Planning Guidance and Policy Statements (MPG/MPS), Marine Minerals Guidance (MMG) and Circulars.

<http://www.planningportal.gov.uk/england/professionals/en/1021020433713.html>

- [Circulars](#)
  - **Circulars**

- [04/06: Economic Impact Reports](#)

## **Planning Inquiries Into Major Infrastructure Projects: Economic Impact Reports**

ODPM 04/2006

This Circular is being sent to local planning authorities (LPAs), and Government Offices to enable them to advise applicants who may have to prepare an economic impact report (EIR) as a result of a planning application being designated a major infrastructure project (MIP) by the Secretary of State.

The Circular provides guidance on what is expected in an EIR and assistance in identifying existing appraisal guidance.

- [03/06: Building Regs](#)

## **Building Regulation Amendments**

ODPM 03/2006

ODPM Circular 3/2006 gives notice of the changes being brought into effect on 06 April 2006, and conveys the Secretary of State's approval to the those provisions that require this. It refers to:

- new Parts L and P in Schedule 1 of the Building Regulations 2000
- new energy efficiency requirements for Buildings to implement Articles 3 to 6 of the Energy Performance of Buildings Directive
- new Approved Documents for Parts F, L and P
- new approved calculation methodology for Part L
- further provisions for self certification
- transitional provisions

- [02/06: Casinos](#)
- [01/06 Gypsy and traveller sites](#)
- [11/05 Green Belt](#)
- [10/05 Antenna](#)
- [09/05 Handling Heritage Applications](#)
- [08/05 Development control changes](#)
- [07/05 Inquiries into major projects](#)
- [06/05 Biodiv. & Geol. Conserv.](#)
- [05/05 Planning Obligations](#)

## **Planning Obligations**

ODPM 05/2005

This Circular replaces Department of the Environment Circular 1/97, which is hereby cancelled.

The purpose of this Circular is to provide revised guidance to local authorities in England on the use of planning obligations under section 106 of the Town and Country Planning Act 1990 as substituted by the Planning and Compensation Act 1991. Sections 46 and 47 of the Planning and Compulsory Purchase Act 2004 give

the Secretary of State the power to make regulations to replace s106, but the Secretary of State has not yet taken these powers, and so the Circular does not concern these sections.

- [03/05 Change Of Use](#)
- [02/05 Temporary Stop Notice](#)
- [01/05 Residential Density](#)
- [06/04 Comp. Purchase](#)
- [08/03 GPDO & Listed](#)
- [06/03 Land Disposal](#)
- [02/03 Comp. purchase](#)
- [01/03 Aerodromes](#)
- [02/02 Enforcement](#)

## **02/02 - Enforcement Appeals Procedures**

This circular explains the new procedures for handling enforcement appeals in England. The aim is to reduce the time and cost incurred by the handling of these appeals, emphasising the responsibility of all parties involved. The circular highlights the ways in which all three procedures - written representations, hearings and inquiries - are operated to determine enforcement notice appeals.

For all appeals, there is to be a new emphasis on co-operation between the parties and the minimisation of paperwork. There will be a general preference to use hearings rather than inquiries. But where inquiries are necessary, they have to focus on the critical issues and avoid inessential detail.

The Inspector will exercise tight control over advocacy and cross-examination and a regime of discipline will be put in place for all parties. Timetables will have to be adhered to, except in extraordinary circumstances.

Annexes set out the regulations relating to enforcement notices and appeals, how written representations should be made and procedures for hearings and inquiries. Pre- and post-appeal considerations are outlined and the comments offered on the choice of procedure by the parties.

The parties are reminded of their liability to pay costs if they behave unreasonably and thus cause unnecessary expense to other parties.

- [02/02 Major Projects](#)
- [01/02 Residential Density](#)
- [05/01 Housing Grants](#)
- [04/01 CROW Act](#)
- [04/01 Trunk Roads](#)
- [01/01 Heritage Apps](#)
- [08/00 Greenfield Dev](#)

- [07/00 Build. Regs.](#)

### **07/2000 The Building Act 1984; The Building Regulations 2000; The Building (Approved Inspectors etc) Regulations 2000.**

DETR (13 October 2000)

This circular explains changes introduced by the Building Regulations 2000 and outlines how they differ from the Building Regulations 1991 which are revoked. It covers in some detail matters relating to the giving of a building notice or the deposit of plans.

