

*Summary of responses
to the
Health and Safety Commission's
consultation on proposals
for the
revision of the
Construction
(Design and Management)
Regulations 1994*



Introduction

1. This report summarises responses received to the Health and Safety Commission's (HSC's) consultation on proposals for a single set of Regulations, and supporting guidance, covering construction work in Great Britain. The proposed Construction (Design and Management) (CDM) Regulations 2007 will consolidate and revise provisions in the Construction (Design and Management) (CDM) Regulations 1994 and the Construction (Health, Safety and Welfare) (CHSW) Regulations 1996, which mainly implement the Temporary or Mobile Construction Sites (TMCS) Directive (1992/EEC/57).

2. The Health and Safety Commission/Executive (HSC/E) and HSC's Construction Industry Advisory Committee (CONIAC) would like to express their appreciation for all the responses received to this consultation exercise and the passion and thought that people put into it. When you see the final versions of the Regulations and Approved Code of Practice (ACoP) we hope that you will see that we did take note of your comments.

3. The analysis work (and therefore this report) was delayed because of the volume of responses, and the need to divert resources to deal with other high-priority policy work – principally responding to an enquiry from the European Commission (EC) in connection with its review of the TMCS Directive.

4. An initial review of responses revealed concerns about the ability of small clients to comply with their strengthened duties. There were also concerns about the small number of small clients and their representative bodies who had responded to the consultation. In January 2006 HSE recruited two industry secondees for 3 months, to help address these concerns. Tim Kind (Senior Policy Adviser with the Forum for Private Business) worked on issues associated with small/one-off clients and David Watson (a chartered engineer with WSP) looked at issues relating to the proposed changes to designer duties. Both reported at the end of March 2006, and their findings are available on the HSE website. The CDM 2007 proposals are currently being refined in the light of their work, responses to the consultation, and ongoing discussions with key stakeholders before the HSC makes its formal proposals to Ministers.

5. In response to Tim Kind's report, and related representations from the Construction Clients' Group (CCG), HSE has committed itself to continuing its work with the Department for Communities and Local Government (DCLG) to identify ways in which better integration of the CDM, Planning and Building Control regimes would simplify the requirements, reduce burdens on those subject to the Regulations and bring corresponding improvements in terms of compliance. Identified necessary changes to HSE's current enforcement or administrative arrangements or Regulations will be incorporated into HSE's Simplification Plan and submitted to the Better Regulation Executive (BRE). Work is also being done with Local Authorities and others to enable provision of CDM information for small and occasional clients at the point of need. HSE's Construction Division is committed to reviewing its approach to improving standards amongst small and medium sized enterprises (SMEs) and micro businesses. Looking for innovative solutions in this area is fundamental to this review, and discussions with the CCG should be helpful in this. Copies of the CCG/HSE correspondence are available on the HSE website, and contain detailed information concerning other issues such as removal of the Client's Agent provision, timing of the co-ordinator's appointment and client CDM duties generally.

6. When reading the following analysis of your responses, please bear in mind the following points:

- Comments from respondents are shown in *italics*. As far as possible these have been left in the respondents' own words, but they may have been pruned to reduce the length of this report, trimmed slightly to make them read more easily in the context in which they are used,

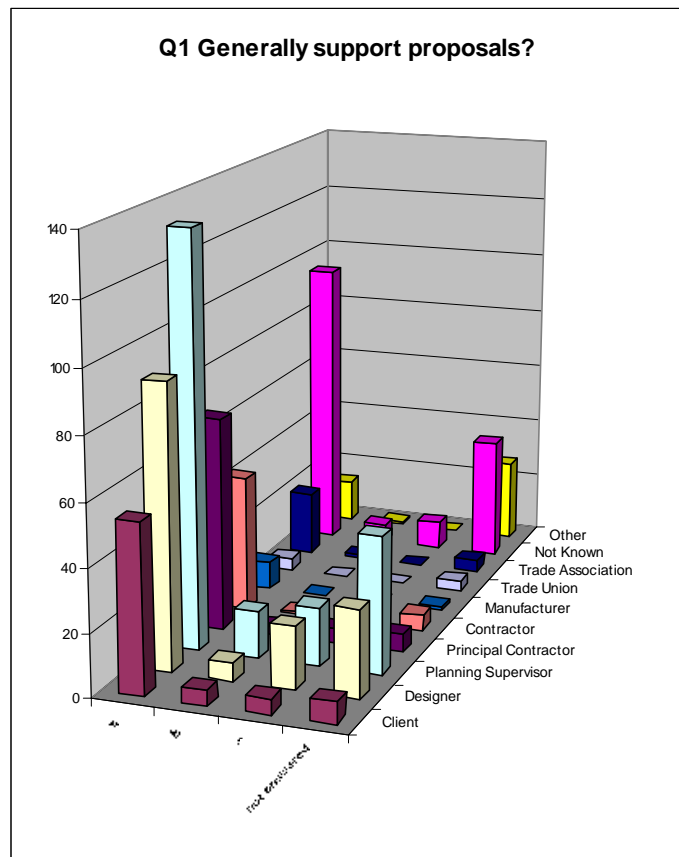
or merged with similar comments from others.

- The comments mainly come from those who were not entirely content with the proposals and so the balance of the comments may differ significantly from the overall statistics.
- Many respondents did not provide the requested background information. This is the reason for the significant numbers of ‘not known’ answers in the following graphs. This makes it much harder to properly interpret the data.
- Many respondents wear two or more hats, so if you add up the answers from all clients, designers.... the result is significantly greater than the total number of respondents.
- Not every respondent answered all of the questions – we didn’t expect them to, since all were not relevant to every respondent. Some were not answered because people felt that the answers provided did not allow them to express their views properly, or even that *questions are on occasion slanted to elicit the answer the HSE appears to prefer*. In hindsight we should have allowed respondents to make comments even where they answered *yes*.
- Many comments relate to questions other than the one where they were made. To minimise repetition these have been considered with the most relevant question.

Q1 – Responses to the Discussion Document (published 2002) indicated a clear view that the Regulations needed to be revised. Having seen the proposals do you:

	Responses	
	%	No.
a) support the changes proposed (in general terms);	83	272
b) feel you would rather stick with the current Regulations and ACOP; or	7	22
c) neither of the above	10	32

7. There was a high level of support, in general terms, for the proposed changes to CDM and CHSW. The level of support for keeping the current Regulations was quite low. 26% of respondents chose not to answer the question at all. As can be seen from the graph, the proportion of those opposed to the proposals, or not answering, was higher among designers and planning supervisors than in other groups.



- *CIBSE’s view of the new CDM Regulations is that they are improved this time round and we appear to have learned from the previous experience. The new Regs should make the Planning Coordinator (formerly the Planning Supervisor) work and act in a more proactive role. The new draft guidance document, Annex B on the consultation file, is easy to understand and navigate. There is widespread support for the need for a revision. The existing regulations, whilst they may have achieved improvement by attempting to demarcate the roles and responsibilities of all stakeholders in the construction process, have also given rise to a process bureaucracy and the creation of much paper work that does little in practice to improve safety. We therefore support the objectives of the revision i.e. to improve the management of risk, and ensure responsibility is placed with those in the best position to influence or manage it.*
- *They improve the definition of what the regulator requires. The revisions provide a better focus on the key requirements for safety on a specific project, and hopefully draw designers and contractors away from the more ritualistic approach to dealing with hazards. That approach often risked obscuring project specific hazards, which good practising designers and contractors might otherwise pick up more readily.*
- *They provide a better framework for achieving the key objective, which is to improve the management of risk. The focus on achieving effective planning and management, with the minimum of bureaucracy -concentrating on the provision of necessary and relevant information, rather than on generic, is also wholeheartedly supported.*
- *There is great merit in the proposals, as the current Regulations have failed to be given more than lip service by many in the construction industry. This is something I have observed first hand from*

both sides of the fence as Principal Contractor, Designer and Planning Supervisor, because my formative years were spent employed by contractors and the latter years by a civil engineering consultant.

As with good management the example needs to be set from the top. Placing the onus on clients to ensure that Health and Safety is a key issue from conception to completion and beyond is paramount to the success of CDM and something which to date has been lacking. Provided clients understand their own responsibilities and if the consequences to the client of wilful non-compliance are sufficiently high then the proposed changes may have the desired impact.

As you rightly point out clients are not and would not wish to become experts in the broad subject of construction. The majority of clients choose to employ the necessary professionals and tradesman to carry out the work on their behalf to construct the desired product on time, within budget, without any defects and most importantly with the minimum interference with their own agenda/business. From what I have read this is where the role of the Co-ordinator comes in. But if the Co-ordinator is not fully empowered then the role will be meaningless and the system will not work as intended.

- *The CCG recognises that construction, design and management are inseparable links in the safe and effective construction project management chain. Clients are increasingly recognising that taking the lowest price option, irrespective of how many corners may be cut on safety, jeopardises both individuals and their projects.*

BUT.....

8. A lot of the comments were: *I generally support the changes, but ...* The exact **but** differs widely among respondents, but the main concern was that changing the Regulations would not make the industry change its culture and methods of working.

- *The industry is client driven and the key to success of the new regs will largely depend upon how clients react to the proposals. It is paramount that the principles of the directive are adhered to, in terms of pre-tender co-ordination and that the new position of co-ordinator does just that.*
- *The cost saving – cheapest is best approach in the construction industry has lead to complete segregation of tasks and roles.*
- *I feel that the proposed changes are not radical enough and I believe that once the dust has settled and various parties have repositioned and reassigned themselves we will quickly see a return to business as usual with the same old people doing the same old thing, cutting corners, sidestepping and inappropriate delegation of responsibility where possible.*
- *They way the regulations are written encourages the client to interfere.*
- *In engineering construction, where dutyholders are generally anxious to guarantee compliance, there is a danger that uncertainty over new law will provoke cautionary over-reaction; particularly amongst clients who face the most important changes. Companies who are good at managing CDM under the existing regulations will continue to be good – largely due to their investment in their own systems; Companies who are not good at managing CDM are unlikely to improve just because the regulations / ACOP change.*
- *The regs do not tackle the fundamental things which are not going well at the moment i.e. risk assessment and timing as being an inherent feature of the whole process. More needs to be written about health and safety in the tendering process. There is not much focus on it at the moment and this has led to issues arising when the project commences.*
- *The revisions appear to be biased towards large and medium size companies. Clients and Contractors are already used to using the current ACOP. However there are very many smaller developers and contractors who see the Regulations as a costly nuisance with no real benefit to them. Although this perception is wrong the new Regulations do not address this issue at all.*

- *The regs are still biased towards the building industry which leads to issues convincing clients that plant engineering work can fall within the scope.*
- *The basic aims of the proposed regulations are clear. What they actually provoke may not be the same. Careful thought about the implementing package that supports the new regulations will be essential.*

9. HSC/E and CONIAC fully agree that simply changing the Regulations will not bring about the necessary improvements we are seeking, and which are so badly needed. We all need to work together to use CDM 2007 as an opportunity to promote the step-change in culture and move away from pointless bureaucracy and towards better planning and management and more focused information provision. Work is in hand to make sure that the key messages which accompany the launch of the Regulations will have behavioural and cultural change at their heart.

10. Some respondents wanted the Regulations to take different approaches according to the size or risk involved in a project, but there were no clear proposals as to where this split should be or how it might operate.

Status quo

11. 7% of respondents preferred the current Regulations; others favoured a halfway house between the existing and proposed Regulations.

- *The current regulations are generally adequate. The problems are; Low levels of understanding which produces too much documentation to 'cover' the respective duty holder. Lack of H&S training of PS's & designer Low levels of enforcement & intervention at Client, designer & PS level.*
- *The present Regulations should be slimmed down and clarified, with effort focussed on clarifying requirements and reducing paperwork.*
- *Revise the existing Regulations and ACoP to make them clearer, simpler and less bureaucratic and also to rectify errors but do not expand and extend roles and duties in the manner proposed in the proposed document.*
- *Time and energy would be better spent maintaining the existing regulations and training the industry to root out the cowboys. As it seems likely that the new regulations will be even less well understood, more resented (particularly by clients and contractors) and widen the gap between those trying to do the job properly and safely and those paying only lip service to it.*
- *Involve the Planning Supervisor at the construction stage and refine the existing Regulations and ACOP.*
- *The Existing Regs undoubtedly have shortcomings, but I believe the industry would be better served by incorporating the good parts of the new Regs into the existing, otherwise the past ten years good work will be undone, and a whole new set of confusions will occur.*

Better

- *Overall the proposals appear to offer a less bureaucratic and more collaborative approach to the management of health, safety and welfare issues in the industry.*
- *The proposed relationship between Client and Co-ordinator makes better use of the specialist knowledge and experience which can be brought by a practising Co-ordinator who treats the process as one of management rather than "box-ticking", and allows added value to be brought to the role.*
- *Revised layout of grouping Regs to stakeholder responsibilities helps. Improvement of the ACOP with flow charts rather than text.*
- *The streamlining of the Construction (H,S&W) Regs, and the CDM Regs is a good idea , as is the*

reduction in paperwork,

- *We strongly support and welcome this attempt to consolidate the law in this area and believe that the proposals are much clearer and practical than the previous regulations.*
- *We would support the changes, which do not appear to be that major*
- *They represent an evolutionary step.*
- *The existing CDM client duties have not provoked a genuine client engagement across construction as a whole. A new legal emphasis is essential to generate a significant improvement in the exercise of positive client influence across the wider construction industry.*

Scope and Notification

12. The main issues on scope were whether the formal appointments and documentation should be required for smaller or high-risk projects – particularly demolition. Some wanted the client duties to be *incumbent upon domestic clients*.

- *Our main concern relate to removing the smaller project from the need to appoint Planning Supervisor/co-ordinator. It is our experience is that the clients for smaller project who are prepared to take and accept risks and they appoint a team who will also take risks. A competent PS/ co-ordinator can help in educating these smaller clients and their team of the need to make health and Safety as a higher priority. Many Clients will encourage programmes be reduced to avoid the need to appoint a co-ordinator. They already encourage 4 or less workers.*
- *The proposals will mean that many smaller and demolition projects, where many accidents occur, are no longer covered to the same extent. We understand the need to reduce bureaucracy but feel an appropriate level of formal appointments and documents should be applied. Consideration should be given to application relative to the hazards and risks involved in the projects.*
- *The proposal to remove the specific requirement to notify demolition works is ill-advised.*
- *All demolition projects (and other high risk, small scale projects) should remain subject to the full Regulations.*
- *For example, a single weekend engineering project involving 150 workers from a variety of contractor organisations and agencies would not explicitly require the appointment of a Co-ordinator or Principal Contractor because the work is not notifiable. Neither would there be an explicit duty to co-operate and consult with the workers.*
- *We support the change of cut off point for application of the regulations and welcome the emphasis on the client responsibility.*
- *It is however apparent that the management duties of contractors are considerable expanded and therefore, presumably, substitute for the PC duties in non-notifiable projects.*

13. There were also concerns that the proposed requirement for earlier notification would lead to a lot of abortive notifications, which would be of no benefit to the industry or HSE.

Clearer?

14. Views as to whether the proposals were clearer or not were also diametrically opposed!

- *The new proposals appear to be better structured and clearer than the current CDM Regulations.*
- *Overall the language is easier to understand.*
- *The proposed changes could be more easily understood.*
- *Less clarity – particularly in respect of the role of the (health and safety) co-ordinator*
- *The new regs appear more confused and the guidance does not, in general follow the regs.*

Building Regulations

15. Several respondents suggested that the new Regulations would be better if they were modelled on the Building Regulations *where an approval is required and guidance provided*. These are set out as a short set of proposed requirements, then a list deemed to satisfy guidance. However, they do allow the designer to do something completely different provided that the enforcing authority can be convinced of compliance. This would require designers to pass through a gateway and equally significantly contractors would have to serve notice and be subject to inspection.

16. Such an approach was also suggested by Tim Kind in his report for HSE on the impact of the proposals on small clients. HSE is committed to work with the Department for Communities and Local Government (DCLG) which aims to find ways of achieving greater integration between the Building control, planning and CDM regimes. Any resulting proposals for changing HSE's current enforcement or administrative arrangements or Regulations will be incorporated into HSE's Simplification Plan and submitted to the Better Regulation Executive (BRE).

Misunderstandings

17. Sadly, there are still a number of fundamental misunderstandings about the current and proposed Regulations. Those mentioned included:

- *The CDM Regs do not apply to small jobs for householders where many of the 'cowboy' builders work.* (They do – designers and contractors have the same duties as for other projects, it is only the clients who are exempt.)
- *The safer a structure is to build the more time it will take and therefore the more money it will cost.* (Experience shows that time and money invested in buildability and maintainability is rarely wasted. It often saves time and money during construction and invariably improves whole life value. See also the responses to question 14.)
- *The regs as they stand imply that one co-ordinator must be appointed.* (While this will normally be the case for smaller projects there is no reason why a team should not do the work, providing it has the resources and competence to do so. Spreading the work around the team also requires good project management skills and arrangements.)
- *The role of co-ordinator is confused by the attachment of duties, or the suggestion of duties, that are normally carried out by other members of the construction team.* (There is no need for duplication, just for the team to be clear about who does what.)

Q2 a – Do you think the proposals will help to reduce bureaucracy?

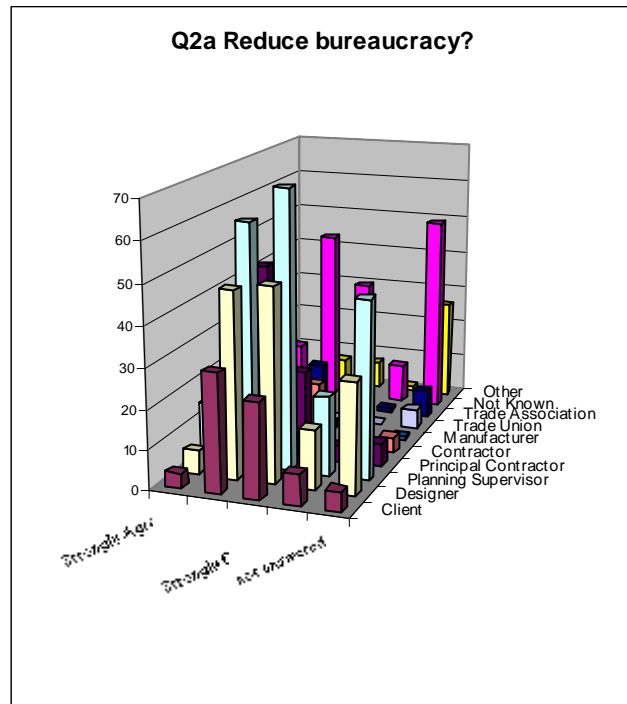
18. 53% (164) of respondents thought that the proposals would reduce bureaucracy. 29% of respondents did not answer the question. With designers (64:53) and Planning Supervisors (90:76) there were majorities who thought that the proposals would not reduce *There is nothing in the Consultation Document that will help to reduce bureaucracy* or, in one case, might even increase bureaucracy by at least double the current rate.

19. It is clear that the current levels of bureaucracy remain a concern to many – *the caveats and mindless drivel contained within pre-tender and construction phase plans and health and safety files is unbelievable in some organisations.*

20. Respondents were therefore generally keen to reduce it and to make sure that we do not accidentally create more as a result of the changes. *Whilst bureaucracy has reduced in certain areas there seems to be a lot "checking" which will create its own paperwork.*

21. Respondents were keen for HSE to do everything possible to reduce pointless paperwork: *We urge HSE however, to keep to its basic intent of rooting out unnecessary paperwork linked to CDM. Our members have told us this is a long-standing problem. Not only has it deflected attention from proper risk assessment and control, but it has tended to reinforce negative views in the industry about health and safety at work.* In the end, however, many recognised that, while HSE can point the way, success depends on the reaction of the industry.

- *Although the intent of the proposals is to reduce bureaucracy this will continue to depend on how the duties are carried out in practice and whether there will be a reduction in actions to protect against litigation.*
- *In the main the proposals are sound but I feel that the prime weakness area will be the Co-ordinator, who in many cases at present either pushes for more paperwork needlessly or is nominated and has no formal training or understanding of health and safety matters. Having said that it is a generalisation and not all Planning Supervisors are like that.*
- *Removing the need for a pre-construction and construction phase health and safety plan and a health and safety file for the smaller non-notifiable projects may reduce bureaucracy. Replacing the need to have a health and safety file for each project with the requirement to hold one for each structure will assist in reducing bureaucracy. There is a real danger, however, that progress in developing a safer culture in the industry is sacrificed in the process. The key to reducing bureaucracy is to target what is done upon the unusual risks in the project - this principal cannot be ignored. For notifiable projects we feel that the proposals will not reduce bureaucracy because everyone involved in the project will continue to document their work on top of the 'project file' or to sign off work at certain gateways.*
- *The introduction of the Client's arrangements will be seen by some as the introduction of an additional document. We would like to think that any documents produced for the client's arrangements would avoid repetition in later documents but believe that this opportunity to cut*



bureaucracy will not be seized.