Also described are particulars and plans where a building notice is given, energy rating and unauthorised building work. No substantive changes are made to the functional requirement contained in Schedule 1 of the new Regulations, but amendments have been made to certain requirements for clarification.

The Building (Approved Inspectors) Regulations 2000 replace those of 1985. Extensive changes cover energy rating and inspectors' consultations with fire authorities.

- [06/00 School Crossings](#)
- [05/00 Appeals](#)

### **05/00 - Planning Appeals**

This circular explains the new procedures for handling planning appeals in England, introduced with effect from 1 August 2000. The object is to speed up the appeal process while maintaining its quality.

The circular highlights the main ways in which the three appeal procedures - written representations, hearings and inquiries - are operated. All are amended to make them more user-friendly and strengthened to ensure all parties comply with the procedural rules.

Key points include co-operation between all parties, the minimising of paperwork and insistence on meeting deadlines. More use of hearings is announced and inquiries are required to focus on the critical issues.

A regime of discipline for all parties is introduced, with late representations not normally considered. Annexes cover the format of written statements, hearings procedures and statements, written evidence and statements of common ground at inquiries, a code of practice for preparing for major public inquiries, and a statement of government policy on called-in applications.

- [04/00 Hazard Subs](#)
- [03/00 Housing grants \(1\)](#)

- [02/00 Contaminated Land](#)

## **02/00 Contaminated Land**

This circular gives statutory guidance on the new regime for the treatment of contaminated land, as set out in Part IIA of the Environmental Protection Act 1990. It also describes the way in which the new regime is expected to work.

There is a statement of government policy covering sustainable development, action to deal with contamination, the new contaminated land regime and interaction with other regimes.

Contaminated land procedures are described in detail, which includes definition of the land in question and how to identify it, and the various ways of taking remediation action.

Statutory guidance is given on remediation standards to be applied, exclusion of liability to take remediation action and on recovering its costs.

There is also a guide to the Contaminated Land (England) Regulations 2000.

- [07/99 Dev Plan & Con](#)
- [04/99 Telecomms](#)
- [03/99 Sewerage](#)
- [02/99 Env Imp Asst](#)

## **DETR Circular 02/99 - Environmental Impact Assessment**

*DETR 02/99 (12 March 1999)*

The Circular gives guidance on the [Town and Country Planning \(Environmental Impact Assessment\) \(England and Wales\) Regulations 1999](#).

The Regulations implement EC Directive 85/337/EEC (as amended by 97/11/EC) and known as the EIA Directive, on the assessment of the effects of certain public and private projects on the environment.

The Circular explains the procedural requirements of the Regulations including the production of an environmental statement where EIA is required.

Special cases are considered, including local authority development, Crown development, Simplified Planning Zones, and the implications for Permitted Development

- [09/98 Playing Fields](#)
- [06/98 Afford Housing](#)
- [03/98 Prison Dev](#)
- [02/98 Dereliction](#)
- [01/98 Comp Purch Ord](#)
- [15/97 Air Quality](#)
- [14/97 Historic Env](#)
- [10/97 Enforcing](#)
- [01/97 Obligations](#)

- [12/96 National Parks](#)
- [04/96 Loc Gov change](#)
- [03/96 Unused Land](#)
- [11/95 Conditions](#)
- [10/95 Demolition](#)

Demolition constituting development is granted a general planning permission by Schedule 2 Part 31 of the **Town and Country Planning (General Permitted Development) Order 1995**.