- *We cannot see how these revised regulations are supposed to reduce bureaucracy.*
 - *UCATT is concerned that the emphasis on reducing bureaucracy will lead to a further deterioration in safety standards. It is already well accepted that in many cases risk assessments are not carried out and UCATT believes there is a danger that this situation will get worse. We do support improved clarity as a way of enabling duty holders to know what is expected of them but consider that without effective enforcement there will be little change in practices on site.*
22. Many respondents, while they would like to see a reduction, are just sceptical about it happening in practice. *We are sceptical. There is no reason to suppose that the bureaucracy will diminish.* Two principal factors were seen as the underlying causes of bureaucracy.
23. Some thought that risk registers would help, others thought they would just add to the bureaucracy.
- *Have a single risk register for the project to avoid designers producing the same information*
 - *Appendix 3 relates to the risk register. It says it will provide an audit trail for future reference, it should be kept up to date "a living document," more fees and paperwork for the co-ordinator. It states that it can help to avoid the production of excessive paperwork but does not explain how, and I cannot see how it will either.*
24. Existing documents could be used for several purposes, including health and safety, reducing duplication. Examples of good practice could also be shared.
- *Focus more on the contract document, specification, drawings and bill of quantities. Include pre-tender information and construction phase health and safety information within the existing documents. Recognise that through contract arrangements the Clients appoint a Project Manager who leads and influences the overall project but is not recognised under CDM. Align the CDM duty holders to that of the Contractual duty holders that generally stem from the Client appointing of Architect/Project Manager for the project.*
 - *What may be needed are various example documents, acknowledged by the HSE as examples of best practice', demonstrating succinct health and safety management. The existing Regs and ACoP/guidance are not causing bureaucracy, it is the lack of understanding and poor performance of the various duty-holders.*
25. Design Risk Assessments still sometimes produce a lot of unhelpful paperwork.
- *We do not consider that the draft proposals will significantly reduce bureaucracy unless clearer guidance is given on DRA and its usefulness and appropriateness to the Project Team. One example is that drawings can include simple DRA information¹ and make it effective and easily understood. The idea has been around for a long time, but still DRA continues to be generic and complicated and seldom communicated on drawings.*
26. The most radical solution to reducing bureaucracy suggested was building relationships and fostering communication between designers & constructors. If you talk regularly and know what the other party needs perhaps you won't need to write so much down.

Uncertainty principle

- *Bureaucracy is most often provoked by uncertainty*
- *As a qualified building designer I am astonished by lack of understanding of regulations by large architectural and engineering design practices who produce generic rubbish not knowing better or the real implication of existing duties!*

¹ As recommended in both the current ACoP and draft guidance included with the CD!

- *Because of a lack of clarity, others have resorted to inappropriate ways of addressing the requirements by such things as including reams of superfluous information in CDM plans and H&S files. Simplicity and clarity should, therefore, be the main priorities both in the rewriting and reframing the Regulations/ACoP/guidance and in the identification of the content of documentation needed for a project.*
- *I believe that the regulations will cause "Panic" and uncertainty among many clients; they may seek reassurance of compliance through administration / documentation to the Nth. degree.*
- *I think we are all tired of seeing voluminous H&S files and generic risk assessments. We live in a litigious world and it takes confidence to cut through all this and deliver what really matters. Eliminating ambiguity is not easily balanced with being succinct. The ACOP should stress the impotence of eliminating generic words and concentrate on communicating what to the PC etc would not be obvious to a competent person.*

27. The perceived remedies to this problem are increased clarity in the Regulations and supporting material, improved competence and forceful messages from HSE and others that irrelevant paperwork is not required and, indeed, positively unhelpful. The implementation of the new Regulations provides an opportunity to present this message forcefully.

- *It is not just a question of the regulations and 'official' guidance. The package that supports implementation of the new regime will be at least as important and quite possibly more. For instance associated press, publicity, industry support, targeted mailshots etc have an extremely important role to play in ensuring success. They need to be ready to run well before the regulations come into force. Messages for clients will be of particular importance. The new client duty is an enhanced one. Many who perceive a 'larger' duty will respond with new defensive bureaucracy unless it is clear that this is not what is required and will be a positively 'bad thing' if it is produced.*

Proving innocence

- *Bureaucracy is inevitable in a system where compliance has to be confirmed and where the penalty for failure is prosecution*
- *CDM places statutory requirements on duty holders. There is the possibility that any person might be investigated in future and face the potential of prosecution whether justified or not. The HSE asks for proof of what has been done in the past. Consequently any duty holder is likely to have in mind that at some stage he may have to prove that he has complied with the regulations. Under these circumstances there will always be a strong tendency to produce documents thereby increasing bureaucracy.*
- *Bureaucracy is primarily driven by fear of prosecution rather than the content of the Regulations and guidance. Less bureaucracy could be achieved by writing into the regulations that offences would only be committed where the information passed on at any stage fell significantly below what could reasonably be expected i.e. only people who had not made a genuine effort to do what was required could be prosecuted rather than those who had tried their best but made a technical error on a judgement call in a grey area.*
- *HSE may not require the records the insurance companies will – as the defence against any litigation that may arise, particularly from the 'No win - No fee' sector of civil claims.*
- *Alter the legal requirement of burden of proof under the Health and Safety at Work etc Act, so that people do not have to "prove" innocence – this only encourages bureaucracy.*

28. This is a significant fear for many, even though the numbers of prosecutions is relatively small. In addition, if a project is well managed then it is far less likely that anything will go wrong, and

this is where effort is likely to produce the greatest dividend. Masses of irrelevant information are also unlikely to impress either an Inspector or Court favourably.

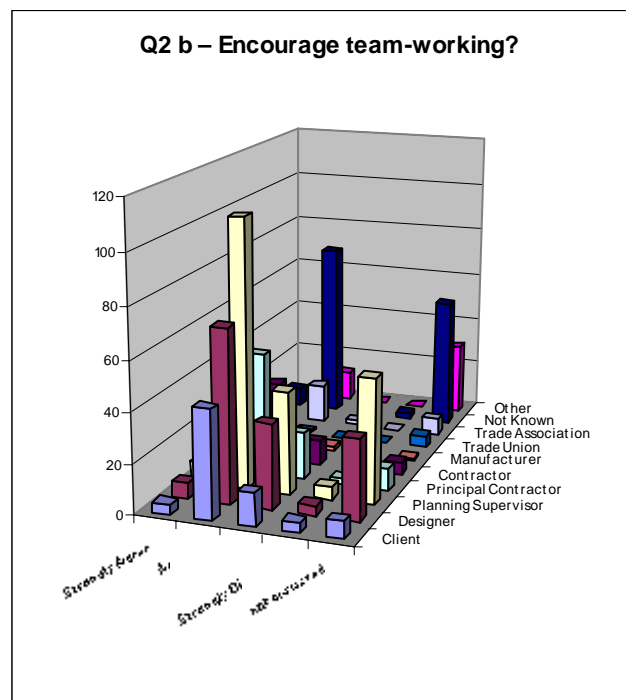
29. Finally there was the innovative idea that we should *make pointless questionnaires illegal*, but something so radical would involve re-consulting and that would doubtless include a long, complicated ...

30. Overall, the conclusion appears to be that there is the potential for the revised regulations to reduce the burden of bureaucracy, but this will depend on cultural and behavioural changes as well. Achieving these cultural and behavioural changes will need to be the focus of the launch and benefits realisation work once the Regulations come into force.

Q2 b – Do you think the proposals will help to encourage team-working?

31. 75% (227) of respondents thought that the proposals would help to encourage team working. As the graph shows, designers and Planning Supervisors were more doubtful than other groups.

- *The existing Regs, ACoP and Guidance sufficiently emphasise cooperation and communication, and no amount of 'legislation' or guidance forms a team approach, but rather the individuals of the team and how they work together.*
- *We believe that the proposals will encourage team working more than current regulations.*
- *The proposals do encourage team working as a practical solution to addressing H&S issues.*
- *In my view the construction industry is a heart still strongly adversarial. I do not think that legislators can be very effective in combating these attitudes.*
- *The construction industry is client driven and money drives clients, certainly in terms of transferring risk. Contrary to the present trend this is one aspect of H&S legislation that requires greater prescription.*
- *No amount of H&S legislation will ensure that projects have integrated teams and are effectively managed. Change is brought about by a cultural change in construction by altering perceptions towards risk and risk behaviour. This is depending on risk communication, information, training and on personal attributes and people's own 'world-views' and risk thresholds. Commercially organisations have to be convinced that it is a more efficient and cost-effective avenue. More good practice projects should be publicised.*
- *Team working is not usually created by legal obligation - it happens as a result of mutual will, and typically where there is an incentive, not a penalty.*



Co-ordinators and teamwork

32. Some feared that the co-ordinator could hinder teamwork rather than facilitate it.

- *A co-ordinator role requiring the active intervention of a third party into the design process is likely to be disruptive, not beneficial.*
- *The introduction of the concept of the 'co-ordinator' .may not help effective project management as there now becomes one more player required, with all the interface and communication challenges and issues. I believe it is ill conceived to have the 'co-ordinator' with functions of actually co-ordinating design work, planning and other preparation; and of liaising with the PC in relation to any design or change. The industry will not be able to do this, as it undermines the way it works (in many cases) now. What is needed in relation to this design work, is designers themselves taking on these functions, as many do already. For these functions, one of the designers must be given the responsibility of 'lead designer' – a far closer match with good existing project management*
- *Some further acknowledgement that the H&S Co-ordinator Role must overlap with the Lead Design Consultant Role in that no client will realistically appoint a sole H&S professional to project manage from inception as held forth as an option in the draft regulations. The inception has to be design, with HS constraints closely coordinated with other factors from the outset. This is what happens in the best run projects under the current regs.*
- *If the role of Co-ordinator was appointed by the Lead Designer and became an integral member of the design team whilst still maintaining objectivity then this approach should encourage teamwork and ensure that CDM is a seamless within the design process.*
- *The proposals are a major threat to team working in the presentation of the Co-ordinator as an individual whose wisdom will direct the efforts of all. This is the very opposite of the function which is required. The Co-ordinator should facilitate the collective efforts of all parties to the contract in reducing the residual risks of the design through collective review. The guidance does not recognise the importance of this approach, which would be better supported by the title of 'Communications Facilitator' than co-ordinator.*

Integrated teams and Early Contractor Involvement

33. Teamwork relies on the team being together.

- *There is a need to appoint the principal contractor and any specialist sub contractors at the earliest stages of design in order for the designer to be advised of any potential construction issues due the particular method or equipment a particular contractor may normally use, in order to adjust the design to accommodate the contractors method of operation. I believe that designers need the support of the "Construction Professionals" to determine the best method of build required for a project.*
- *To support effective project management, Clients and Principal Contractors must consider involving temporary works contractors at a much earlier stage. For example Architects/Designers need to take account of the following requirements for scaffolding when they are designing buildings, plant or equipment.*
- *In the past communications within some projects has been dire with contractors getting into difficulties due to poor project planning and procurement. The value of involving service/plant and maintenance engineers at early stages and continued planning meetings with those teams can only improve the situation.*
- *A key aspect of project management is the management of health and safety risks on site. Draft Regulation 16(1)(g) states that the principal contractor shall: "where necessary, consult a contractor before finalising such part of the construction plan as is relevant to the work to be performed by him." We insist that the words "where necessary" be deleted. The consultation in this context should be an essential part of good management practice. We also insist that the "principal contractor" has an additional duty which is to "ensure that he consults each contractor*

before commencement on site on the management of health and safety risks relevant to that contractor's activity." This reflects existing practice in the steel sector of the industry which is now spreading to other parts of the specialist engineering sector. Different trades often have specific needs as far as health and safety is concerned and these should be fully addressed with the principal contractor before activities are commenced on site by that particular trade.

- It would be better not to promote any particular contractual arrangement, just the benefits of discussion and cooperation.

34. HSE believes both Integrated Teams and Early Contractor Involvement are beneficial to health and safety, but does not believe that they should be required through health and safety law.

What about the workers?

35. Improved teamwork must include worker involvement.

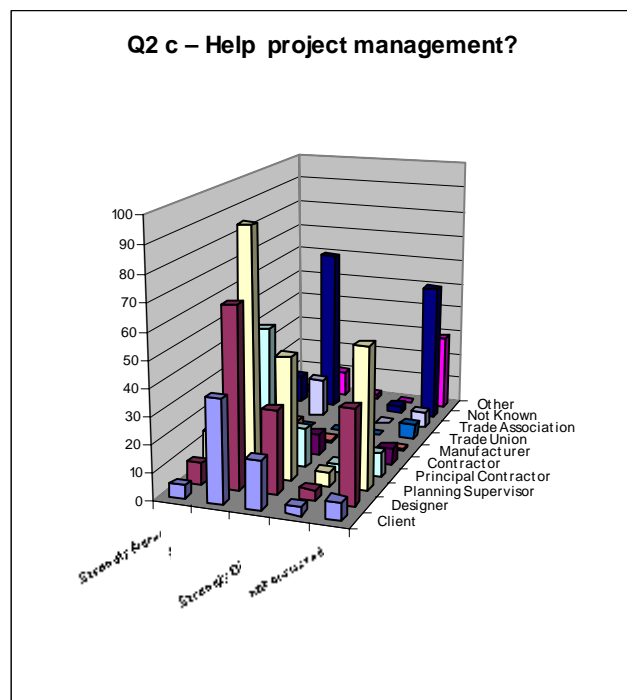
- Employee consultation could be expanded upon for large scale projects where numbers of staff will be affected. Inclusion of employee consultation as part of information pack could be explicit recommendation.
- More cooperation between management and the workforce.
- Amicus is right behind the concept of team working, but we emphasise that trade union backed safety representatives are the best way to support this. The key to the success of trade union reps is in their training and support from union specialists. Even on sites with low union density, these reps have a tremendous effect, as their inspections and other involvements enhance the health and safety regime for all, not just union members. In order for team working to be a success this TU involvement needs to be, highlighted and supported as part of effective project management.

36. Worker engagement remains a key plank of HSE's approach to the management of health and safety in construction and this will be reflected in the Regulations and ACoP.

Q2 c – Do you think the proposals will help to support effective project management?

37. 72% (214) of respondents thought that the proposals would help to encourage effective project management. This is slightly less than thought it would help team working. Again designers and Planning Supervisors were more doubtful than other groups.

- I think there could be visible improvements at the front end of a project as a result of these revisions. However, there is a weakness when the construction phase commences. Here, except for certain high profile clients projects will be managed as before with some managing safety well with affective planning coordination, monitoring etc and others improving their paperwork but not encouraged to improve their management.
- The proposals support effective project management through the requirement for competence.
- Project management must be undertaken by those with the relevant expertise who must bear



responsibility for their own actions.

- *The inclusion of signposts in the Regulations in the direction of integrated team working would provide the best support for effective project management.*
- *The regulations and guidance set a clear framework for effective project management*
- *Strengthening of the client and project co-ordinator roles could help to make safety management a central consideration in the way projects are run. This in turn could reduce the burden of safety management by integrating it with all aspects of project risk management.*
- *Not convinced would support project management in practice*

Project managers

- *The role of project manager is hardly recognised in the proposed changes*
- *The Project Manager and the team under the PM should be utilised more, or be enabled by the regs to be utilised more. Many organisations have PM's who manage projects. Many smaller clients (who will continue to not understand or only implemet retrospectively) use Project Managers. This should be given more prominence in the ACoP or guidance.*
- *Effective project management is not supported if, for example, the Project Manager is trying to deal with all aspects of CDM and H&S, as well as trying to manage the project's programme, finances and personalities. In my experience the two do not mix and usually it is H&S that takes second place.*
- *Current project managers along with many others in the construction industry fight shy of H&S duties*
- *It is vital that CDM (and indeed all H&S) should become integrated into the other management activities, and possibly the idea of a project manager who also acts as the Co-ordinator is no bad thing.*

Question 3 – How can we (Industry and HSE) make it easier for people to assess appointees' competence?

38. This question attracted submissions from 74% of respondents, indicating its importance, both in response to this question and many of the others. A lot has happened on this topic since the publication of the Consultative Document (CD)² so this summary is deliberately kept short and is only intended to give a flavour of the issues raised and contributions received.

Issues

- *The current system is often based around questionnaires and is bureaucratic and of little benefit – the ability to complete questionnaires is not an indication of competence.*
- *If there must be questionnaires, can they not be standardised?*
- *Experience and knowledge of the type of work involved and the issues arising from it are of equal, or greater importance than formal qualifications. (Though it is more difficult to demonstrate or test.)*
- *Competence must be project specific.*
- *Systems are better developed and administered by trade associations and professional bodies, than through legislation. (Though clearly HSE needs some input.)*
- *We need a sensible competence standard to make new co-ordinator role effective.*
- *It is better to build on CHAS, CSCS and other widely accepted schemes than to start from scratch.*

Examples of comments

- *The endless form filling at Bid Stage existed before CDM. CDM merely added to an already protracted series of hoops and hurdles to jump through and over.*
- *Many large organisations put a huge amount of effort in to 'pre-qualification schemes', to 'check consultants competence'. These schemes do nothing of the sort, they produce a large amount of paperwork and it is suspected that the information gained sits forever in a filing system never to be looked at again.*
- *Although many contractors have taken on board the requirements for health and safety competence there is still very little emphasis on this subject within training for the construction professions. This needs to be addressed by the leading bodies, both as a requirement for new membership and also as part of CPD.*
- *The focus on competence and resource is welcomed, as adequate levels of both will inevitably lead to improvements in health and safety performance. However, one would caution against over bureaucratic methods of confirming the levels of competence and resource.*
- *The proposed new duty on appointees to make sure that they are competent to do that for which they are appointed is wishful in the extreme.*
- *Assessment in terms of pre-qualification questionnaires and the like is often a futile paper chase and is taking up too much of the industry's time which could better be spent on real health and safety issues.*
- *Collaboration with professional bodies to ensure health and safety is properly included in education and training curricula.*
- *It is felt this would be a totally inappropriate area in which to have Regulation as it would stifle*

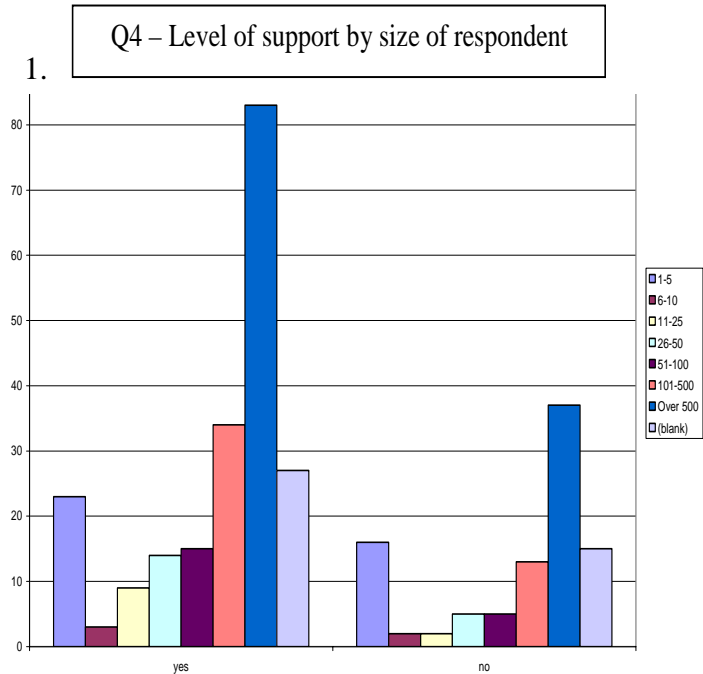
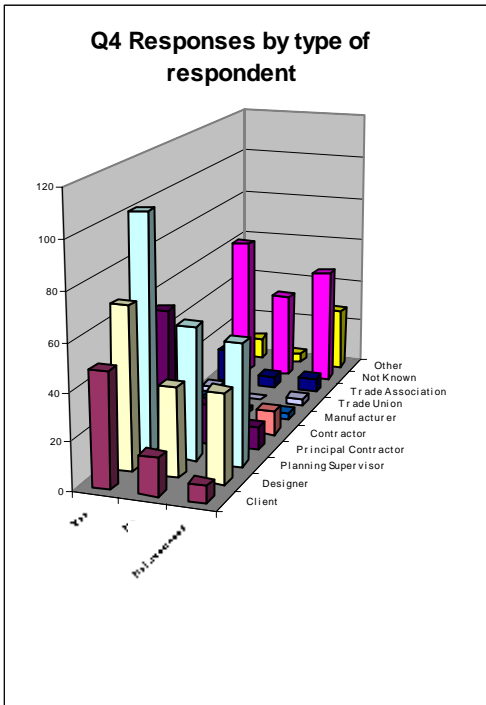
² See John Carpenter's report for more details – John considered all the responses to the consultative document on this topic when preparing his report.

flexibility and innovative thinking. The emphasis on proportionality in assessment and the need for assessments to be project specific cannot be over emphasised.

- *The CSCS scheme is the obvious route to facilitate assessment of competence amongst workers. We would support CSCS certification as a requirement under the Regulations for all trades with a high responsibility for site safety.*
- *There's a good opportunity here for HSE to back one of the pre-qualification schemes ... so that we can all do our competence demonstrations once and once only.*
- *I believe the guidance given in the current ACOP is valid; any difficulty arises because people do not read it.*

39. Since the consultation, the chapter of the ACoP which covers competence has been substantially redrafted. Much of the work has been based on a report prepared by John Carpenter (Developing Guidelines for the selection of Designers and Contractors under the Construction (Design and Management) Regulations 1994, HSE Research Report number 442). Many of the issues raised here have been addressed through this revision.

Q4: Taking account of clients' influential role, but also of their frequent lack of construction expertise, do you think the proposed new duties on clients (particularly to ensure that there are suitable management arrangements) are reasonable and appropriate?



40. 69% (208) of respondents considered that the proposals were reasonable and appropriate. The support was largely consistent, irrespective of the size or type of respondent. A couple of respondents preferred the existing Regulations in this respect.

- *Culture change must come from the client; this must be driven by the client at the start of a project.*
- *The client is the one with overall control of a project and it is right and appropriate that there should be duties on them.*
- *They seem to be reasonable and appropriate because the client is in the best position to ensure that the right people are in place, the project is adequately funded, there is adequate time and interfaces with the client's operations are managed effectively.*
- *The 'balancing out' of legal responsibilities in the new Regulations is very welcome. Placing an overall duty on clients to ensure adequate management arrangements are made and maintained should promote better engagement by the client in the management challenges faced by construction contractors and CDM co-ordinators.*
- *We are talking here about management skills and client's competence to manage. They must use their management competence to appoint a team and be held accountable for their appointees.*
- *I believe the new regs will force more clients to provide the funds to properly take CDM on board. There will always be some who will treat their duties with scant respect unless prosecution becomes more of a reality.*
- *With the appointment of the Co-ordinator at an early stage, the Client should have any support he needs to carry out these duties, always dependant on the competence of the Co-ordinator on Health and Safety matters.*
- *Given that the duties of the co-ordinator, designer, and principle contractor all include explicit or implicit duties to assist the client with their responsibilities, this would appear to be reasonable.*

- *Compare the requirements for client tax returns – an accountant is normally engaged, similarly when a design is required a designer/architect is engaged. For these Regs the essential requirement on a client should be to engage a competent co-ordinator.*
- *Clients should be able to establish a delivery model for their investment plans that reduces the amount of their day to day involvement in the detailed actions that are proposed without removing their overall responsibility. The action on the Client should be to ensure that there are adequate arrangements in place to manage the project and those involved are competent to undertake the roles and then the client should monitor the performance of the delivery model.*
- *I worked for a “national” contractor on a project where the client (Shell UK) took a very active interest in their project and monitored the Principal contractor very closely. Standards for health and safety on the project were very high. In contrast, with the same “national” contractor on a major project, where the client took no active interest, the result was that standards on the site were very poor. It is obvious that the client involvement had the desired impact of providing for a safer project, however, the fact remains that the “National” contractor had chosen to ignore his legislative duties and had put people at risk in doing so. The difference between the two projects was that one had a strong (financially and organisationally) client, while the other had a weak (knowledge and experience) client who put their trust in the contractor, design houses etc. There will always be strong and weak clients.*

41. As with many of the other questions, however, there were a number of underlying misunderstandings and concerns. The concerns reflect the challenge that regulating construction clients raises, as explained in the CD. The CD acknowledged the lack of construction expertise in many clients, but noted their influence over the selection of the team and the manner and conditions under which it works.

Unreasonable

42. Although the majority thought that the proposals got the balance right a significant minority thought that the proposals were unreasonable, particularly for one-off and occasional clients.

- *It is accepted that the ‘clients have a pivotal role in setting the overall framework in which the construction work takes place (including the provision of adequate information, time, resources etc). That pivotal role needs to be balanced by the fact that, in many cases, the client has absolutely no construction background or expertise.*
- *The new Regulations are a trap for single project or infrequent Clients who can not be reasonably expected to have adequate knowledge to “ensure” suitable management arrangements are implemented. Why should it be necessary for a Client to have the knowledge necessary to “ensure” such an obligation is achieved? Clients appoint experts to assist during all Construction projects why can not H&S be approached in a similar manner.*
- *The duties do seem slightly unfair on inexperienced clients as if they have an inept coordinator, the client seem to be responsible for the coordinator’s failings.*
- *Appear reasonable for an experienced Client, but not the inexperienced.*
- *The problem is the very different knowledge and expertise of different clients; a large industrial or commercial client will have the expertise to be able to carry out their duties. A small farmer will not.*
- *Our overall concern is predominantly around the fact that the new duties fail to distinguish between repeat and one-off clients. Since a one-off client will have no construction or design expertise, the consultation significantly over estimates the amount of influence such clients will be able to exert over the fulfilment of health and safety functions. Even some major repeat clients very active in safety culture improvement have concerns in terms of the shift in responsibilities.*
- *Allocating responsibility to those without expertise does not seem a sensible way to ensure that*

health and safety is observed and achieved. Responsibility should be allocated to those with the relevant expertise.

- *The Client should only be responsible for ensuring he appoints competent people. This team should then have the responsibility of carrying out the management arrangements.*
- *It is totally unreasonable to also expect the client to ensure duties placed on others are complied with.*

43. One possible reason for this perception may have been that the proposed duty to ensure suitable management arrangements was read as a duty for the client to manage the project, though this was never our intention.

- *There is much ambiguity in the requirement for the client to manage projects.*
- *It is not possible for a client to 'ensure' that things are done unless he/she personally checks, which could only be done if the client took over direct management of the contractor.*

44. Another issue was that the stated objective of the management arrangements was that the project should be **without risk**. A number of respondents correctly pointed out that it is never possible for projects to be entirely **without risk** – indeed HSC/E aim for sensible risk management, not zero risk. These are drafting issues that need to be reconsidered to ensure that the intention is clearly conveyed.

- *Clients are so varied in their knowledge and experience that it is unreasonable to expect all of them to be competent to make many of the decisions and judgements you propose – that is why they employ professionals and they should be able to rely on those professionals to make competent decisions.*

45. Clearly, more work is required to ensure that the proposed duties are seen to be fair and reasonable. It certainly ought to be possible for a reasonable client, acting in good faith, to rely on the advice provided by a competent, properly informed and resourced team - without fear of prosecution. Indeed, this very point will be specifically brought out in the ACoP.

46. In January 2006 HSE recruited two industry secondees for 3 months, to help address some of these concerns. Tim Kind (Senior Policy Adviser with the Forum for Private Business) worked on issues associated with small/one-off clients and David Watson (a chartered engineer with WSP) looked at issues relating to the proposed changes to designer duties. Both reported at the end of March 2006, and their findings are available on the HSE website. The CDM 2007 proposals are currently being refined in the light of their work, responses to the consultation, and ongoing discussions with key stakeholders before the HSC makes its formal proposals to Ministers.

Not enough

47. On the opposite tack, a few respondents thought that the proposals should be broader or tougher on clients.

- *The documents are too shy of giving responsibility to clients. Their duties are diluted by asking other parties to check their understanding. This is unacceptable if clients are to have an impact in improving safety. They should hold the absolute duty, and seek whatever advice they need to be able to discharge their duty. This is not unusual – for example a client cannot build without planning permission.*
- *Remove the phrase “take reasonable steps to” and make the duty absolute.*
- *It is right that clients are perceived as the duty holders that can have most effect in promoting change. Some of our clients will welcome these proposed changes in that they will reduce their obligations and allow them to bully QS's, designers and project coordinators into the role of coordinator without adequate resourcing. This to a large degree will take us back 8 or more years.*
- *Still are able to “distance themselves during the construction phase. Should have an ongoing role*

until completion. Is the Principal Contractor doing what he said he would do?

- *It is neither reasonable nor appropriate not to impose duties upon the domestic client.*

Clients' agents

48. There were a number of comments on the proposed removal of the current opportunity for a client to appoint an agent, who then takes on the client's legal duties. These were fairly equally balanced between those in favour of removal and of the status quo.

- *The removal of Client Agent is a particularly good step forward.*
- *All manners of Agents have arisen to undertake the Clients duties and this has served to distance the Client even further from their responsibilities. The LI welcomes the proposal that every Client must assume their own responsibility.*
- *The issue of inexperienced clients managing a project needs to be addressed. Where this would have previously been managed by a Clients Agent, an inexperienced client will now have greater involvement, possibly with only a designer and planning supervisor to provide competent advice.*

49. Of course, the proposals would not stop a client appointing an agent to manage things on their behalf; they would just be unable to transfer their legal CDM responsibilities. (As things currently stand, even if a client transfers his CDM 1994 duties to an agent, he retains his legal responsibilities under other health and safety legislation, e.g. the Health and Safety at Work etc Act 1974 and the Management of Health and Safety at Work Regulations 1999.)

Ignorance

50. There is a widespread acceptance that many clients know little about construction – and why should they when this is not central to their business? This is a challenge to be overcome to ensure the effective implementation of the proposed Regulations and many respondents emphasised the need for effective publicity to raise CDM awareness; and guidance and support from the project team to help them.

- *Ensuring that this advice is available and adopted from the beginning of the project is the key hurdle to be overcome with inexperienced construction clients and those clients who just ignore H&S considerations. A variety of measures will be needed to ensure that the inexperienced clients who appoint uninformed or cowboy designers / contractors get the message through national publicity campaigns, Client trade bodies, Chambers of Commerce, and especially via Planning Application requirements.*
- *The clients you need to get to will not have any knowledge of these Regulations nor will their advisors.*
- *There will need to be some sort of education of clients in relation to their new duties, which may well affect lay managers within retail groups who may act as clients.*
- *Their duties could be detailed in literature supplied with Building Regulations or Planning Applications.*
- *It will take some persuading that cheapest/quickest isn't necessarily for the best.*
- *If the client is to be given greater responsibility, what is needed is detailed practical advice for different types of clients on different types of projects.*
- *The implementation of the new regulations require designers/ Principal Contractors to inform their client (who are their pay masters) of their legal obligations. Ultimately the designer/PC has to decline work if the client does not comply with the regulations.*

Other concerns

51. There were some concerns that there was a potential for increased bureaucracy:

- *most contractor companies believe the additional duties will increase the bureaucracy as this is the way the clients normally ensure they have “managed” health and safety issues.*
- *there is a real danger that the bureaucracy of eg competence assessment could simply be replaced by new burdens from clients seeking to demonstrate they have ‘ensured so far as they reasonably can’.*
- *there will be even more paperwork generated as the clients pass down risk to someone else.*

52. Another concern was that the changes could encourage clients to interfere with contractors’ work:

- *Although the Regulations say “shall ensure”, there will be a temptation for Clients to impose systems, or commission Consultants to devise systems, of which Contractors will not have true ownership. We strongly advise that this is clarified in the ACoP/ Guidance to the Regulations.*
- *There is too much interference by clients especially in relation to late changes to rules, which hinders PC efficiency. The way in which these regulations are worded could make the situation worse as the outcome depends on interpretation.*

53. On the other hand, some respondents wanted more involvement by clients in the management of the construction phase!

54. There were also several who thought that the proposals were just unrealistic. *APS believes the rationale for effecting a change through increased client performance is fundamentally flawed and not borne out by the evidence.*

Other issues

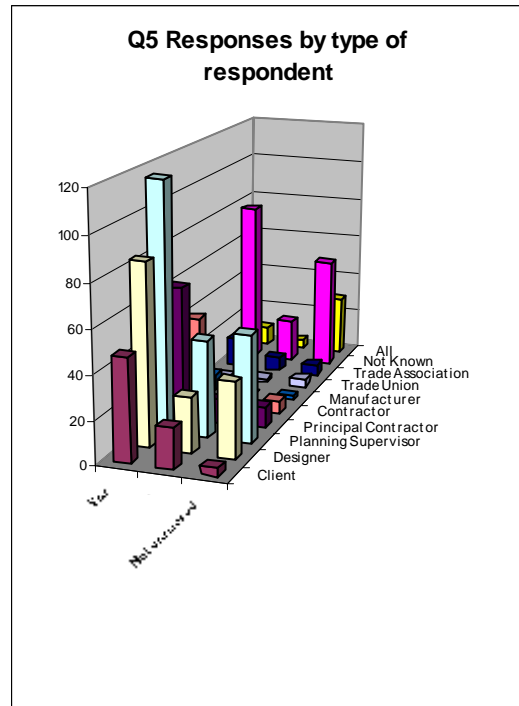
55. Several respondents sought increased enforcement action by HSE against clients. Others suggested that the duty to provide information about the site/structure should apply to all projects, not just those that are notifiable.

56. One respondent wanted an increased emphasis for clients on safety in use of the finished structure. (Of course, where the client occupies it they will have to comply with the Workplace and other health and safety regulations.) Several respondents wanted greater emphasis on the links with the Management and other health and safety regulations.

Q5: Do you think the draft Regulations make it clear that the intention of the proposed new duty on clients is for them to ensure that things are done – but not necessarily for them to do those things themselves?

57. 74% (223) of respondents thought that the intention was conveyed clearly. This was consistent across all size and duty holder groups. A number of the comments on this question are addressed elsewhere. These are not repeated.

- Yes, they are clear, if you read the Regulations.
- It is difficult to see how the wording can be changed to make it more explicit. However the question is not so much what the text says in law, but how it is perceived in practice.
- Some more plain English required in the Regulations
- The Regulations are somewhat ambiguous. The proposed Guidance offers more clarity.
- It is difficult to see how to improve the present wording in the regulations as it is unambiguous when read carefully. This can only be made clearer by practical and relevant examples in Guidance.



- The proposed regulations require the Client to take “reasonable steps” to ensure that the Principal Contractor and Co-ordinator carry out their responsibilities properly. This is likely to include an element of checking and review. In effect, the Client is being asked to be involved in the management chain. This blurs the accountability between those with responsibility for “ensuring” that things are done and actually doing them. Anyone in the position of a “checker” is naturally seen as having a higher level of authority and safety accountability than those being “checked”.
- The proposed new duties on clients to ensure there are arrangements for managing projects, has the potential to be beneficial where projects are notifiable and they are therefore supported by a co-ordinator. It would be beneficial to provide further guidance for non-notifiable projects and for inexperienced clients to ensure standards are maintained.

58. There was some confusion as to what the draft Regulations required a client to ensure. Some took it to mean that they had to ensure that everything was done properly.

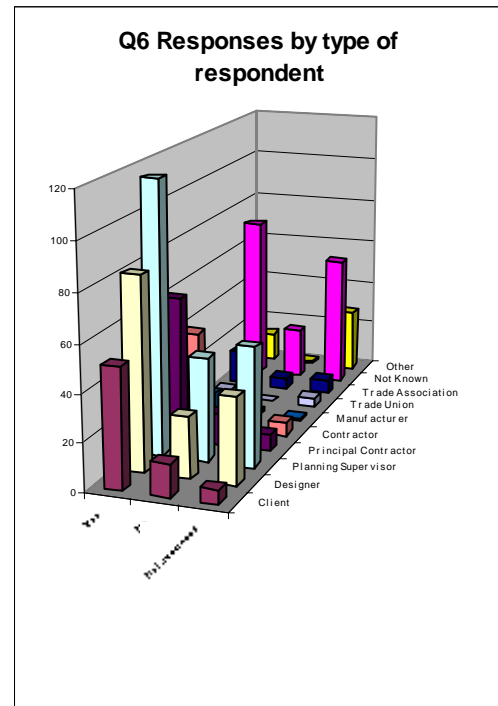
- a duty to ‘ensure’ is an absolute duty and it may not be possible to discharge it without assuming direct control over matters

59. In fact the main duty on a client to ensure was in draft regulation 7 and this was a duty to ensure that there were reasonable management arrangements in place for the project. This links with the points made about management in the previous question.

Q6: Do you think the proposed duties on clients (supported by co-ordinators) to ensure there are arrangements for managing projects are likely to have a beneficial effect on safe planning and arrangements for work?

60.76% (224) of respondents thought that the proposed management arrangements would be beneficial. This was consistent across all size and duty holder groups. As with Question 5, many of the comments on this question have been addressed elsewhere, so are not repeated here.

- *By simply setting out what the Client is responsible for the regulations will have a greater affect than their predecessor. Too many Clients in the past have been able to contractually absolve themselves of any health and safety responsibilities. Regardless of how well many of the duties are implemented they will act as a lever that other duty holders can use to ensure the project is effectively managed.*
- *The consolidation of the client’s duties and the improved clarity of some of the regulations is a positive step, and one to be welcomed. This enables clients to more easily understand what is expected of them. However, the new responsibilities will need to be widely publicised and explained in practical terms.*
- *The proposed duties on the Client (supported by Co-ordinators) will have a positive impact on safe planning and arrangements for work due to the Client having better knowledge through a more involved role in the project to ensure duties are carried out. There will be more emphasis upon a competent Co-ordinator to assist the Client which will be separate to that of the Project Manager and be part of an integrated team.*
- *Planning and arrangements are key and the Client needs to be made aware, if not already, of the importance of this, specifically the time factor.*
- *However imperfect the response to the new duty it should undoubtedly provoke more interest from more clients on health and safety matters during project planning stages. If all this does is to raise health and safety issues at earlier stages in more construction projects the regulations will have achieved a great deal.*
- *Good early decisions and actions should benefit planning and arrangements for projects. It will definitely have a beneficial effect where we have educated clients, but for those who are not educated we foresee another reason for them to try to remain below the HSE’s radar. Examples required to demonstrate the added value of these arrangements in practice.*
- *The regulations require clients to ensure that arrangements are in place but make no provision to compel them to ensure that these are used fully and effectively. Management processes come under considerable pressure when put into practice and there may be the temptation to deviate from them in order to remain on schedule.*
- *Clearly major “Intelligent” clients can and often do have a positive impact on their projects, however I am struggling to see how the new proposals will have the desired impact on the less amiable clients.*
- *The key to effective project management lies in the presence of an effective and competent Project*



Manager, managing the project on behalf of the client. We feel that a requirement on the client to appoint a competent Project Manager to manage the work is preferable to the proposed appointment of a Co-ordinator to advise him. It also reflects how projects are managed in practice and doesn't create an artificial role.

- *The role of project manager is hardly recognised in the proposed changes. Where client's appoint project managers - they sometimes take on the client duties - this is still a 'grey' area that needs to be clarified.*
- *The duty should be clearly on the co-ordinator not client as many smaller clients are inexperienced. The co-ordinator should be principal duty holder here.*

61. Some respondents commented that these duties are already in the current CDM Regulations. This is not quite correct. A similar duty is implicit in the requirements of Sections 3 and 4 of the Health and Safety at Work Etc Act 1974 and through the Management of Health and Safety at Work Regulations 1999, but these duties are not made explicit in the current CDM 94 Regulations. The existing duties are spelled out in the existing CDM ACoP, on page 3. *The move up the enforcement scale to being Regulations in CDM 2006 will have the biggest impact at the 'less well managed end' of the scale of construction projects*

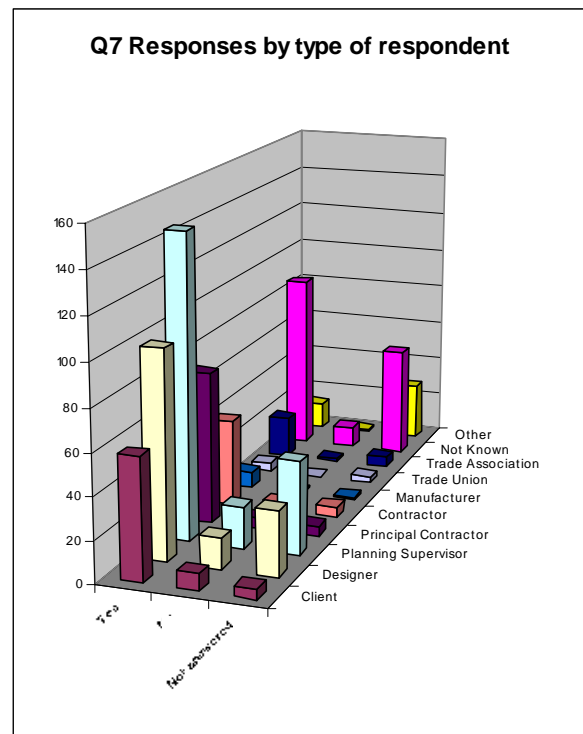
62. There was some concern about high-risk, non-notifiable projects which require a Planning Supervisor at present, but may not require a co-ordinator under these proposals. There was also concern that clients may take on the role themselves, without having the competence, or desire, to carry it out properly.

Q7: Do you think the explicit duty on clients to allocate sufficient time and resources is helpful?

63. 89% (276) of respondents thought that an explicit duty on clients to allocate sufficient time and resources would be helpful. This was consistent across all size and duty holder groups.

64. As can be seen from the high level of support, the need to allow sufficient time and resources is very important to many respondents and is also seen as crucial to improving health and safety standards. *This is the most critical parameter affecting health & safety it will help all parties.* The amount of interest also probably reflects the widespread nature of the problem.

- *Lack of time to bid and deliver jobs is endemic in the industry. Those at the end of the food chain are invariably squeezed to perform and this is where safety is often compromised.*
- *There are often incredible pressures to get the work completed within an allotted time. This can put an immense pressure on individual parties within the project team.*



65. It also reflects the wider interests in improving project delivery, often hampered by unrealistic deadlines. *The inclusion of such explicit duties will help to reinforce the often held argument that more time is required at these stages in a scheme. Consequently, the procurement and construction process should be enhanced, both in terms of health & safety and scheme delivery.*

66. A number of the respondents wanted to extend the duty to cover “anyone procuring” and, in particular, demolition work and the needs of specialist contractors so that health and safety is built into the timescale throughout the project. *Once the contract has been signed the Client has no control over on-site activities. It is the Principal Contractor who controls the activities on site and it is therefore the Principal Contractor who should ultimately be responsible for the level of resources that they have agreed to provide in their tender submission.*

67. The bulk of the other comments indicated a lot of cynicism and concerns about how the proposal could be made to work in practice.

Cynics

68. A number pointed out that *this requirement exists in the current regulations / ACOP*, but had had virtually no effect because of the attitude of clients and the commercial pressures on other members of the team.

- *Clients basically want it built in as little time as possible and there are always contractors willing to cut the programme (and possibly corners). Similarly during the design phase, there are problems with Clients engaging a team for longer periods due to costs. The number of fast-track projects has increased in my experience recently as general costs of construction have escalated.*
- *The client dictates the pace and the project team will invariably capitulate, rather than upset the client and potentially lose further work.*
- *The project programme has been lead by when the building is required and worked backwards to*

provide time for construction and design. This usually means the design and or construction periods are squeezed and any issues get sorted out on site, unless the designers and or contractors are brave enough to say they cannot work to the timescales. Unfortunately there is always someone in the marketplace ready to take their place and very few brave soles exist. Clients need to recognise that late decisions mean late buildings not everyone trying to cut corners to achieve ridiculous deadlines.

- *The sort of clients who pressurise contractors on budget and deadlines are unlikely to be influenced by the threat of enforcement.*

What is sufficient?

69. The best way to decide what is sufficient is for all those involved to discuss and agree it:

- *The real answer is for the Client, Designer, Coordinator AND the Principal Contractor to determine this*
- *There should be agreement from those parties who are involved/effected by the decision.*
- *There should be a requirement for the allocation of sufficient time to be agreed with the relevant designers / contractors.*

70. However, given the earlier comments about the commercial pressures it is hard to see what a requirement to agree a timetable, where lack of agreement often means not getting the work, would add in practice.