- [09/95 Gen Dev Order](#)
- [18/94 Gypsy Sites](#)
- [15/94 Advertisements](#)
- [14/94 Comp Purch Ord](#)
- [11/94 Waste](#)
- [05/94 Crime](#)
- [01/94 Gypsy Sites](#)
- [15/93 Shopping](#)
- [08/93 Costs](#)
- [06/93 Disposal Land](#)
- [05/93 Comp Purch Ord](#)
- [02/93 Rights of Way](#)
- [31/92 Fees for Apps](#)
- [29/92 Forestry](#)
- [28/92 Obligations](#)
- [20/92 Conservation](#)
- [19/92 Dev Plan & Con](#)
- [15/92 Publicity](#)
- [11/92 Hazardous Subs](#)

### **99/90 - The Planning (Hazardous Substances) Act 1990**

This circular explains the Planning (Hazardous Substances) Act 1990. That Act requires hazardous substances consent to be obtained for the presence of amounts above the controlled quantity.

- [05/92 Advertisements](#)
- [02/92 Aerodromes](#)
- [22/91 Showpeople](#)
- [17/91 Water Industry](#)
- [15/91 Comp & C/Purch](#)
- [14/91 Compensation](#)
- [99/90 Hazardous Subs](#)
- [15/90 Legislation](#)
- [14/90 Electricity](#)
- [17/89 Landfill Sites](#)
- [13/88 Waste](#)
- [01/88 PPG & MPG](#)
- [28/87 Coal Mining](#)
- [20/87 Road Fill](#)
- [15/87 Colliery Spoil](#)
- [13/87 Changes of use](#)
- [19/86 Provisions](#)
- [06/86 Access to Info](#)

- [02/85 Oil & Gas](#)
- [18/84 Crown Land](#)
- [28/83 Handling Apps](#)
- [23/83 Caravan Sites](#)
- [13/83 Purchase Notices](#)
- [10/82 Disabled Pers](#)

## 10/82 - Disabled Persons Act 1981

*DoE, DHSS, DES, DTp joint circular 10/82 (April 1982)*

The Disabled Persons Act 1981 added sections to the Town and Country Planning Act 1971 to make sure that developers are better informed about their statutory obligations to provide for the needs of disabled people in certain types of building and to meet the British Standards Institution 1979 code of practice in the matter of access.

This circular draws the attention of the planning world to that part of the Act which covers provision for the needs of disabled people in buildings open to the public. It **places a new duty on local planning authorities to draw the attention of developers to their obligations and allows for the attachment of conditions to planning permissions with implications for use by disabled people.**

It suggests designation of a local authority staff member as 'access officer' and makes specific reference to provision of public conveniences and signposts. The circular also draws attention to the new requirement that developers make provision for access by disabled people in every case unless it can be shown that this would not be practical or reasonable in the circumstances.

- [08/81 Various Provisions](#)
  - [02/81 Plan & Land Act](#)
  - [22/80 Dev Control](#)
  - [11/79 Gypsy Sites](#)
  - [58/78 Minerals](#)
  - [50/78 Aggregates](#)
  - [36/78 Trees & Forest](#)
  - [12/78 mobile homes](#)
  - [125/77 National Park](#)
  - [94/77 new streets](#)
  - [73/77 Recreational](#)
  - [16/76 Nat Land Use](#)
  - [04/76 Nat Park Policy](#)
  - [73/73 Land Comp Act](#)
  - [63/73 Admin Nat Park](#)
  - [25/73 Post Office](#)
  - [68/78 Inner Urban](#)
  - [67/68 Inquiry Commis](#)
  - [48/59 Town & Country](#)
- 
- [Planning Policy Guidance & Statements \(PPG/PPS\)](#)
  - [Regional Planning Guidance \(RPG\)](#)
  - [Minerals Policy & Guidance \(MPG/MPS\)](#)

- [Marine Minerals Guidance \(MMG\)](#)
  - **Good Practice Guides**
    - [Biodiv & Geol. Conserv](#)
    - [Makingplans](#)
    - [Mob Phone Nets](#)
    - [Undev. Land](#)
    - [Town Centres](#)
    - [Validating Apps.](#)
    - [SEA Directive](#)
    - [Climate Change](#)
    - [Diss. of Info.](#)
    - [Delegation](#)
    - [Diversity & Equality](#)
    - [Employ. Land](#)
    - [Local & Unitary Plans](#)
    - [Monitoring RPGs](#)
    - [Outdoor ads & signs](#)
    - [Privacy & Overlook.](#)
    - [External Lighting](#)
    - [Overshadowing](#)
    - [Future Communities](#)
    - [Sustainability](#)
    - [Safer Places](#)

### **Safer Places: The Planning System and Crime Prevention**

*Safer Places* will be of interest to anyone involved in the planning and design of new development. Its main audience is likely to be the officers and councillors in local authorities who guide and control development. But the guide will also be relevant to those who promote development and advise on it, including the Police.