Other comments

- *Central Government frequently releases funding which has to be spent in a short timescale or be lost to the Local Authority, the latter may be politically unacceptable. As a result there is often pressures outwith the control of the client which is not addressed in the allocation of this explicit duty.*
- *We need to engage Utility suppliers*
- *Including the requirement to satisfy Schedule 2 prior to start on site is an excellent idea, but it should be clarified, as often it is not possible to install the final facilities until, for instance, some groundworks have been carried out, so an interim solution will be required.*
- *We like the duties relating to schedule 2. Welfare Facilities, in regulations 11, 16 & 19.*

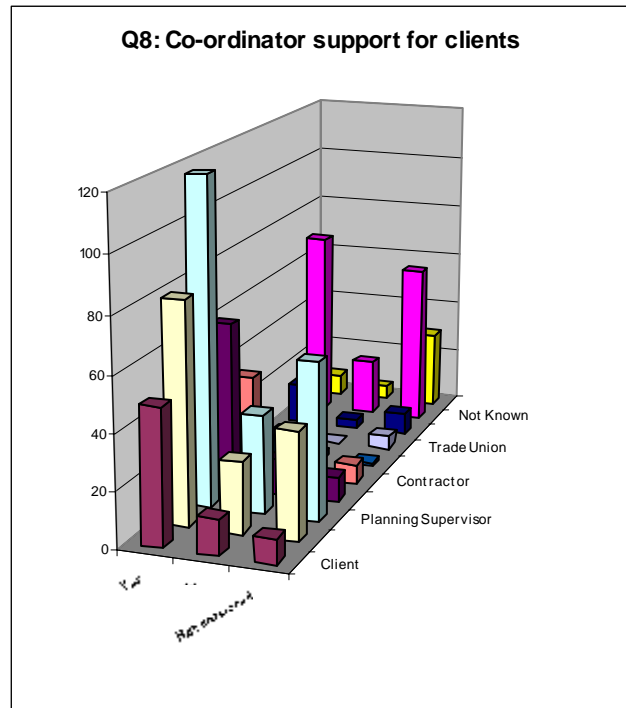
Questions 8 & 9

71. Many general points were made in response to these questions and similar issues were raised under both questions. To minimise repetition, issues relating to the specific questions have been brought together under the relevant question. The general points and other issues that were raised under either question are covered after Question 9.

Q8: Will the proposed role of the co-ordinator provide the support needed by clients, particularly inexperienced ones?

72. The co-ordinator is principally intended to provide the support that inexperienced clients need. But *how do you ensure inexperienced clients understand that they need to appoint a co-ordinator for any proposed building work? How will an inexperienced Client know what to ask for and whether the service he is receiving is adequate?* Clear guidance, setting out the potential benefits as well as the legal duties, was seen as a priority *the ICE would encourage the HSE to invest in good, strong and helpful advice for all Clients on this matter so that they are able to comply appropriately.*

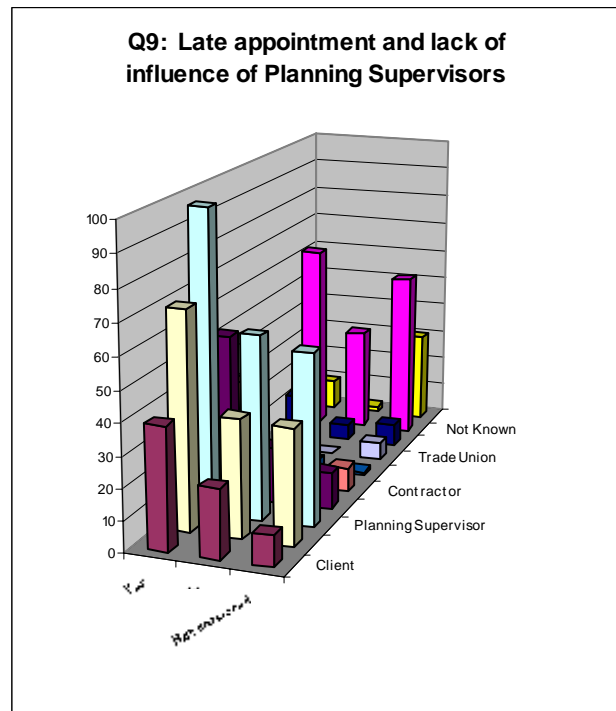
73. 78% of respondents (225) concluded that the proposed role of the co-ordinator would provide the support needed by clients; and the remaining 65 that it would not. This view was shared with a remarkable degree of consistency (77-83%) by all groups of respondents (clients, designers, planning supervisors, principal contractors, contractors, manufacturers and trade associations.) Three Trade Unions responded to this and two agreed. There was the same level of agreement in all size groups of organisations responding. (70-100%) However this high level of overall support masks a lot of misunderstandings and concerns expressed by respondents in their detailed comments.



Q9: Do the proposed changes address the issues of late appointment and lack of influence currently faced by Planning Supervisors?

74. A few respondents made the point that Question 9 was effectively two questions in one, and that this made it difficult for them to give a straight “yes” or “no” answer, so the design of the questionnaire was poor in this respect. 68% of respondents (197) nevertheless concluded that the proposed changes address the issues of late appointment and lack of influence currently faced by Planning Supervisors; the remainder that they would not.

75. This view was shared (62-77%) by all groups of respondents (clients, designers, planning supervisors, principal contactors, contactors, manufacturers and trade associations.) One Trade Union answered ‘yes’. All size groups of organisations responding supported the proposed changes, but the level of support was weaker than to Q8. (52-67%)



76. If early appointment and adequate influence can be achieved, however, there is much potential for improvement. *This change, I believe, will resolve 75% of the problems I have encountered in discharging the planning supervisor role.*

Early appointment

77. The potential benefits of early appointment were recognised by many respondents.

- *In my experience basic design decisions are often made before a client’s board of directors approves a project to proceed to detailed design and construction, In engineering construction referred to as Front End Engineering Design (FEED) Stage, this can cover several months, numerous persons and parts of more detailed design.*
- *There are various activities which are necessarily carried out at the front-end - e.g. Site investigations - which need the planning supervisor to be in place. These situations are unlikely to be easy for Clients to understand. The early appointment of the planning co-ordinator should assist in the better management of projects, if the duties are put into practice properly.*
- *I welcome, in particular, the early appointment of the CDM Co-ordinator so that he/she can really be involved with the design process and not, as is often the case at present, be appointed so far down the process to have much of an impact.*
- *Assumptions are made at the concept stage that influence safe construction. i.e. lay down areas, parking, site traffic management, temporary accesses, money, environment hazards, impact surveys and the like often get overlooked or not given enough consideration.*

78. A key driver for early appointment in the proposals is that designers and contractors should not begin work unless a co-ordinator has been appointed. *This will only result in early appointments if designers refuse to work without a co-ordinator.* There is a strong degree of cynicism about this in the responses. *It is often the case at present that Designers do not point out to Clients what their duties are. This would appear to be likely to continue.* On the other hand there is also concern that

Clients will now simply appoint as Co-ordinator the first designer to be appointed, rather than seeking a properly competent Co-ordinator. Alternatively many clients will take this job on themselves but not do any work. Then when they have to do some work they will then make a late appointment of someone else exactly as the norm at the moment.

79. Even if the appointment is made it won't necessarily add value. *Because you have made it an explicit requirement, it is more likely to occur, but it doesn't mean that they will actually do anything.*

Practical problems

80. Many respondents, however, considered that the proposal to require the appointment of the co-ordinator before design work began (even though we intended this to be applied with common sense) would pose insuperable problems in practice:

- *90% of building designs never proceed beyond the design stage, as they are speculative, feasibility designs, cost planning, too expensive, fail planning, etc. Clients will not want a separate appointment for these designs, and will probably appoint the designer to carry out this role at the early stages. The designer already has these design responsibilities!*
- *this could cause unnecessary delays on urgent jobs and makes it impossible for engineers and architects (or others) to discuss schemes with clients.*
- *potentially disastrous effects on emergency work*
- *notifications for jobs that do not go ahead, needlessly increasing the administration burden on the HSE. More than one notification for the same site again a needless administration burden for the HSE Increase the cost of building without making it safer.*

81. But on the other hand:

- *Around 30% of our appointments come after the design stage has been completed, and in a further 15% of our appointments, a principal contractor has already been appointed. This is because designers frequently fail in their duty to inform the client of their duty to appoint a Planning Supervisor, or the client fails to take notice of the advice. competent planning supervisor is appointed at a very early stage in the design process, and certainly before serious design work commences. We believe that "Co-ordinators" should be appointed at the conception of the project. Designers should be prevented from carrying out design work until a "Co-ordinator" is in place.*

82. It is difficult to balance the practical difficulties and potential benefits of early involvement or to find a point that can be used in regulations that is both realistic and enforceable. The issue has been much debated during development of the Regulations, with a view to settling on the clearest and most practicable solution to ensure early co-ordinator involvement and timely health and safety consideration in design.

Empowerment

83. Lack of authority is presently a problem for the Planning Supervisor. The approach adopted in the CD was to make the co-ordinator the client's helper, so that they are empowered through the client's contractual position. One respondent said this *reliance on lay clients is naive*. Others considered that this alignment would overcome the Planning Supervisor poor influence *provided clients accept their enhanced responsibility to make the Co-ordinator role work in practice*. Of course this involves the client ensuring that this co-ordinator *is set at a senior level within the management structure in order to exercise authority and to act as the clients representative when necessary*. This means that *the influence of the Co-ordinator must be channelled through the Client, to ensure that the legal duties are in line with contractual arrangements. This ensures that the client retains control of the project, whilst benefiting from the advice of the Co-ordinator.*

84. One respondent reflected that *under current legislation, clients believe that they can appoint a "Planning Supervisor" and effectively this distances them from further health and safety liability. Under the revised proposals, the client is now clearly recognised as having liability for health and safety from the inception of the scheme.*

85. On the other hand, a number of respondents consider that the co-ordinator will remain powerless under the proposals. Does the co-ordinator become a dog with no teeth? Whilst having the responsibility it is still up to the client / the one with the money to contractually or otherwise ensure that actions are completed. Many of these want the Regulations to give co-ordinators authority, e.g. powers to stop the work, if he/she thinks it necessary, but none explained how that might work in practice or how the financial or contractual implications could be addressed. And, as another respondent pointed out, if co-ordinators have the power to command a client to provide adequate health and safety then they are not acting as a "friend". In contrast, one respondent already adopts the approach envisaged: *I pride myself on winning repeat business by being there to help [my client] rather than as a kind of 'policeman' and a hindrance. This change will encourage all to do the same.*

86. This issue of empowerment seems to be linked to a widespread dislike for the way the proposals set out the functions of co-ordinators rather than duties. (It was drafted in this way because we wanted to emphasise the work that needed to be done, rather than who did it.) *The functional role needs to be strengthened to make 'explicit' the legal duties of the Co-ordinator.* Others recognised that in order to work effectively the co-ordinator will need delegated authority from the client.

87. One respondent's view was that the answer to the question was dependent *on whether you view the co-ordinator as a policeman or a facilitator*; and another made the very valid point that *what must be recognised is that Co-ordinators are not to work in isolation - their main duty is to bring people together.*

88. Finally, one respondent thought that a Professional Code of Conduct for co-ordinators would improve their standing and influence.

General comments about Planning Supervisors and co-ordinators

89. The role of Planning Supervisor has been contentious from the beginning. Some want to abolish it entirely – *Never seen the role of the Planning Supervisor as particularly useful.* Others want it to take on responsibility for monitoring the work of contractors. *I believe the Co-ordinator must take a more active role out on site with the power to close sites that do not comply.* Some thought that the proposals weaken the Planning Supervisor role, while others thought the opposite. Some wanted independent co-ordinators with teeth; others wanted the role integrated into the project team. This range of views evident in the responses makes it difficult to identify any clear consensus.

- *Having practised as a Planning Supervisor and a Designer, I feel strongly that the role should be disbanded and not replaced. The issues should be dealt with by the professional teams.*
- *remove the need to appoint a co-ordinator and provide a list the actions that must be incorporated into the project This will remove the perception that safety is an add on to a project*
- *I would like to see a safety coordinator or whatever you want to call him, take statutory responsibility for safety at ALL stages of a project, design and on site activities. This would then clarify who was responsible for health and safety from the beginning.*

90. Many of the difficulties are seen as arising because, while you can't have a project without designers and contractors (even if the contractor does both jobs), the role of Planning Supervisor or co-ordinator *is invented for the purpose of the regulations and would not naturally evolve in a situation where all the participants were already fully committed to H&S.* As such, they are often seen as creating extra costs without providing equivalent value.

91. A number of respondents still believe that the case for change has not been made and that we would be better off with the existing Regulations with minor modifications and improved guidance. *In our particular sphere of operation, bottom end of CDM, the planning supervisor is appointed only because it is a statutory appointment; this appointment is usually a small firm, one man band and is easily steered by the client. I am afraid it boils down to who is paying the planning supervisor's wages! I am afraid I do not foresee any significant change once the co-ordinator is introduced.*

92. Others made the valid point that *changing a title and function does not make the co-ordinator any more a part of the construction team than was the planning supervisor. In fact, as the industry has for 11 years grown to know and appreciate the planning supervisor, changing the name will not help one bit. The success of a team will be determined by personalities, expectations, experience, and skills.* As a result they conclude that *it would be better to adjust the duties of a planning supervisor rather than start the 10 year learning process over again.*

93. Those in the middle hope for improvements, but have a degree of cynicism because, ultimately, it depends on the willingness of people to change. *If the co-ordinator is sensible and knows the limits of his brief there could be an improvement, if not we will have the same bureaucratic and pedantic nightmare we have now. The co-ordinator will need to avoid the previous problems of creating bureaucracy by the Planning Supervisor by improving the direct communication and hopefully trust and openness. The industry needs to improve so that health and safety management is more integrated and normal.*

94. Some see the proposed changes as being major with significant cost implications and much more demanding roles.

- *The cost in comparison to the current Planning Supervisor will be much increased however (probably double) and many current Planning Supervisors will not be able to undertake the level of coordination demanded by the role. The role sounds to be an incredibly demanding one, given the levels of general and specific technical expertise likely to be needed for the co-ordinator to be effective. Even if it were possible to source such people in sufficient quantity, would the construction market be willing (or able?) to pay the levels of salary they should be able to command? I doubt it.*
- *The greater responsibilities on the 'co-ordinator' will make it difficult for a large multi-disciplinary consultancy to allow project-based design staff (as this CD appears to advocate) to discharge the role.*
- *The skills asked for in the co-coordinator role don't reside in one person.*

95. Others see the proposals as being the same or weaker than the current requirements.

- *The ineffectiveness of the planning supervisor has been because the Client has wanted it that way. The change to a Co-ordinator more directly under Client control will maintain this situation. They may undermine the hard work done by Planning Supervisors under the current regs, to get themselves seen as a valued part of the team.*
- *The regulations appear to be aiming to merge the co-ordinator into an ineffective role, which can do nothing to assist in reducing accidents on site.*
- *The apparent weakening of the PS/Coordinator role is likely to have an overall negative effect on Health & Safety issues*

96. Some favour one co-ordinator throughout a project: *the ACOP needs to emphasise the benefits of a single continuous appointment - efficiency, continuity and leadership* while others think that passing responsibility from one team member to another is preferable.

97. A few recognised that demonstrable value for money as key to their acceptance in the team.

- *If they can progress projects efficiently and add value to the process resistance to their role will decrease. If Co-ordinators initially prove inflexible (possibly due to bedding in and becoming familiar with the parameters of their roles) or are perceived as unnecessarily delaying projects, circumvention of their roles may then begin to take place by the projects other participants.*

Other co-ordinator related issues

98. Other key issues that were seen as determining the success or failure of the proposals, some of which ranged rather more widely than the actual questions, included:

- **Competence** – *However, I do not believe the current Planning Supervisors have the design skills or actual construction/buildability knowledge to provide the more rounded role expected of the new Co-ordinator. How does an inexperienced client select a competent co-ordinator? (Similar points formed the largest part of the comments to question 8, but competency is addressed elsewhere in this document.)*
- **Avoidance of further bureaucracy** – *Anxious co-ordinators (particularly those feeling less experienced or confident in design and project management) may well overload clients with unnecessary information in order to guarantee their advice and assistance was adequate. The practical effect could be confusing interference from the client on practical matters which could create conflict (especially with the Principal Contractor) rather than encouraging teamwork. In addition there is a real danger that uncertainty on what the co-ordinator role requires could provoke a new tranche of defensive paperwork.*
- **Clients who take on or bundle the work** without the skills, resources or motivation to do it properly – *he will do the role himself (Client) or appoint a designer as co-ordinator. Support on health and safety issues will be minimal. Clients will try to have the role included as part of something else to reduce cost thereby reducing impact.*
- **Conflict within the team** – *the possibility for conflict with the client is considerable; the role as currently defined brings it into potential conflict with the design team, particularly on design and build jobs and it interferes with the existing relationships between client and architect and engineer on consultant-led jobs. One respondent felt that the duty of 'cooperation of all' is out of step with commercial reality. My proposal is that the Planning Supervisor/Co-ordinator should have a duty to record conflicts, disagreements and deadlocks.*
- **Communication** – *someone needs to explain to clients, particularly one-off and occasional clients that a co-ordinator must be appointed and what the benefits are. All clients, even inexperienced ones, know they need an architect or consultant engineer. The existing Regs require this party to then tell the client that they should now employ another person, called a Planning Supervisor. Inexperienced clients ask why this is and are suspicious that the "industry" is trying to get more money out of them before they have even started to think about what they want.*
- **Role** – *some wanted the role to be more clearly restricted to health and safety – not explicit enough emphasis on the responsibility of the "co-ordinator" as a safety role. Another respondent wanted the role to be broader: in the draft guidance, you state that "Co-ordinators don't have to co-ordinate anything, except health and safety. We consider that this is a fundamental flaw -you cannot separate health and safety from all other aspects of the work. It would be dangerous to include references to health and safety in a title for this role. (HSC/E's remit is limited to health and safety, but in practice it is rarely possible (nor does it make sense) to address it in isolation. We encourage an integrated/holistic approach, but cannot require it.)*
Some saw a major overlap with other tasks normally undertaken by the project manager or members of the design team (e.g. identifying u/g services, ensuring compatibility of designs) which will lead to confusion over ultimate responsibility. Others valued the flexibility that had been built into the draft Regulations which allowed tasks to be combined or done separately as was most

appropriate for a particular project/team.

- **Independent?** Some want a totally independent co-ordinator, others want the role merged into that of the project manager or other team members. *The co-ordinator must be independent and not vulnerable to programme or financial pressures, or professional disputes, in building a sound H&S conscious project culture. He must have the full support of the Client to do this. The requirements of the new coordinator role does not ensure that the person carrying out the function is sufficiently independent, competent, or carry enough authority to promote safety in design and throughout the construction process.*
- **Individual or team?** Some wanted to see independent co-ordinators while others wanted their functions to be allocated among team members. The draft Regulations were neutral on this point, believing that both approaches have their place, depending on the type and complexity of project and team make-up/expertise. The specific requirement to appoint a co-ordinator, coming from the Directive, was clearly a major cause of the confusion. The intension was that the client, whether through an independent co-ordinator or through different members of the team ensured that all of the tasks were carried out. Inexperienced clients were thought most likely to need the support of an independent co-ordinator and the draft guidance was slanted towards their needs on the assumption that major clients would understand the implicit flexibility. *The use of separate contracted-out Planning Supervisor functions is a great creator of unnecessary bureaucracy. Responsibility for the management of health and safety must remain with the Clients, specifiers, designers, and constructors for their areas of influence. I feel that many would be only too willing to offload their responsibilities onto another health and safety functionary. I am concerned that the regs open the door to "one-stop shoplanning supervisor" e.g. designers offering co-ordinator services for very little over and above their design fee, but not really carrying them out properly. As long as the client feels he is safe, then this will prevail. With co-ordinators from within the team or participants in the team, early involvement and appointment will be natural and really effective.*
- **Project Manager?** Some respondents thought that a project manager is best placed to carry out the role of co-ordinator, which has the added advantage that *safety is not seen as added on to a project and carried out by someone else. However, although they are traditionally the co-ordinator of the project from inception to completion ... based on current experience too often do not have even the basic knowledge of health and safety legislation as it effects the whole life cycle of a structure (from feasibility to demolition or changes, through design, construction, maintenance, replacement of plant and equipment, etc.), especially the Project Managers, Architects, and Quantity Surveyors. Clearly if the PM is appointed as the co-ordinator they are likely to need support if the team is to effectively carry out all of the required tasks.*
- **Lead Designer?** Some wanted to see the co-ordinator replaced by a lead designer. While this was one possibility that was set out in the draft guidance it was considered inappropriate to limit appointments in such a way in the Regulations since the co-ordinator does not always need to be a designer and some projects benefit from an independent co-ordinator while in others the work is best shared by various members of the project management team. One respondent suggested *that the initial co-ordinator appointment is a "Lead Designer. The draft Regulations would permit this, with the baton passing to another party if/when wider issues need to be addressed.*
- **Involvement in design** – Some wanted the co-ordinator to review designs to ensure that the designers' duties had been complied with; others thought that this could encourage other team members to abdicate their responsibilities to the co-ordinator. *The creation of the Co-ordinator carries serious risks that the contractor and the designers start to neglect their basic duties to construct and design things that are as safe as is practicable. I can imagine people saying 'well it's a H&S issue - speak to the Co-ordinator'. Much more preferable to make the designer responsible*

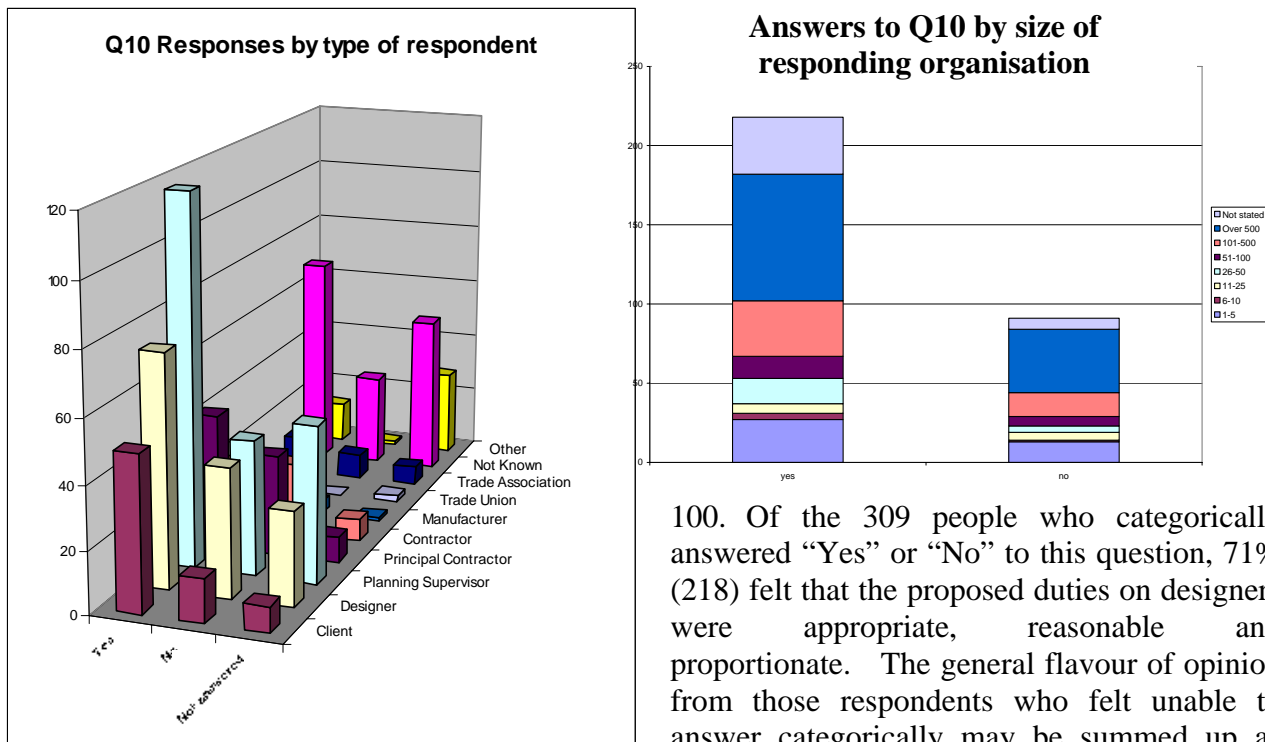
for his own design.

- **Job title** – although the majority of respondents to the Discussion Document (“*Revitalising health and safety in construction*”) favoured a change of name from Planning Supervisor there was no consensus on a replacement. The main problem that respondents saw with the term co-ordinator is that construction projects involve a number of different co-ordinators. The most common suggestion was CDM Co-ordinator. Of course the title is much less important for projects where the work is shared between a number of different parties and could even cause confusion by reinforcing the impression that the co-ordinator must be an individual.

Questions 10 to 14

99. Most respondents unburdened themselves in response to Question 10, often extending or repeating their points in responses to the subsequent designer-related questions, which resulted in considerable overlap in responses. As with Questions 8 and 9, many general points were made and similar issues were raised under the five questions. To minimise repetition, the general points and other issues raised have been covered under Question 10. Issues relating more specifically to Questions 11 to 14 have been brought together under the relevant question.

Q10 – Do you think the proposed designers’ duties are appropriate, reasonable and proportionate?



100. Of the 309 people who categorically answered “Yes” or “No” to this question, 71% (218) felt that the proposed duties on designers were appropriate, reasonable and proportionate. The general flavour of opinion from those respondents who felt unable to answer categorically may be summed up as follows: *I have answered “Yes” and “No” as*

this is an extremely difficult question to respond to. The “Yes” is because we are moving in the right direction. The “No” because we have a long way to go before the regulations become compatible with the various and varied construction design processes.

101. 160 respondents provided supplementary (or stand-alone) comments. It was clear from these comments that, notwithstanding the broad support for the proposals, there were areas (covered in more detail below) where respondents felt clarification, modification or further consideration was necessary.

102. Clear supporting guidance (preferably an ACoP) and effective enforcement were cited as necessary to achieve compliance: *The issue has always been, and will continue to be, getting the designer to comply with these duties.* Respondents felt that such guidance should particularly cover the risk management hierarchy and include case studies: *The duties are reasonable, however, there should be more guidance in the Regulations on a risk management hierarchy, similar to that in the COSHH Regs and Work at Height Regs. This should be backed up by an ACoP that also goes through some case studies on the type of practical actions that can be taken.*

103. One or two respondents also raised cost as a factor impacting on compliance: *The designers are under considerable economic pressure from very “commercial” clients to keep costs down. In*

particular, clients are generally unwilling to spend much on “structure” preferring to spend on services or aesthetics. One respondent queried who would pay for the contractor to sit with the designer to undertake input into risk assessments. Education was seen as the key to improving designer understanding, particularly of risk assessment issues; and availability of funds for training on the new designer principles was also raised as an issue, especially for companies struggling for survival.

Getting the balance right

104. Firmly agreeing with the comment in the CD that designers have considerable potential to reduce the risks associated with construction work, building use, maintenance, cleaning, and eventual demolition, one trade association supported the proposals for greater responsibilities on designers. *As referred to at the Safety Summit, it has been shown that possibly half of all accidents could have been avoided through better consideration of the relationship between design and construction and the consequence of design decisions on the safety of construction.* They did, however, question whether designers were best placed to check whether clients were aware of their duties, believing that the co-ordinator was more likely to be aware of and understand the requirements.

105. One group respondent felt that the designers’ duties were appropriate, particularly relating to use, but that checks at gateways were still required. They also felt that the duties needed to be more prescriptive, but that they were easier to follow under the new duty holder format, and clearer.

106. One respondent felt that the CDM Designer duties, and the HSE’s approach to enforcement, appear to be trying to force permanent works designers to tell contractors how to do their job. *The difficulty appears to stem from lack of appreciation on the part of HSC/HSE of how designers are appointed, what they are paid to be responsible for and the fact they do most of their design work without the benefit of having a contractor available. Tender drawings usually have to be priceable and buildable – any subsequent changes carry a cost.* He also felt that *safety will not be improved by forcing designers into the contractor’s arena of responsibility. Only one party can carry responsibility for methods of working and that is the one most competent to do so, namely, the contractor.*

What about responsibility on others who impact on design of works?

107. The influence of external parties, such as Local Authorities, on the design of works did not go unmentioned. One group response *noted quite strongly that designers hold the brunt of many of the complaints regarding their duties to eliminate and reduce hazards. It was felt that, while the duties were reasonable, there should be some responsibility on others who also impact on the design of the works. This included local Planning Departments and Local Authorities who set many conditions without any due regard for health and safety.* Examples were cited, such as a residential development submission issued to local planners - who reduced the gap between each dwelling, with the result that scaffolding around each block could not be erected safely during the build.

Appointment issues

108. As mentioned above, concerns were expressed - based mainly on the provisions of draft regulation 14 (1) - that responsibilities resting better with the client or co-ordinator were being allocated to the designer; also that the designer was being expected to “police” the client. *Should the designer be placed in the position of refusing to do something until other appointments, notifications are in place? If project team leader has a duty to notify, and advise client of duties (such as they might be) and already is the 'co-ordinator' appointee, the duty on the 'designer' seems unnecessary/inappropriate.*

109. Central to the regulation 14 (1) concerns was the issue of when design work should be taken to commence: *Is a Planner drawing up a procurement plan for a strategic decision carrying out a design? Is a Quantity Surveyor preparing approximate quantities and budget figure for discussion undertaking design? How does a Designer of standard components such as lift assemblies fit in?* One respondent remarked *the requirement for designers not to start design work until the co-ordinator is appointed is an excellent idea, but there are going to be long arguments about what constitutes a start.*

110. Opposing views were expressed about the duty; on the one hand: *this restriction on the work of engineers and architects is completely unnecessary and inappropriate;* and on the other: *greater clarification is needed on the definition of "design work", particularly with respect to feasibility designs and concept designs. A co-ordinator ought to be present during both of these activities, as this is where most decisions are set out and then cannot be altered at a later date. The proposed regulations may still allow design to progress before professional health and safety input is available.*

111. Many respondents took the view, broadly speaking, that it would not be reasonable to give designers an absolute duty not to start any work on a project until a co-ordinator had been appointed and the project notified, as these issues were outside of the designer's control and would conflict with the commercial pressures on them. Furthermore, designers often carried out feasibility study work or non-project specific design work where such appointments and notification were not appropriate.

112. One suggestion to overcome the problem was that the client's authorisation to proceed with the concept design would be an appropriate starting point; another that there should be a requirement on the client to provide a project brief, clearly setting out what he required, including an overall timescale for design and construction, and that this could be the starting point in the design process. One respondent thought that the regulation 14 (1) (c) requirement would not be feasible unless some design work was done to enable a meaningful F10 submission, and suggested it might be appropriate to amend the requirement to prohibit design work beyond that necessary to provide items 2, and 6 to 9 of the F10 form.

113. The proposed duty prohibiting design work unless the client is aware of his duties was a bone of contention. The clear view was that the co-ordinator was the appropriate person to discharge this responsibility, and that this would help cement the relationship between the two. Respondents also felt that placing this responsibility on designers may lead to increased bureaucracy, due to standard letters to clients, and that they would be in a Catch 22 situation: *Bit of a 'chicken and egg' situation here with the designer being responsible for telling the client he needs a coordinator but not able to start work until a coordinator has been appointed.*

Eliminating hazards and reducing remaining risks

114. *Elimination of hazards is a difficult concept.* Many of those who commented on the proposed requirement to (a) eliminate hazards which may give rise to risks; and (b) reduce risks from any remaining hazards suggested it to be disproportionate and unrealistic, and some thought it impossible. Often there was a misunderstanding of the draft regulation and a belief that 14(3) and 14(4) were absolute duties, when in fact they are qualified by the requirements in 14(2). Their feelings can be summarised by one respondent's comments: *The key issue is the absolute requirement in Regulation 14 (3) and (4) that designers shall "avoid risk" and "eliminate hazards" which is simply unachievable. Alternative wording such as "reduce risk" and "control hazards" would still meet the objectives but reflect reality. Inclusion of "foreseeable" in regulation 14 (4) would also assist. Hazards can not be controlled or eliminated if they are not foreseeable. It is worth noting that the Safety in Design standards of competence refers to eliminating "identified"*

hazards and risks. This could be a further alternative form of words which addresses this issue. Another felt strongly that the only way to eliminate hazard from construction is not to carry it out.

115. Among those in favour, one respondent felt it to be a pivotal regulation, but one which could be clearer (along with the related guidance) *in recognising the balance between the capability of the designer to eliminate or reduce risk in view of a degree of inherent risk in construction, which will always remain; and the delicate balance between removing/controlling risks and introducing others.* Along with others, he stressed that the regulation should be based on the current premise that foreseeable risks to health and safety should be avoided, so far as is reasonably practicable. Supporting this view, another respondent remarked: *It is entirely reasonable to require a Designer to consider Health and Safety during design but the problem with the CDM regulations is, and in the light of the proposals will continue to be, the degree to which it is reasonable to expect the designer to eliminate hazards during design and that those should be highlighted to a competent contractor.*

116. He also felt that the requirements might inadvertently result in prescriptive solutions being imposed by the designer on contractor or client, which might not be cost effective or the best way to approach building or maintenance. He took the view that the designer was not in a position to dictate the contractor's resource and manpower levels, plant selection, working practices, health and safety policy nor actual working methods – all of which have a fundamental impact on the risk to the individual. This echoes the view of several other respondents, who felt that a designer could not be expected to be an expert contractor as well, and design all the safety measures a contractor might require to be added to the original design.

117. Several correspondents took the view that the focus should be on the high-level and non-routine risks, and that information about specific hazards must be provided to contractors, as this would help them to focus on areas not likely to be obvious to a competent contractor or designer, and also help reduce bureaucracy. As one respondent put it: *the emphasis must be on hazard identification, elimination or reduction not on a paper chase of so called risk assessment, often done after the design. Advice on what is expected in the way of records would help this.*

118. One organisation suggested that *often the only party within the project design team to inject an understanding of construction health and safety risk management is the PS and that to do so most effectively the role is best undertaken as an independent appointment. In order to be effective, it is essential that the regulations require the co-ordinator to ensure that designers are giving adequate regard to health and safety risk management in their work.*

119. One respondent, believing the designers' duties to be improved, felt it was important that *designers are encouraged to identify hazards, assess the risks, apply the hierarchy of risk mitigation and then record the thought and decision making process. The flow chart is a good tool.* Others commented that risk assessment should be specifically mentioned in the designers' duties in the Regulations, and that there should be reciprocal duties for other CDM duty holders on elimination of hazards and reduction of risks.

120. The construction (in terms of workmanship) and maintenance stages were felt to be outside the designer's control, as was change of ownership or use of a building. Although acknowledging that sometimes *the hierarchy approach of eliminate, reduce, inform sits appropriately within the design process but for some designs the process is inappropriate,* one respondent felt that *CDM does not acknowledge this and in some instances appears a superfluous waste of time to designers.* He felt, along with others, that a duty framed around avoidance, rather than elimination, of hazards was more appropriate. Linked to this, Examples 13, 14, 16, 18 and 19 were cited as *excellent guidance to help bring designers on board,* while others – for instance Example 12 and 21 - were

felt to be outside the scope of the design activities (and more appropriate to other duty holders' remits) or generally inappropriate.

Designer competence and communicating with the PC and other duty holders

121. Designer competence and training needs were raised by many respondents, particularly in relation to the elimination of hazards and reduction of risks duty, and early consultation with the PC (and involvement with contractors) to enhance their knowledge of on-site issues recommended. *Designers often do not understand their duties to reduce risk, rather they just inform others of the general risks imposed by the design.*

122. One respondent called for a minimum standard for designers to comply with, as with the Building Regulations, believing that they would *be able to relate to this*. Along with other respondents to the consultation generally, he took the view that the more competent designers were already making more effort to eliminate risks in design, and would continue to do so, while the less knowledgeable would still find it difficult (or be less willing) to work at this.

123. Another, commenting that *it is perfectly possible to be a designer without ever having set foot on a construction site*, called upon the Professional Institutions and others to address the lack of practical knowledge of many people in the design organisations. Another, recognising there have been advances with designers and their training on risk elimination/reduction by design, noted further progress was required which could best be achieved by designer integration with the client, co-ordinator and contractor. Another suggested that there would be a shortage of suitably trained and experienced designers able to meet the enhanced requirements of the Regulations.

124. There was a distinct body of feeling that, generally, designers' grasp of what was required of them could be improved, and that aesthetic issues still outweighed health and safety. As one group response indicated: *It was one view in general (this does obviously not apply to all) "some" designers never have understood what was required of them. They rarely adequately consider all hazards or at least manage to miss some obvious issues e.g. latchway systems on roofs for maintenance as fixed barriers may look unsightly and interrupt the lines of the building. During construction you have to have physical barriers because it's required, why does this change for maintenance? There were thoughts that the aesthetic pleasure of a building was outweighing the practicalities of the design (all architectural university departments are affiliated to the arts department).*

125. Unsurprisingly, contractors' views in responding to Question 10 were overwhelmingly that *there needs to be a greater emphasis on designers achieving an understanding of construction hazards and the practical techniques available on-site to eliminate, control and mitigate the resulting risks. Competence of designers is one vital component and the Regulations or ACOP/Guidance need to stress the importance of demonstrating a sound practical understanding of these issues*. Linked to this was a call for more emphasis on early and effective communication with the PC. This was seen as *absolutely key in finding the simple and effective risk management strategies needed to make informed design decisions*.

126. This perceived lack of designers' understanding of what is required of them, or knowledge of what a competent contractor could be expected to be aware of, or would need to be told also impacted on respondents' views regarding the provision of information requirements. It also coloured their views on the appropriateness of other proposed duties, such as the prohibition from starting work unless the client was aware of his duties or HSE notified of the project (draft regulations 14 (1) (a) and (c)). *Designers have not grasped the fundamental requirements of the Regs so why include 14 (1) (c) and in particular keep Regulation 14 (1) (a) when it is seldom carried out by Designers*. Some thought that it was unreasonable and inappropriate to have these

absolute duties, and that they should be softened to a requirement to “take reasonable steps to ensure”.

127. Planning officers’ involvement in design was a common cause for concern. Commenting in relation to designer competence, one respondent felt it was a positive step that the proposals would protect designers by holding planning officers accountable - *who often design out safety features by stealth at present (possibly unknowingly) with no real training or understanding of the existing CDM Regulations.*

128. Commenting on the role of the co-ordinator, one respondent suggested that designers should be called upon by the co-ordinator to assess competence/resources of other designers, who may be appointed by the PC, contractors/vendors. The proposals’ implication that designers undertake the co-ordinators duties was regarded by some as *potentially dangerous and is a kick in the teeth for those PS's that have taken up this role and carried it out with enthusiasm and a genuine desire to see improvements in our industry.* Again, the question of designers’ competence to undertake the co-ordinator’s role was called into question. However, there was also recognition *that good designers already work with Planning Supervisors (and vice versa) of an adequate competency to ensure, so far as is reasonably practicable, that designs consider health and safety hazards/risks.*

Co-operation, co-ordination and integrated team working

129. Several correspondents picked up on the fact that the proposals did not include an explicit duty on the designer to co-operate with other designers (this being an essential element of the successful design of a project); and that co-operation with the co-ordinator on exchange of safety data should also be required.

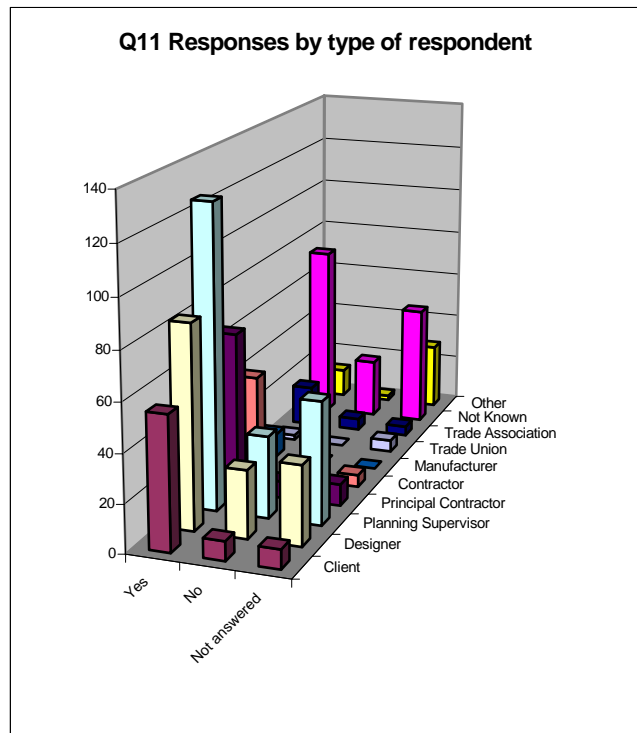
130. One respondent, clearly aware of the business benefits to be gained from integrated team working (and recognising that some designers know little about the physical constraints of what they are designing), suggested: *The Principal Contractors project team could provide invaluable assistance to the Designer at an early stage, which may save severe delays and cost overruns during the life of the project once on site. It appears to me that insufficient time is given to the planning process rather than the design process, or it could be that the Client does not allow this breathing space where thoughts can be collected and the whole project viewed from a fresh perspective.*

131. Another felt that the proposed new CDM Regulations merely attempted to impose a different structure on the traditional role of Lead Designer, with the result that it had become unwieldy, bureaucratic and unnecessarily complex. He suggested that having a separate set of Regulations may have contributed to the tendency to bring in the Planning Supervisor (PS) *almost as an afterthought, rather than becoming an integral member of the design team.* The solution, he felt, was simply to enlarge on what was already there by adding the CDM Regulations to the current Building Regulations.

Q11 – Do you think the proposed duties on designers, when read with the supporting guidance, are clearer and easier to understand?

132. Of the 303 people who categorically replied “Yes” or “No” to this question, 239 (79%) agreed the proposed duties on designers, when read with the supporting guidance, were clearer and easier to understand.

133. 113 respondents provided supplementary (or stand-alone) comments, and again these often cross-referred to earlier answers given to Question 10 or to issues covered more specifically by other questions relating to the designers’ duties. One favourable respondent remarked: *The poor old designers (Architects, Chartered Surveyors, Architectural Technologists, Engineers etc.) get a raw deal at present and this is one of the few things that makes progress in the proposals. On the other hand, one critic felt: I don’t think that the designers that are likely to be involved with CDM need to be told what their duties are it’s those who will never be part of CDM who need to be reached. If that means HSE needs to write to every designer registered in this country to set out their responsibility then so be it.*



Getting the balance right

134. The proposed duties on designers were intended to explicitly address the need for designers to pay sufficient regard to health and safety in their designs. In doing so, designers would harness the considerable potential they have for eliminating hazards and reducing the risks associated with construction work, building use, maintenance, cleaning and eventual demolition. The intention was that, in achieving this, they should exercise their professional judgement responsibly, and there should be no need to stifle their creativity or prejudice the need to consider other priorities such as aesthetics, buildability or cost.

Clarity

135. The proposals were also intended to clarify designers’ duties, by improving on the wording of regulation 13 of the CDM 94 Regulations, which many find confusing. They do not seem, altogether, to have achieved this, as responses to Question 10 indicated a clear body of opinion that the *Designers’ duties were good in meaning but muddled and therefore impractical in implementation.* One respondent felt *in intent they are very appropriate, and what all good designers would do as a matter of course. However as a criminal law they do not define each parties responsibility well enough.* Many respondents also raised a genuine concern over a *perceived and possibly correctly interpreted increase in responsibility and accountability,* with strong concern that responsibilities which should rest with the client were being unnecessarily placed on the designer, particularly where these related to the role of the co-ordinator. *The client must take some responsibility for being informed.*

136. The main concern for respondents, including those who generally felt the proposals were clearer and easier to understand than the current Regulations, was the need to clarify the extent of their duties in the Regulations and accompanying ACoP and/or guidance. This was seen as crucial to compliance and reduction in bureaucracy: *What is needed is a clear indication of the extent of the duties so designers can evaluate if they've complied with the requirements. The inability to establish that enough has been done is a major driver to increasing bureaucracy.*

137. There was a strong call for the wording of the [then] regulation 14 itself to be clearer, and for the Regulations generally to be supported by clear and comprehensive guidance. (Some respondents found the current CDM 94, regulation 13 wording clearer.) They seem to have a point as, rather surprisingly, although the draft duties in regulation 14 (3) and (4) were qualified by “so far as is reasonably practicable”, many respondents commented that the regulation 14 (4) duty should relate to “foreseeable risks³”, and felt the perceived removal of the “so far as reasonably practicable” (sfarp) qualification of the duties was a retrograde step, particularly in relation to regulations 14 (3) and (4). This seemed to be a widespread view, whether or not respondents found the duties to be clearer. There was also a call to explain the “safe use as a workplace” requirement more clearly, particularly the terms and the terms “designed as a place of work”, “user” and “use”; and for relevant examples to be provided in the guidance.