*Safer Places* focuses on seven attributes of sustainability that are particularly relevant to crime prevention. The attributes are general and descriptive. They are not prescriptive. They are not a set of rules to be applied to all situations. Instead, they should be considered as prompts to thinking about crime prevention and promoting community safety through the planning system.

- [Listed Building](#)
- [Structure plans](#)
- [Spatial planning](#)
- [Large foodstores](#)
- [Disabled Access](#)

### **Planning and Access for Disabled People: A Good Practice Guide**

The primary objective of this guide is to ensure the Town and Country Planning system in England successfully and consistently delivers inclusive environments as an integral part of the development process. An inclusive environment is one that can be used by everyone, regardless of age, gender or disability.

- [Better Places to Live](#)

- [Urban Design](#)
- [Light Pollution](#)
- [Plan. & Dev. Briefs](#)
- [Sustainable RPGs](#)
- [Develop. Consents](#)
- [Tree Pres Orders](#)
- [Planning to deliver](#)
- [Urban Housing Capacity](#)
- [Provision of Housing](#)
- [Old GPGs](#)

## APPENDIX VIII

### BUILDING REGULATIONS

<http://www.odpm.gov.uk/index.asp?docid=1161226>

#### BUILDING REGULATIONS OVERVIEW

ODPM is responsible for Building Regulations, which exist principally to ensure the health and safety of people in and around buildings.

The regulations apply to most new buildings and many alterations of existing buildings in England and Wales, whether domestic, commercial or industrial.

#### Building Regulations promote:

- Standards for most aspects of a building's construction, including its structure, fire safety, sound insulation, drainage, ventilation and electrical safety. Electrical safety was added in January 2005 to reduce the number of deaths, injuries and fires caused by faulty electrical installations
- Energy efficiency in buildings. The changes to the regulations on energy conservation proposed on 13 September 2005 will save a million tonnes of carbon per year by 2010 and help to combat climate change
- The needs of all people including those with disabilities. They set standards for buildings to be accessible and hazard-free wherever possible

In this section you can view the *Building Regulations Explanatory Booklet* which gives a concise overview for anyone intending to carry out building work. There are also documents and publications on the individual parts of the Regulations and links to other related websites.

Many building projects may also require planning permission which is dealt with as a separate matter. For further information, visit the Planning section of this website and ODPM's separate Planning Portal website.

#### THE BUILDING ACT 1984 AND THE BUILDING REGULATIONS

The Building Act 1984 is the enabling Act under which the Building Regulations have been made. The Secretary of State, under the power given in the Building Act 1984, may for any purposes of:

1. securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings;

2. furthering the conservation of fuel and power;
3. preventing waste, undue consumption, misuse or contamination of water

make regulations with respect to the design and construction of buildings and the provision of services, fittings and equipment in or in connection with buildings.

Copies of the Building Act 1984 and its amending legislation are available from HMSO. The current regulations governing these are the Building Regulations 2000 SI 2000/2531 (as amended).

## **BUILDING REGULATIONS**

The Building Regulations are split into a number of parts, as follows:

Part A: Structure

Part B: Fire Safety

Part C: Site Preparation and Resistance to Moisture

Part D: Toxic Substances

Part E: Resistance to the Passage of Sound

Part F: Ventilation

Part G: Hygiene

Part H: Drainage and Waste

Part J : Combustion Appliances and Fuel Storage Systems

Part K: Protection from Falling, Collision and Impact

Part L: Conservation of Fuel and Power

Part M: Access to Buildings

Part N: Glazing

Part P: Electrical Safety

Regulation 7: Materials and Workmanship