138. Some respondents felt that using industry-recognised terminology would be helpful, but this would have legal implications and was therefore decided against as far as the Regulations were concerned. Two asked for greater clarity in relation to the regulation 14 (4) requirement to give “collective measures priority over individual measures”: *it suggests that decisions made by committee are better than those made alone.* On the positive side, some respondents felt the definitions were more explicit and this in itself should be helpful.

139. Some respondents felt *the principles in the regulations, while being simple, are in practice complex*; and there was a widespread call for more, practical examples in the guidance, as well as detailed advice on best practice records and formats to satisfy the designer duty without producing a paper mountain. The general consensus was that the draft guidance required more work to enhance its clarity, and to rectify apparent inconsistencies between the guidance and the Regulations and within the guidance itself. Several respondents commented on the lack of health references.

140. On the Regulations themselves, respondents who gave a negative response to Question 11 largely regarded regulation 14 as unclear in meaning and intent, unreasonable and unworkable. Some felt it was a watering down of standards, compared with the current regulation 13, and that some of the terminology warranted clarification. *The term "designed as a place of work" is hopelessly unclear as to what it means. This could have a considerable impact on professional indemnity insurance.* Regulation 14 (4), concerning elimination of hazards and reduction of remaining risks, was seen by many as being particularly inappropriate and also muddling hazard and risk.

Who exactly is a designer, what is design work, and when does it start?

141. Several respondents expressed concern over the adequacy of the fundamental definitions of “designer” and “design work” - believing that, to improve industry understanding and reflect better the wide range of occupations and activities covered, they needed to be defined much more explicitly: *As a general matter we are concerned that there is inadequate definition of ‘Design’ in Regulation 2. As there is quite rightly controversy as to who is a designer it would help to have a more accurate description of design. Persons who do not undertake works within the current definition are nevertheless designers and hence a better definition is required.* One respondent

³ In the case of Regulation v Hatton Traffic Management the Court of Appeal ruled that sfarp includes foreseeability.

observed that the regulation 3 definition appeared to make a consultant a designer, who would then be precluded by regulation 14 from giving any advice until a co-ordinator had been appointed. Clarity was also sought as to whether the activities of traffic management and of surveys, inspections and investigations involved design and, if so, who might be the designer.

142. Reflecting the above points, some respondents felt HSE needed to be clear, using established terminology, about who are designers; and need *to work with the established Institutions to develop correctly worded clauses to capture in words the duties of designers – a complex area which includes many years of case law but worth a try.* One respondent's comments summed up the views of many: *The proposals are clearer than previously, however, the regulations use the word "designer" to cover a multitude of design inputs by different parties. This could lead to some ambiguity of responsibility of the various designer roles during the life of a project.*

143. The issue of whether a Quantity Surveyor (QS) could truly be regarded as a designer, either within the industry-recognised term or the proposed regulatory definition, was raised again here - as was the need to distinguish between permanent and temporary works designers. *A key area here is the issue of being clear about where the split of responsibility lies between us as a consultant and subcontractor designer/detailers or the contractor's temporary works designer.*

144. There was a feeling that *where recommendations are made in the Guidance about what the 'designer' should do, they need to make clear which particular 'designer' they are talking about. The also need to address how problems should be addressed when (as is often the case) there is more than one 'designer' involved.*

145. Ten respondents to this question specifically raised Temporary Works issues. The gist of their responses was that the very wide definition of "designer" does not accord with the general perception where a designer is assumed to be the architect or engineer responsible for the permanent works design. They felt that, in clarifying the definition of 'design', explicit reference should be made to inclusion of temporary works design; and that the CDM responsibilities of the contractor or temporary works designer and those of the permanent works designer should be clearly distinguished.

146. Confining the definition of 'design' to information provided on formal paper documents, drawings, calculations and bills of quantities was also felt to be misleading, as this failed to take account of information communicated verbally or design decisions taken by the builder himself.

Provision of information

147. Points made on the draft regulation 14 (5) duty (to provide sufficient design information to other designers and contractors) were mixed. Some respondents welcomed the requirement, along with the ability to provide information on drawings instead of separate health and safety plans. One respondent questioned whether the exclusion in relation to users and maintainers was deliberate and felt, if so, it should be pointed out (particularly if the requirement was already covered by other legislation). Guidance on timing was also sought, along with clarification of some aspects of the draft guidance, e.g. paragraphs 158 and 159.

Appointment issues

148. One respondent felt that paragraph 151 of the draft guidance, stating that designers could take it that the client was aware of their duties if a co-ordinator had been appointed and HSE notified, might be a big assumption.

ACoP/Guidance issues

149. By far and away, the most comments received in response to Question 11 related to ACoP and Guidance issues. These ranged from calls for an ACoP to reinforce the duties, to requests for

more practical examples in the guidance – particularly on maintenance and design solutions: *Designers have no experience of the maintenance process so are unable to design effectively for that element of health and safety. Furthermore the guidance should emphasise that designers need to concentrate on the unusual aspect of design because that is where the risk is. It isn't in the standard designs with which all parties are familiar. Design solutions which all designers could relate to should be included in the guidance.*

150. Several respondents welcomed the guidance, believing it to be generally good and appropriate, or an improvement on the current ACoP. There was a consensus of opinion, however, that there were some inconsistencies and contradictions between the Regulations and guidance and within the guidance itself. *The Guidance needs to be rewritten so that it is consistent with the Regulations and clarifies them in a meaningful way.*

151. Some respondents felt a firmer line should be taken in some respects, for example risk mitigation: *The good ideas and suggestions for effective risk mitigation are presented as optional and not as essential process and there is no requirement on the co-ordinator to use the project team expertise to maximise the mitigation of risk during design.* Better guidance on practical ways of eliminating hazards and reducing the impact of remaining risks was requested, plus more on using a structure designed as a place of work; and on the importance of health issues. As with Question 10, temporary works issues were also mentioned, together with a need for better guidance on what is meant by collective measures having priority over individual measures.

Q12 – Do you agree with the proposed explicit duty on designers to consider the health and safety of users of offices, shops, factories and other fixed workplaces that they design?

152. Responses to this question indicated an overwhelming majority (88%) in favour of the proposed duty. (As one remarked: an *excellent move forward*.) Of the 313 people who categorically replied “Yes” or “No” to this question, 277 agreed with it, and only 36 (12%) disagreed. 167 respondents provided supplementary (or stand-alone) comments and, once again, there was overlap with, and cross-referencing to, earlier questions.

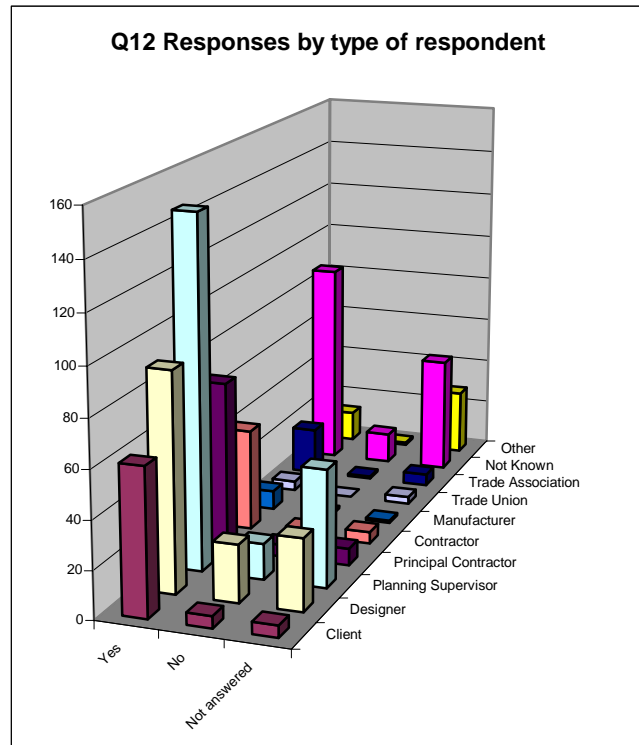
Impact of, and on, the client

153. From the client’s standpoint, one trade association firmly agreed with the HSC/E view that designers had considerable potential to reduce risks associated with construction work etc, and regarded introduction of the requirement for designers to consider the use of the building as excellent. As illustrated by the percentage of favourable responses, many other respondents echoed this view, regarding the duty as a sensible move towards promoting an integrated health and safety approach.

Making consideration of the actual end user is an excellent idea. This is a recurring theme throughout associated legislation and as such should be endorsed where any design takes place. In any case, this is one of the biggest headaches for those at the 'tail-end' of construction projects where future use, maintainability, accessibility and so on is not clear, not planned for and then becomes an issue for those same individuals.

154. The virtue of the proposed regulation 14 (3) duty in relation to cost was also cited by three respondents, two of whom raised the issue of related competence: *This should be no more than the Client could be expected to require in his design brief. I suppose some Clients might put cost before safety, so the requirement on the designer is a good thing, but do they have the experience to achieve this? Very often the design focus is on construction and not the usability or maintenance of the building or structure and the end product while looking very good is costly to maintain. It will be necessary to ensure that designers of buildings have the necessary competence to identify and eliminate risks at the design stage. It costs little to change a plan, but a great deal once the design has been built.*

155. The quality of the client’s design brief was seen by many as a crucial influence on the designer’s ability to discharge the duty. *The quality of the client's brief will have a major impact on the extent to which Designer's can discharge this responsibility. The consideration for the safe use of an end product should already be at the forefront of any competent designer's mind, and should be made clear in the Client's brief.* Many respondents in favour of the duty thought it should be limited to health and safety risks foreseeable or known to the designer at the time of design, matters within their knowledge and control, and that the use must be consistent with that envisaged at the time of the original design. The Professional Institutions, in particular, felt that designers should not be held responsible for changes in use or function after the completion date.



156. Many of those in favour felt that safe use was already a consideration, and assumed by many to be implicit in the current CDM Regulations. Some (both for and against) queried why the duty was not extended beyond protection of people at work, for example to people using airports, football stadia, theatres or stations - and sought an explanation. One respondent found it *particularly pleasing that an instruction from a client can be considered a design decision*. Re-iterating the point made by others in response to earlier questions, another stressed the need for HSE to understand the influence exercised by Local Authority planners on a project's design, and recognise them as a designer under the Regulations (in the same way a client might be). The importance of ensuring temporary works, particularly working platforms/structures, were properly designed and manufactured to ensure safe work activities was also repeated.

Clarity

157. Those not in favour were mainly concerned about the clarity of the requirement, or believed it to be inappropriate on the basis that *it is covered to a large extent by the Workplace Regs, Building Regs, public and consumer protection laws and requirements*. Dissenters' concerns mainly focused on a perceived need to define the scope of the duty *Take a cow shed; the designer of the building may not be an expert in the behaviour of cows and so may not have the expertise to ensure that the farm worker is safe. He should be able to expect the farm worker to be an expert in animal behaviour and so work in a safe manner*.

158. Related to this, three respondents raised concerns about implications for highway design, on the basis that a highway is 'fixed' and the 'workplace' of those who drive for a living, but there are other users. *Would this allow designers to be criticised for a highway accident because they could always have designed a less sharp bend, lower gradient etc*. They were also worried that a designer might be prosecuted for an oversight that was judged to be a contributory cause of the death or injury to a Taxi driver but be exempt from a similar action in the case of a member of the public.

159. Many respondents felt that the designer can normally only consider those matters he/she has been told about by the Client and can influence, or that the duty might be seen to remove the client's responsibilities under the Workplace (Health, Safety and Welfare) Regulations 1992. The views of others could be best summed up by one respondent's comments: *While it is reasonable for a designer to assess the risks associated with construction, maintenance and demolition of a structure, he is not in a position to know how the structure will be used throughout its life. The designer can only design to the remit provided by the client and in doing so will already comply with all relevant codes, standards and legislation such as the Workplace Regulations. Consequently, it is difficult to see what an explicit duty to consider the health and safety of users would add to this process*. Some felt the duty would generate bureaucracy, as designers strove to show others that they had complied, and might also contribute to the compensation culture. One felt *the duty diverts valuable designer resources to final workplace issues which are easier to visualise and deal with, they need to think about methods of construction, eliminating construction hazards, etc*.

Relationship with Building Regulations and other health and safety law

160. A high proportion of additional comments covered the relationship between the proposed duty and requirements in the Building Regulations, or other health and safety legislation. Most people welcomed the proposed duty as something designers were (or should be) doing already, viewing it as a more explicit extension of duties contained in the Health and Safety at Work etc Act 1974 (HSWA), or the Workplace or Building Regulations. Some were against it, for almost the same reason, i.e. *the duties relating to users fall under existing Regulations and Codes of practice. Designers will comply with Town planning requirements, the Building Regulations, CIBSE etc, but they cannot be expected to be responsible for the safe use of a place of work under the criteria set*

out in CDM. Some found the overlap with the Building Regulations potentially confusing and suggested the “safety in use” duty should not be included in the CDM Regulations. As one respondent pointed out, though, not all structures are buildings.

What about those carrying out construction work, cleaning and maintenance?

161. The comments of 13 or so respondents drifted over into the associated regulation 14 (3) provisions relating to those carrying out construction work, cleaning or maintenance, or affected by construction work. Welcoming these duties generally, 22 respondents made the identical points from the contractors’ standpoint: *This new duty merely incorporates the requirements in the Workplace (Health, Safety and Welfare) Regulations 1992 and general duties under the Health and Safety at Work etc. Act 1974. Unfortunately, CDM duties relating to the health and safety of those constructing or maintaining the facility or structure are regarded as being the sole responsibility of the contractor. Removing this false distinction is an important step toward consolidating ownership amongst designers.* One client, commenting on the 14 (b) duty regarding cleaning and maintenance, remarked: *Always felt that operational safety including all maintenance was an area of weakness in old CDM regs. As a large client we could insist on this also being reviewed. Welcome change to include whole life cycle of facility being designed.* The comments of one designer/PS encapsulated the view of the 13 respondents particularly in favour of the maintenance duty: *Although designers normally consider the use to which they building will be put in normal occupation, few consider the consequences on future maintenance and alteration. In many ways this is more important than the original construction risks as a competent contractor is usually in the position to devise a safe method of construction of even the most outrageous structures - once the building is completed most of the options for future work are closed off.*

Elimination of hazards/reduction of remaining risks

162. There were also comments relating to this aspect of the proposed designers’ duties, most of which related to the general regulation 14 duty, rather than the specific “safety in use” provision. The general points were broadly similar to those made elsewhere in relation to the designers’ duties. The specific points were mixed, with those in favour feeling the requirement would *encourage designers to develop a wider and deeper understanding of the law and the positive influence that they can have on reducing risks on the workplace;* and that *the safe use of buildings must also be given equal consideration.* Those who felt dubious about it did so in the belief that *competent designers should be doing this already and ... there is therefore no need to include this in the regulations. Adding to the regulations just makes them more complicated.*

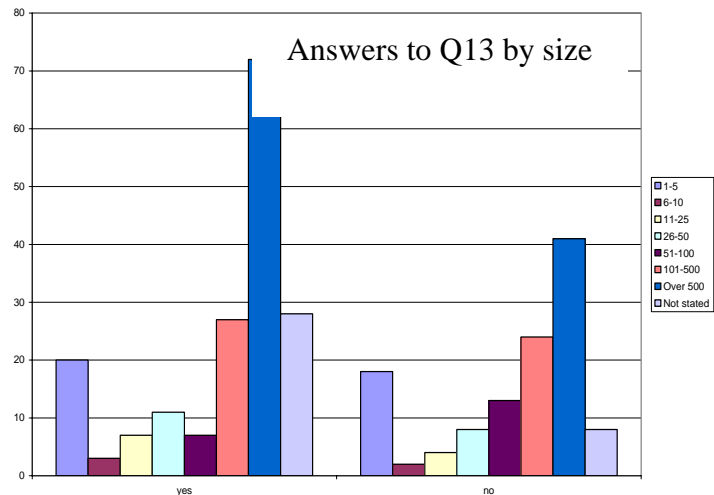
Competence

163. 13 respondents made points regarding designer competence; a need for designer health and safety training (and knowledge of relevant legislation); and the positive role of the co-ordinator in ensuring safe design for use. Some questioned whether all designers would possess the necessary experience and competence to discharge the “safe use” duty and, for the same reason, one respondent felt it was not wise to allow the designer to be the co-ordinator. There was a definite view that the co-ordinator ought to have the necessary experience and competence to advise the designer(s), so that the design could be influenced or co-ordinated as needed, and that this interaction should result in a design developed to meet the client’s actual intention for use of the building. *It will be necessary to ensure that designers of buildings have the necessary competence to identify and eliminate risks at the design stage. It costs little to change a plan, but a great deal once the design has been built. The need to ensure competence will need to be addressed both by those commissioning designs and those who design them.*

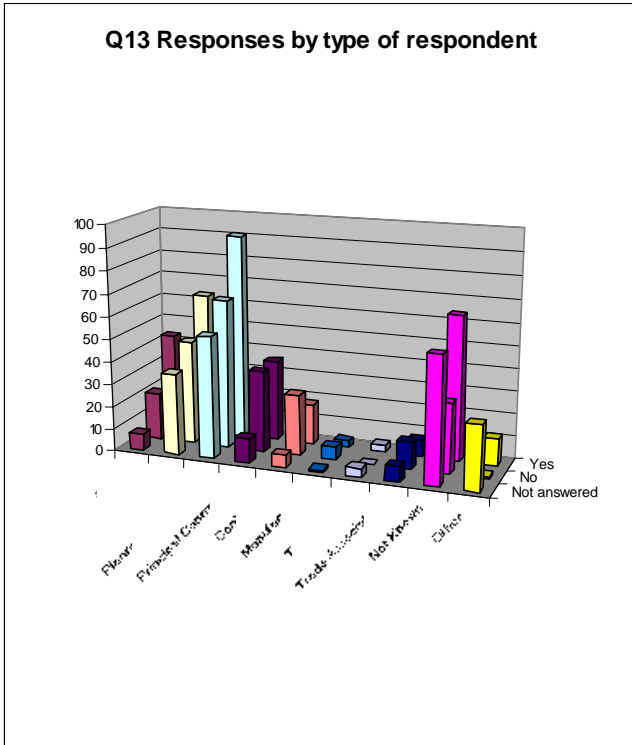
Enforcement

164. Concern was expressed by several respondents that fear of prosecution for a structure being unfit for purpose or unsafe in use would mean designers would be more conservative or restrictive in design. A recurring point here, and in response to other questions, was that a designer could not be held responsible if a workplace was used for work other than that which he envisaged at the time of design.

165. Two respondents raised the issue of enforcement and Public Indemnity Insurance. Both comments stemmed from a belief that problems might arise because of ambiguity over the appropriate Court to deal with breaches of the CDM Regulations – i.e. criminal or civil – because of the “fitness for purpose” element of the “safe use” duty.



Q13 There is a proposed duty on designers to provide information needed by contractors and others to comply with their duties under these Regulations. Does this describe the information needed and discourage unhelpful generic risk information?



166. Unlike the earlier questions on designer duties, there was a less marked division of opinion here. Of those who categorically replied “Yes” or “No” to this question, 60% of the 293 thought the duty described the information needed and discouraged unhelpful generic risk information; and 40% that it did not. [In the case of PCs the response was equally divided 36:36 and trade associations were opposed at 7:12.] It did prompt a large number (194) of supplementary (or stand-alone) comments although, as before, these sometimes covered issues beyond this question and there were many identical responses and simple cross-references to earlier questions.

167. Eleven respondents to Question 10 provided specific comments in relation to this duty. Some felt the duty should be strengthened, e.g. by having the information passed on through the co-ordinator; by providing information to safely achieve the design, e.g. by providing

temporary works designs when removing structural elements or installing heavy fire doors or fully glazed large windows; or explicitly requiring the information to include that required for the health and safety file. One remarked that *it would be useful to put limits on the duties so that it is clear the duties only extend to things that each designer is in a position to influence.*

168. Although in favour of the requirement, one respondent expressed some concern that, if misinterpreted by designers in relation to contractors, they may be inclined to provide everything they could in the information pack – rather than what was really needed and useful. *This is a fertile area for unnecessary bureaucracy*, and particularly robust guidance would be needed to explain the terms “sufficient” information and “adequately assist”.

The vices and virtues of generic information

169. Those in favour of the duty generally felt it was a helpful and positive inclusion that will be used by informed designers; and that anything that discourages "unhelpful generic information" must be an improvement. In defence of generic information, several respondents expressed concern at the statement in the CD that generic information was of no value, and put forward the argument that there was a place for some generic risk information providing it is appropriately used and combined with the necessary project specific information. It was suggested that, particularly for repetitive, routine work, properly used generic risk assessments were a useful means of reducing CDM-related bureaucracy. One respondent remarked: *I would argue that generic risk assessments do have a place in our work. Generic assessments (always reviewed for specific projects) are useful to give PC's the insight they need into the general nature and risks of our work.*

170. Expanding on the point that most standard documents in the construction industry are prepared from generic masters, one respondent stated: *examples include contracts, leases, conditions of trading, contract preliminaries, specifications etc. Many of the clauses that could be described as generic in Health and Safety Plans are essential as they provide the basis for legal responsibility. As the new "information packs" are likely to contain much of the information contained within Pre-Tender Health and Safety Plan we do not understand how you are preventing the provision of generic information.*

171. The more cynical felt that, although the duty was critical and did describe the information needed, most designers would continue to use standard information as it is more cost effective for them to do so, or because many projects are similar. One respondent believed that a lot of the current paperwork problems were generated to demonstrate Planning Supervisor activity, and that paper production would become worse under the revised Regulations because of the large number of individuals acting as the 'Co-ordinator' needed to do the co-ordinators job. Two respondents felt that the current CDM 1994, regulation 13 (2) (b) duty to provide "adequate information" was more appropriate, and saw the proposed requirement as a watering down of this.

Competence, communication and co-ordinator influences

172. Concern was again expressed about the duty relating to elimination of hazards and reduction of remaining risks – focusing on designers' ability to identify hazards and prepare risk assessments. (Linked to this were calls for more guidance on producing risk assessments, case studies on information provision, plus a CDM training and awareness campaign.) Several respondents proposed education and training on safety management, including the principles of prevention in regulation 4 of the Management of Health and Safety at Work Regulations (MHSWR), as necessary requirements for designers. One respondent remarked that designers who were not suitably trained in health and safety issues would not be confident to provide purely project-specific information, but that early appointment of the co-ordinator could stimulate this.

173. A need for increased emphasis to be placed on two-way communication and team working between designers, co-ordinators and contractors was also suggested. This would help steer designers away from supplying generic information and help unearth information that was not automatically forthcoming. Several respondents took the view that regulation 14 (5) should specifically require designers only to communicate information regarding significant hazards arising from the design which a competent contractor could not be expected to know. Harking back to concerns over competence aired elsewhere, some respondents expressed a worry that designers might not be the best people to identify the information needed by others, particularly if they had no practical site experience. Their views are illustrated by the words of one: *How will a designer know whether the information about his design is sufficient so that it will adequately assist and inform other designers and contractors? It would be much more effective if para. 14(5) in the draft Regulations was to impose a duty upon the designer to co-operate with other designers and relevant contractors in ensuring that the design has, so far as is reasonably practicable, addressed health and safety risks during construction, use and maintenance. Unless this is addressed unnecessary paperwork and disputes are likely to be engendered. In practice designers - consultants and contractors - are often in the dark about each other needs, requirements and intentions.*

What exactly do designers need to provide by way of information – and how will they know?

174. There was a considerable body of opinion that the Regulations should be more explicit about the type of information required, that the "Information Pack" referred to in the guidance should also be specifically mentioned in the Regulations; and that without more precision about what exactly was required by way of "sufficient information", far more bureaucracy (rather than less) would ensue. *This will lead to even more generic documentation being provided taken from various safety*

publications. Contractors need less general information and more specific project information (more for less). The word "sufficient" in regulation 14(5) might be interpreted as "the more we provide the less chance of missing something" and therefore less chance of being on the receiving end of enforcement action. As part of the general call for clarity, one respondent remarked: Industry does not know what it can afford to omit to improve the clarity of the documents particularly when the price of failure is so high.

175. Several respondents saw value in the drawings and specifications showing the information necessary to identify risk in a project, with the focus on the unusual (rather than run of the mill) practices and work techniques – which a competent contractor would not know. The point was also made that information provided should be relevant, specific and appropriate - and proportionate to the project and perceived risk. Several respondents specifically mentioned the need for information to be provided to parties other than the designer(s) or contractor(s), for example the end user or cleaners. This was mostly raised in connection with cleaning and maintenance, but two respondents cited a need to provide information to external organisations, for example fire and rescue services, which might need to work within the construction site environment.

Health and safety plans and file

176. Many respondents aired their views on the virtues of the current three-document system, i.e. pre-tender plan, construction phase plan and health and safety file. They generally felt that to eliminate the pre-tender plan, as it is currently understood, with the perceived result that there would be no single, co-ordinated document would be a retrograde step and result in *piles of generic risk information*. They felt this would also lead to untimely and piecemeal provision of incomplete or insufficient information to contractors, and arguments over adequacy of information. Also, because the plan could allow for the pricing and inclusion of health and safety into the planning and building process (and helped focus designers' minds on the information they needed to pass on), it provided a vital tool.

177. Contractors generally welcomed the robust stance taken in the draft guidance material, i.e. that only significant, project-specific, and meaningful information should be provided – suggesting it should be strengthened to re-enforce the message. They also felt that although adopting a broader definition of the type of information required might reduce the unwelcome tendency for clients, Planning Supervisors and designers to provide generic pre-tender plans and design risk assessments, the term “information pack” was more likely to reinforce it - and should therefore be removed from the ACOP/Guidance.

178. Commenting on the Health and Safety File, they described it as *a source of some of the worst practices under the current Regulations*. The term “file” was believed to lead to creation by designers and contractors of a “dumping ground” for documents of general, rather than specific, relevance. They suggested that it would be more appropriate for the Health and Safety File to be called the Health and Safety Manual, as “Manual” *infers a structured document that is an aid to the structure owner in his management of the health and safety issues related to use, maintenance, alteration, and demolition*. The client and co-ordinator would agree the scope, structure, format and medium for the Manual at the start of the project, and the information required from contractors would be communicated to them before they start work. Although already reflected in the draft Guidance (Chapter 10), they felt this should be entrenched in the Regulations.

Demolition

179. One respondent offered a view that, although the proposed duty was helpful in relation to construction projects, the same could not be said for demolition. Here, because design generally followed the tender process (being carried out by a demolition and/or structural engineer - both appointed post-tender), the necessary information about the site, surveys and structure to be

demolished needed to be available before the designer was appointed. This identified a need for allocated time to design and plan the demolition process. In connection with the supporting guidance, one respondent felt that designing for safe demolition or dismantling needed to be spelled out more clearly.

More precision needed in Regulations and guidance

180. Around 46 respondents made specific points relating to the draft guidance, many calling for a supporting ACoP as they felt a robust approach was needed if bureaucracy was to be avoided, and also in terms of enforcement of the duty. Some felt the Regulations were *themselves generic and therefore invite generic responses or worse* or that, because they were not specific enough (or described the information needed in legal terms), they did nothing to discourage generic information and might actively encourage more bureaucracy. Similar criticism was levelled at the draft guidance, suggesting that there was insufficient detail to clarify responsibilities and that *the distinction between generic and non-generic will always be a grey area. Hazards/risks that are repeatedly encountered in construction work are often therefore seen as 'generic' by nature. It is a far more useful concept to accept that hazards are often generic, but that they should be effectively reviewed in the context of each unique project to determine risk levels and the controls that are appropriate.*

181. As already mentioned, there was a clear call for clarification of “sufficient information” and guidance on the duty generally – particularly elaboration on what a competent contractor should know and/or be made aware of. Several respondents regarded paragraphs 158 and 169 of the draft guidance as being particularly helpful, even to the extent that the latter should be transferred to the Regulations. There was a general desire for more comprehensive, illustrative examples (with the emphasis on quality, not quantity, and with equal weight given to what designers should not be providing); also for more emphasis on life cycle and usability issues. Some inconsistencies within the guidance were also identified.

Summary of Q10 - Q13 Responses

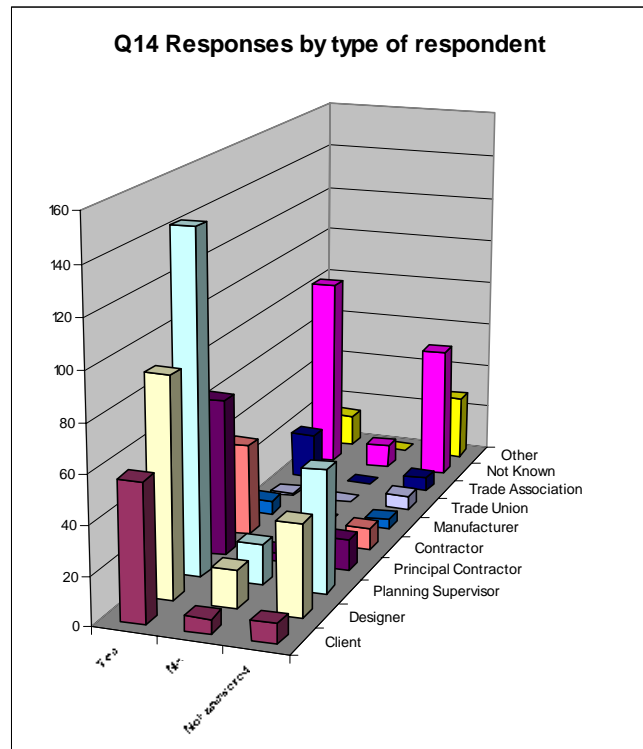
182. In many ways questions 10-13 produced the most diverse range of responses. It is clear that there is still some way to go before designers can be seen to be making the significant contribution to overall standards of health and safety which was envisaged when the CDM Regulations were first drawn up. There is general agreement that designers do have a role to play, and that improvements in the health and safety performance of the industry as a whole are possible if health and safety considerations are integrated into the design process. Whilst revising the regulations and ACoP will help matters, there is clearly a longer term need to engage more fully with the wider design community to help them understand and deliver the improvements which are needed.

Q14 – Do you think buildability/maintainability/usability reviews provide a practical way of reviewing designs to ensure they satisfy the requirements of the proposed Regulations?

183. Of all the questions concerning designer duties, this generated the most overwhelmingly favourable response. Out of the 296 respondents who categorically replied “Yes” or “No” to this question, 270 (91%) felt the reviews did provide a practical way of reviewing designs to ensure they satisfied the proposed Regulations’ requirements, and 26 (9%) did not. There were 116 supplementary (or stand-alone) comments, with the usual drift into other issues, duplication and cross-referencing to other questions.

Clarity

184. Several respondents pointed out that neither the draft Regulations nor the draft guidance specifically included buildability/maintainability/usability reviews. Consequently, there was some confusion as to precisely what was meant by the terms, and when such reviews should be undertaken. This led to requests for related ACoP or guidance material, particularly on “usability” – although one or two respondents felt that “usability” should not be ACoP material, and that future (post completion/sale) change of use was also a factor. Some saw the reviews as an appropriate topic for joint HSE/industry guidance.



Involving all the right people at the right time

185. Respondents made the point, in varying ways, that *health, safety and welfare issues occur throughout the whole life of the structure and must be considered integral to and an essential requirement of the design process. These reviews would provide a means for assessing and overcoming potential difficulties during various phases of the life cycle of a structure. They were seen as particularly beneficial to those involved in maintenance work (both in the short and long-term): these areas of review have often been lacking in the past, resulting in poor end products that present significant difficulties for the maintaining authority. Regular reviews will certainly assist in this respect, but must include the right people at the right time, and not force additional work onto any maintaining authority, who are already stretched.* Of those who commented, 9 (8%) specifically made the point that demolition should be included in the process.

186. The general feeling was that notwithstanding time constraints, contractual sensitivities and the fact that inexperienced or disinterested clients might not understand or accept their importance, reviews would be more effective if they were carried out at the appropriate stages and involved the client, PC and specialist contractors, i.e. *encompass people at the sharp end regarding building, maintenance and users.* How to make clients accept design elements needed to comply with the duty was also an issue, together with whether the designer would subsequently be held to have satisfied the “so far as is reasonably practicable” compliance test. It was suggested by some that the

success of the proposal depended on the co-ordinator ensuring reviews took place, and that they should be formally recorded, particularly where changes were made.

187. Communication and feedback within the team were seen as positive and useful, with benefits for the future as well as the current project: *Reviews provide a platform for discussion on the lessons that have been learnt, these lessons may then be applied to future projects in order that the same or similar mistakes are not made in the future.*

Competence

188. There was general agreement that a suitably experienced and competent person must undertake the reviews. One respondent suggested that, in considering the designer's competence, more evidence of appreciation of the activities required to construct, use, maintain and dismantle should be demonstrated. Another remarked that the true role of the co-ordinator needed to be established, as his competencies may not extend to carry out some of the design review function. Several respondents raised the issue of co-ordinator competence, concerned about possible unsuitability and excessive demands for competence, depending on what was required. For example, *would it be the Co-ordinator's role to carry out structural checks on the specific load weight capabilities of permanent structures and auxiliary structures or just to make sure the relevant parties carried out these checks? The Co-ordinator would therefore have a more technical role which is outside the scope of their current required competencies and limits the role of Co-ordinator to the Engineer.*

189. Various suggestions were made as to who should lead the reviews, for example, Lead Designer, Lead Consultant, Project Manager, co-ordinator. Some respondents felt there was duplication involving the Lead or Co-ordinating Designer and the co-ordinator which, *to the uninformed Client would appear to be paying two people for doing one job, and the Client's engagement would be compromised as a consequence.*

Time and money

190. Cost was raised as an issue by several respondents, not merely in terms of potential increases in fees for designers and co-ordinators, but also in relation to the cost of a design element often over-riding other considerations. Both were seen as discouraging clients from ensuring the right action was taken; and having the potential to encourage people to cut corners. Two respondents, believing the proposals to be a positive step forward and encouraging early appointment of contractors, still felt they were impractical in a competitive tendering market – particularly for small projects, where contractors were generally unwilling to expend too much time and effort before contract award was confirmed. Reflecting this view, another correspondent remarked: *On larger projects these reviews will be held, either formally or informally, but on medium to small projects these are unlikely to happen.*

Avoiding bureaucracy

191. Several respondents took the view that these reviews were already part of the design process, or covered by Hazard and Operability Studies (HAZOPS) or Risk Assessments. Consequently, to make them a mandatory legal requirement for all projects would not change anything, except the amount of time consuming paperwork generated. Others took the contrary view, supporting the use of buildability/maintainability/usability reviews because *Design Risk Assessments tend to produce a lot of paper but not much useful information.* The general feeling was that they would be useful, provided they were incorporated into the normal design review process, covered only health and safety issues and *if the methodology of review is not permitted to become more important than the principle. If it is this could become a fertile area for bureaucratic effort that offers little added value.*

Q15 – Do you think the proposed new duty to spell out the minimum time between mobilisation and actually starting work will help to ensure sufficient time is available to prepare properly for construction?

192. 61% (185) respondents thought that this would help.

193. This issue is clearly very important to many of the respondents. While one suggested that *this is pure bureaucracy* the remainder wanted to see improvements in provision of time for mobilisation.

- *Starting a project without being properly prepared is potentially a recipe for disaster.*
- *There is no argument that adequate time spent on planning a project will result in fewer mistakes, control costs and results in better quality.*
- *It makes clients think and is solely geared to the production of good quality plans and therefore has to have a benefit in terms of accidents, and that is all that really matters.*
- *Strongly agree with this aspect of the review. All too often there are no welfare or toilet facilities on site from the start. This will hopefully encourage better planning and provision of the facilities mentioned.*
- *Amicus believes in principle this will be very helpful, and we would hope this would lead to better conditions earlier on, such as ensuring proper facilities are in place before work starts*
- *Time needs to be provided to plan the works and to produce an appropriate construction phase health and safety plan.*
- *Demolition projects must have sufficient lead in time to deal with and organise the various surveys on site i.e. Asbestos, Contaminates, Environmental and Services Isolations. Contractors need time to investigate structures within the project and adjacent to the project including party wall issues.*

Cynicism

194. However it was also clear that there are significant difficulties to overcome if this is to be effective:

- *Regrettably some Clients are blissfully unaware of the pressure that their demands for a quick start on site create for some Principal Contractors.*
- *This is very difficult to achieve by regulation without being unreasonable in many cases but the provision, even if no fixed time is specified, opens the possibility of enforcement if there is blatant disregard for proper preparation.*
- *The problem arises that it is not necessarily only the Principal Contractor who is caught off guard this can feed down to main contractors, their sub-contractors and the sub-contractors - sub-contractors, and the initial stages of what should be a relatively straight forward project end up being a piecemeal gathering where there is dysfunctional gathering of bodies, rather than a coherent body working as one, and all the best laid plans of mice and men are thrown into chaos..*
- *Clients want Contractors to start right away, Contractors will use it as an excuse not to start, and not actually spend any more time on it but doing other projects and spending as little planning as at present but only a couple of weeks later*
- *Unfortunately contractors often tender for more work than they can physically undertake which occasional results contractors having too much work at any one time. These new proposals will not address this problem or the contractor's failure to plan or allocate sufficient resources to a project.*
- *There is already severe pressure on contractors. Contracts that used to be allowed six weeks are*

being squeezed down to five weeks.

- *Prefer to see utilities available on site, ready for connection to improve Welfare, reduce noise, etc. Stat. utilities are not geared up so minimum time scales won't achieve what we want.*

Set minimum mobilisation period?

195. A number of respondents wanted a minimum mobilisation period to be specified in the regulations. *Such notice has to be more clearly defined – eg 15 working days or such other (longer) period as may be necessary.* The periods suggested ranged from one week to four. Others, however, felt that this would be impractical because of the number of factors that influence the time needed:

- *You cannot dictate a specific time – you have no idea what is required or what size of team working.*
- *There cannot be specific time constraints – these would be too proscriptive.*
- *The mobilisation time required for a project varies widely, depending on questions like how busy the contractor is etc. and this cannot (and should not) be defined by law. In some situations (such as an emergency, or essential repairs or remedial work) it is necessary to start work as quickly and a good designer and contractor can get work under way very quickly indeed without compromising safety and quality. The idea of passing a law to delay and slow down such projects in accordance with preconceived rules or guidelines is completely wrong.*
- *In certain circumstances a good, capable company can mobilise and get something done remarkably quickly (within hours sometimes), whereas on other occasions even when a long time is taken over planning and mobilisation, the results can still be terrible.*

196. However, many respondents took the opposite view and there was a strong desire for prescription:

- *Contrary to the view expressed in the consultation document we believe that there should be stated in the Regulations the minimum notice allowed between appointment and commencement of work for the purpose of planning and preparation. Unless a minimum notice is stated the new provision for mobilisation periods will become meaningless. We believe that the minimum period should be 3 months. For some construction activities this may seem excessive but, if it was to be a regulatory requirement, the industry will quickly learn to plan and program its activities earlier than previously. The client and principal contractor should be obliged to give this notice in respect of all their contractor appointments.*
- *Notwithstanding the difficulties associated with imposing a minimum mobilisation period I think that this should be given further consideration, even if it is only one week (preferably two). This would at least stop the practice of starting on site within 24 hours of notice to proceed with all the attendant health & safety problems.*
- *Clients will pressurise contractors to shorten timespans for key date works. Minimum time periods for projects [dependent upon size/value] should be set down in the regulations.*

197. Some respondents thought that being too tough in this area could create significant difficulties for Maintenance and/or Emergency works or site investigations and similar which involve less planning, but are usually early on the critical path

Agree?

198. The best solution to the differing views would be for clients and contractors to agree how much mobilisation time is needed.

- *A simple requirement that all parties agree that there has been sufficient time would suffice*
- *As long as this remains a matter for agreement between co-ordinator and contractor, and does not*

become the duty of one or the other to specify.

- *In an ideal world it should be for the parties to the contract to agree project lead-in times, after all they are the one's holding themselves out to be the professionals, however, in reality there may be undue pressure put on the Principal Contractor and some form of 'guidelines' should be introduced into the ACOP, this would at least provide the Client/Principal Contractor with a certain amount of latitude (or rope) to play with.*
- *This is an interesting concept but contractors will come under pressure to accept reduced times. If they accept a reduced time how can the client be found to be at fault? Also you cannot expect the co-ordinator to be placed in a position to insist that a longer time is necessary if both the client and contractor are saying the opposite. The only party who really knows how long it will take and when resources are available is the contractor, and some contractors may require less time than others for the same project.*

Clear guidance/ACoP

199. A number of respondents wanted guidance to illustrate what was reasonable in a variety of circumstances. This could clarify what is reasonable without placing inappropriate constraints or unduly delaying emergency work.

- *guidance on what would be an acceptable minimum period should be given for different types and sizes of projects*
- *there should be clearer guidance, backed by an ACoP about what is "reasonable"*
- *any period given as guidance would inevitably be quoted as "the minimum time" and used for all types of schemes*

200. This could also help the *many clients who will not know what amounts to sufficient time or resources*. Some were concerned that clients who followed the advice of their team might be penalised. *In practice it is not often the client that is making the assessment of what is sufficient time and resource, so the legal duty is not falling to the one most suitable or likely to carry it out. We, as client, take the advice from project managers or lead designers or consultants on the resource and timescale for our projects. Are we to be legally responsible for their insufficient allocations? We should only be responsible under law if we had reduced the allocation with lack of reasonable reason.* The intension was only to target clients who set obviously unreasonable deadlines which then create significant risks, not those who accept apparently reasonable advice.

Starting point

- *The guidance does not provide any direction on when the clock starts ticking. Is this deliberate? It may be necessary to explain in the guidance that the Client should make it clear at what point the clock starts ticking and exactly what he expects by "starting work".*

201. Some said that the time allowed *must be from the time of his appointment*. The difficulty with this is that there is sometimes a considerable uncertainty about the timing of commencement where it depends on an agreement or obtaining finance. This can be the case even after appointment. It doesn't help if there is a long delay after appointment, but the work then begins suddenly, with minimal warning.

F10

202. One way to improve things may be to spell out the time in the F10 notification to inform HSE

- *on what time has been allowed for mobilisation (and what time has been allowed for design). In addition there should be examples of what is reasonable mobilisation time depending on the size of the project and on what information should be made available in order that sites can be mobilised.*

- *This would also reduce the pressure that can be exerted onto a principle contractor to start work immediately.*

Other issues

203. Several respondents pointed out that mobilisation is not just an issue for Principal Contractors. Principal Contractors can be just as unreasonable with their contractors throughout a project – *needs to be applicable to other phases of the work other than the initial procurement.*

204. There are also other potential benefits from early appointment.

- *Early Contractor Involvement should be encouraged. Then they can have an input into the timeframe, after all to nominate a minimum time for set up must depend on lead in times, complexity etc and for individuals with no knowledge of these matters is not possible. Perhaps it might be better to require the contractor to be given sufficient time to set up and that time called for as part of the tendering package.*

205. There was also some concern that the proposed requirement for welfare facilities to be in place before construction starts could create a catch 22 situation.

- *There will be confusion caused over the provision of welfare facilities. The provision of welfare facilities will in many cases require "construction" activities (footings, drainage, power supply, water supply, use of cranes, work at height etc) and so should not be excluded from the construction phase of the works. During the construction of major welfare facilities, temporary portable welfare ought to be provided.*

Q16 – Does grouping the Regulations’ requirements by duty holder make it easier to understand the various responsibilities? If you think not, please say how you would organise the Regulations.

206. 96% (299) of respondents were in favour of this change. As the graph shows this was consistent among all groups who answered the question. This view was also supported by the feedback received from Industry delegates at 25 CDM Roadshows organised by HSE, Constructing Excellence, CITB, CIC and ICE, who were asked "Do you support the grouping by duty-holder of the new regulations (as in the Consultation Document)?" The feedback was strikingly clear with 54% generally agreeing and 31% strongly agreeing.

- *The TUC particularly welcomes the new groupings of duties*
- *The use of the current ACoP style of presentation by duty holder is certainly clearer for the Regulations, and should ensure that the Regulations are referred to more often, rather than just the ACoP, as can often be the case at the moment.*

207. Grouping the regulations may either:

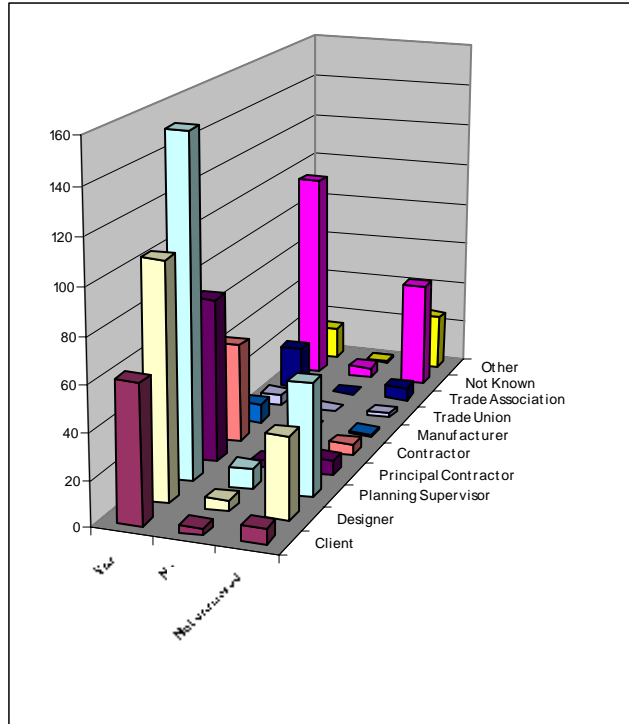
- *encourage people to solely look at their duties and not the responsibilities and interface with others; or to*
- *focus their energy and to enable them to gain possibly a more in-depth understanding of the sections relevant to them.*

208. However, a few respondents were concerned about learning new regulation numbers and layouts:

- *I think it unnecessary and adds confusion by as a result changing all the clause regulation numbering which after 10 years of use we are all now familiar with and frequently quote or refer to.*
- *I think the current organisation is fine, but only question whether moving the designers regulation from 13 to 14 will confuse some people who are now familiar with the requirements on designers being regulation 13.*

Other suggestions

- *The original 1994 ACOP gave the wording of the SI alongside or above each section of the guidance. By 2002 this had been changed. It is important for the understanding of the legal requirements that the Regulations are integrated into the guidance. Having 2 separate documents or even the SI as an appendix is unhelpful. It should be possible for both the SI and the guidance to be grouped by duty holder.*
- *Groups Regs applicable to all, Non notifiable or Notifiable*
- *It would be even better if notifiable / non-notifiable duties were clearly identified in each section rather than have to refer back to reg 3(2).*
- *It would be useful to include a summary of how the regulations are to be applied to domestic client*



situations rather than having to work it all out bit by bit from the other sections.

- *It would help if the duties of individuals (to highlight personal responsibility) were also listed out as part of the Regs in a manner similar to Employees duties in the Management Regs.*

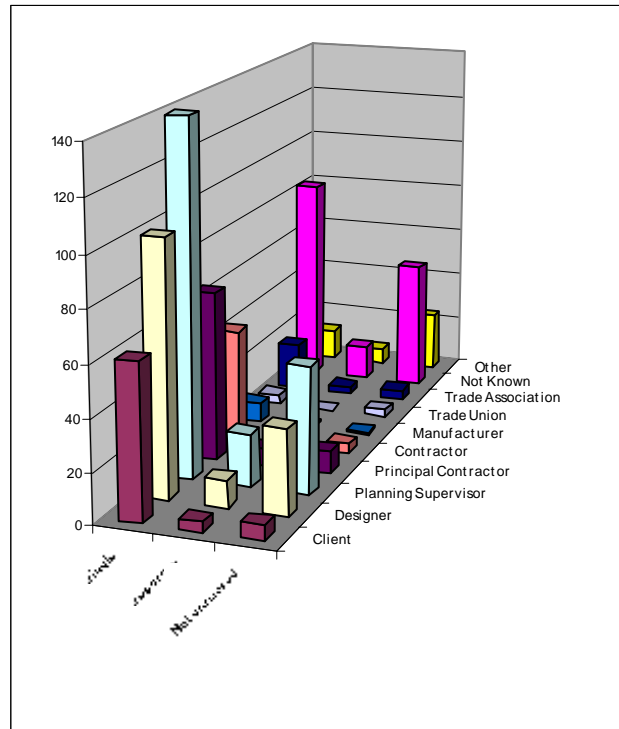
Q17 – Responses to the Discussion Document indicated a preference for a single set of construction regulations. Now that you can see what that looks like, would you prefer:

- a) a single set (as proposed); or**
- b) separate packages covering the management and practical requirements?**

Please give the reason for your preference.

209. 87% (272) of respondents preferred the regulations combined into a single package. This is also supported by the feedback received from those who attended the CDM Roadshows. 64% of those providing feedback strongly and 30% generally favoured merging the regulations.

210. Some would have liked us to have been even more radical by combining them with other health and safety legislation⁴ or even Building regulations so that the industry just had a single set of regulations to cope with. This would go far beyond the scope of this review.



- *A single document is easier to find and follow.*
- *The single set removes duplication and helps to reduce paperwork*
- *They cannot be separated, they are all relevant and need consideration as a whole project, not individually.*
- *Both sets of regulations clearly fit together*
- *We prefer a single set of regulations. This ensures the management decisions and the physical conditions are not considered as separate entities but as a continuous process from design through to completion. However, the wording of some of the regulations could lead to confusion over where responsibilities lie.*
- *It is easier for all duty holders to appreciate their duties if they are contained in a single document, particularly where these duties need to happen concurrently or sequentially*
- *We see benefit in drawing to the attention of all parties the detail in Schedules 2 and 3 as they can all influence how compliance with the schedules is achieved.*
- *The CHSW information is additionally suitable for aiming at supervisors and site personnel as well as the project team generally.*
- *Any attempts to provide separate packages, should be strongly resisted. It is important that the principals are not watered down on smaller projects, and that all aspects of management of projects including the physical standards are integrated. It will also assist Designers in "keeping an eye" on construction standards.*
- *UCATT and Amicus support a single set of Regulations.*
- *A Single Set is preferable for S.M.E.s where Managers and Engineers may be the same person.*

⁴ eg the Construction (Head Protection) Regulations

- *Sits comfortably with better regulation initiative.*

211. A few respondents took the opposite view:

- *A single set of regulations is seen to detract from the significance of the required pre-construction arrangements required under CDM.*
- *I think combined CHSW/CDM dilutes each document. CDM is more inclined to the client and delivery of design and management. Whereas the construction regs are site specific.*
- *They are written for different audiences. It's rather like giving the owner of a car the full works manual written for the mechanic.*
- *My preference is for two separate documents, one for site management and site set up including all safety and environmental issues. The second document covering all aspects of on site working procedures, plant operations, preventing falls from height, HAV practical issues etc. All this in one document makes it unwieldy and if two separate documents they can be issued to the respective group on site.*

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

212. There was some concern that relegating the old CHSW requirements to a schedule would give the impression that *they are not as important as they do not form part of the main body of the Regulations or marginalised*. Since these remain crucial to practical health and safety issues on site we cannot afford to give such an impression – even though, legally speaking, it makes no difference.

- *They should either be incorporated into the main body of the regulations.*
- *Schedule 3 should be 'converted' back into numbered Regulations, not just paragraphs of a schedule.*

213. In any event when the new regulations are launched the publicity must *make it clear that Schedules 2&3 apply to all construction projects*.

Title

214. There were concerns about the proposed title (Construction (Design and Management) Regulations) that because of the proposed title.

- *The fact that they also replace CHSWR may be overlooked by smaller contractors for example. Has consideration been given to using "Construction Regulations" as the short name, rather than CDM? However a fringe benefit of the single set of regulations is that the majority of designers now have access to, and will obtain the replacement to, the CDM Regulations. They are, however, less likely to have a copy of the CHSW Regulations, but would automatically have these under the single set proposal. This will give designers good access to what is effectively a schedule of hazards/risks associated with construction sites. Hence they may be better placed to design out the risks.*
- *The title of the Regs as 'CDM' may effectively prevent non-CDM projects from using the CHSW part.*

Q18 – Do the definitions of “construction work” and “structure” at regulation 2(1) satisfactorily cover everything that the Regulations should apply to and nothing else? If not, we would welcome your suggestions for improvement.

215. 78% (232) of respondents thought that the definitions were correct.

- *It is very difficult to be comprehensive. Why not emphasise that when CDM doesn't apply the Management Regulations apply – planning, organising, controlling, and monitoring.*
- *I note that fixed plant is now included in the general structure list so that maintenance of fixed plant will be subject to the Regs. Good!*
- *We welcome the removal of the previous reference to 2 metres in respect of work on fixed plant. This was always a confusing and unhelpful complication (and will no longer sit well with the new Work at Height Regulations)*

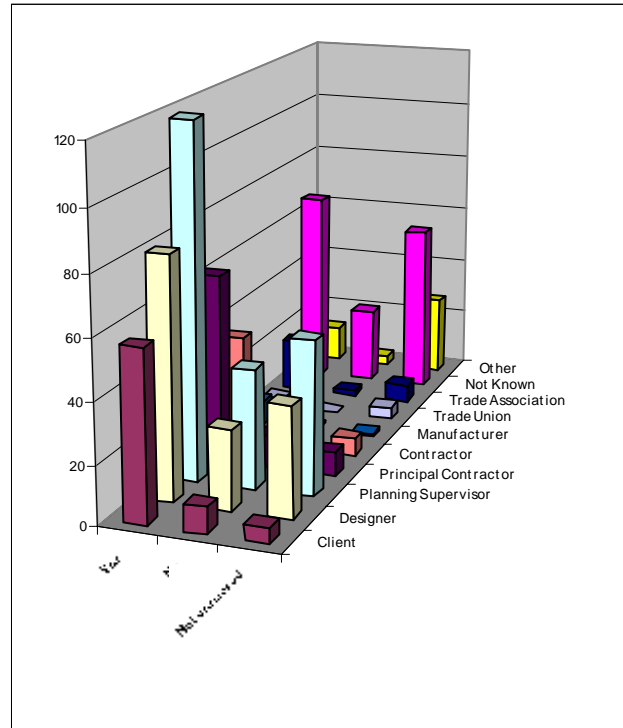
Issues

216. There remain a number of issues that concern or confuse respondents, although the definitions have often not been changed from the current wording.

- *Replacing the supports and cover plates of a vehicle weigh bridge again could be classed as demolition work?*
- *There is confusion in my mind with respect to IT installations - many IT works amount to re-cabling, new floor boxes etc etc. I do not think this is appropriate to these regulations. IT installations as part of a construction project is appropriate however – need to be clear as there is so much IT work going on. (We discussed changing this [and excluding minor electrical work] during drafting, but did not feel that the regulations would create unreasonable duties in such circumstances – basically the work has to be properly planned and managed, nothing more – in addition we couldn't find a form of words to adequately describe what should be included and what should not.)*
- *There should be greater detail about installation of fixed equipment, such as processing machinery that is installed within a building. Often this is installed before all other construction work is completed. There is some confusion about the extent to which CDM applies to this type of engineering installation.*
- *Why has "excavation and laying or installing the foundations of the structure" been omitted from the definition of "construction work"? (This was a legal drafting decision and it was not considered that the words legally added anything. There is certainly no intention to exclude excavation where it is carried out for, or as part of construction work.)*

Steel and reinforced concrete structures

- *On the definition of "structure", we suggest removing the phrase "steel and reinforced concrete structure" since this is a description of two structural materials whereas all the other items in the*



list are descriptions of types of structure. To retain the phrase might lead to confusion in situations involving structures composed of timber, aluminium, masonry or other structural materials.

- *Steel and reinforced concrete are specifically mentioned but not plain concrete or pre-stressed concrete. Neither is timber, masonry, reinforced plastic. Being specific does not allow for the introduction of new materials.*
- *Either changing the description to a more general definition or listing further eg masonry, timber, aluminium, fibreglass, glass, PTFE stressed skin. The statement as it stands at present appears to exclude the above.*

Maintenance of plant and services

- *The maintenance of services and construction work (not including maintenance) on fixed plant has always caused major problems.*
- *The intention is clearly to include large scale maintenance work of the type that characterises engineering construction.*
- *Paragraph 11(b) says that the maintenance of big plant is included. However, the final clause then goes on to say that mechanical maintenance of plant (presumably all plant) is not. In fact much large scale engineering construction work would be called mechanical maintenance in our industry. For instance a reactor vessel refurbishment involves extensive heavy lifting, work at considerable height, substantial scaffolds, welding etc – all the stuff of construction work in any normal sense of the word. If such maintenance is excluded from construction because it is mechanical in nature a substantial slice of engineering construction work would be excluded from CDM. We presume that this is not the intention. 'Mechanical' needs to be explained in more detail.*
- *The major refurbishment of process plant has always been considered as both "Construction Work" and "Mechanical Maintenance" e.g. the replacement of the top of a 16-storey high catalytic cracker unit. Much of the current UK Engineering Construction work is in plant refurbishment and the CDM regulations must apply. Clearly a need to clarify the meaning of "Mechanical". Suggestion – Mechanical maintenance is the minor routine repair or refurbishment of parts of a whole process plant e.g. replacement of a pump, heat exchanger, vessel, motor but excludes systems detailed in Regulation 2(1)(g)*
- *Routine maintenance of the railway infrastructure is notifiable. Our experience since 1994 is that this does not deliver any safety benefits, particularly as this work is already subject to the Railway Safety Case regime, but is a cause of confusion and misunderstanding. We therefore request that routine maintenance (i.e. simply keeping the existing railway running safely) be regarded as non-notifiable regardless of its scale. We do, however, agree that enhancement and renewals projects which exceed the threshold limits should be notifiable.*
- *Theoretically each street light is a 'structure'. (Within the Industry lighting columns and other street furniture are not considered to be structures.) With over 17,000 light columns in our area it is impractical to have a Health and Safety File for each one we install and then maintain. Again whilst demolition of lighting columns must be properly planned and undertaken, it is unclear (as per the 1994 Regulations) if the new Regulations intend each column removal to be considered as demolition of a 'structure'.*

Site

Reg. 2 (1) (e) refers to 'on site' but the Regs do not define 'site'.

- *Where work is in a highway, or adjacent to it, there can be extensive traffic management and traffic diversions. The Regs and Guidance do not explain whether or not these activities are construction work and what, if any, CDM Regs apply to its design and implementation.*

- *The definition of a construction site has changed substantially from the CHSW Regs ('principal work activity being carried out is construction work'). As such this creates problems with respect to Schedule 3 of these regulations in relation to common issues such as Fire, Emergency Procedures, Emergency Routes and Exits, Fire detection and fire fighting. The new regulations will impose a duty upon construction companies to look after issues normally covered by someone else since the principal work may not always be construction work. (There needs to be co-operation in such circumstances. The occupier will often have duties under the Workplace Regulations and there is no intention of transferring those duties to a contractor with a peripheral interest.)*

Misunderstandings & Questions

- *The definition of "water or an abrasive at high pressure" causes confusion to many. (It brings high pressure cleaning or grit blasting of structures into scope.)*
- *It is unclear whether fabrication in manufacturer's yards is considered construction. (No, it isn't.)*
- *Are lift installations covered? (Yes.)*
- *This might be an opportunity to clarify whether structures such as lighting columns and road signs are included in the definition of 'structure.' (Yes, they are.)*
- *Define "lightweight partitions" - eg studwork, proprietary stud systems, proprietary partition screening, fixed to structural soffits, adapted around M&E installations, solid, insulated glazed?*
- *Construction work includes maintenance but the Regulations suggest that this is washing/cleaning. (No, it includes high pressure cleaning, but is much wider, including renovation, repair, upkeep and redecoration.) In road terms maintenance includes structural maintenance where existing roads are reconstructed/resurfaced. There is also cyclic (cleaning, grass cutting, renewal of white lines etc) and winter maintenance (snow, gritting etc). (Reconstruction, resurfacing or marking (white lines, etc.) of roads is construction work as is installation/removal/maintenance of road signs and street lighting and of roads. Grass/hedge cutting, tree felling or gritting are not though many of the same traffic management issues apply.)*
- *What demolition of a road includes, is it excavation for reconstruction, planing of top surface for resurfacing or excavation for utility companies? (Demolition isn't a useful term to apply to roads, just to bridges and other structures that form part of roads.)*
- *Clarification regarding site investigation would be useful as to whether it can be considered as a 'stand-alone' project or is viewed as part of the overall project. (If the site investigation takes place as part of the overall project it is one project. If it takes place to determine the feasibility of a project and there is a substantial delay between it and any construction work it is a separate project.)*
- *Item (g) specifically identifies services installations fixed within a structure but no mention is made of other services, ie. below ground service across the site. (Underground services are structures as defined – pipe or pipe-line, cable, aqueduct, sewer – so work on them is construction work as defined.)*
- *We hope you will agree that it is not the intention that CDM apply to theatre scenery. Indeed the BJAC was informed with absolute clarity when the first CDM Regulations were being drafted that theatre scenery would not be covered under the Regulations. Unfortunately as a consequence of the 'catch all' nature of the definition of 'structure' HSE Officers have taken the view that CDM might apply to scenery. We consider that in almost all instances the application of CDM requirements to the fitting up on stage of theatre scenery would serve no purpose in terms of safety but would provide totally unnecessary bureaucratic complications and could easily cause confusion as to responsibilities. For instance the designer is often appointed before the production manager ('co-ordinator'.) Similarly the concept of the principal contractor is contrary to most,*

but not all, theatre practice in that the overall responsibility for planning the 'structure' and its erection (normally from components prefabricated off site) will lie with the production manager ('co-ordinator'.) For this reason we earnestly suggest that a further example be added to Paragraph 12 of the draft Guidance (items which are not construction work) to read: Theatre scenery other than scenery covered by the Building Regulations.

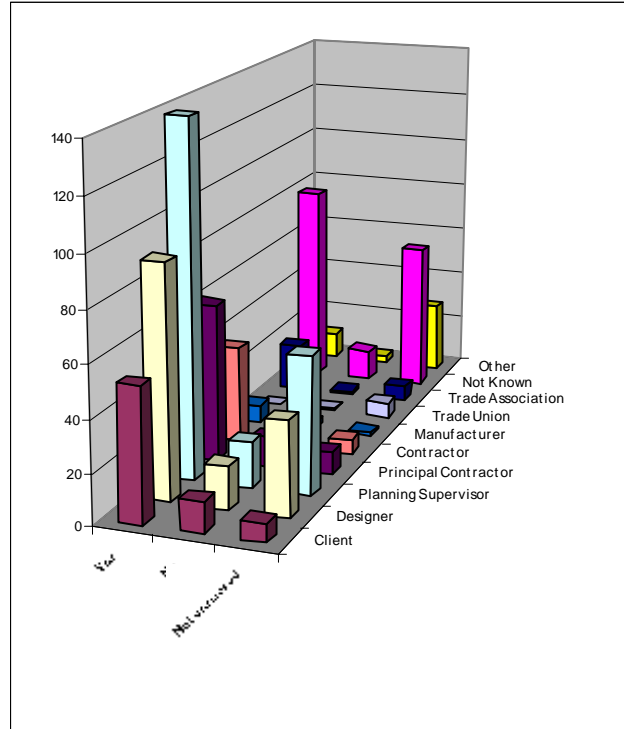
217. We have tried to make the definitions as precise as possible, but absolute precision using legalistic wording is never possible, particularly in an industry like construction where the edges are grey. In many of the cases raised by respondents there is no simple legal answer. In such cases it is better to approach the issue from a common sense point of view. What difference would the application of the CDM regulations make? HSE and Local Authority Inspectors expect the risks to be understood and properly managed, depending on the level of risk. It would be contrary to HSC's enforcement policy to prosecute for a technical breach if the risks are understood and well managed.

Q19 – Do you agree that (apart from the exceptions already in CDM 1994), civil liability for breaches of the Regulations should be limited to employer/employee relationships? If you have answered “no”, please explain why you disagree.

218. 87% (251) thought that the proposals struck the right balance. Only with Trade Union respondents was there a majority (1:0) in favour of widening the scope, though, surprisingly, 6 Trade Union respondents did not answer this question.

219. This is a complicated legal area and a number of respondents clearly found the arguments difficult to follow. There were also those who confused damages for poor quality work or breach of contract with compensation for injury due to failure to comply with the regulations. *It appears to permit someone who is an employee to sue anyone, not just his own employer.*

220. For many respondents it was a balance between the improvements that a fear of civil litigation might bring against the fears that all that might happen is to prove more pointless bureaucracy.



- *I feel strongly that the fear of litigation is one method (probably the main one) whereby the industry's prevailing culture could be changed to the benefit of all its workers. My son died because unacceptable risks were taken without adequate consideration of the possible consequences.*
- *More civil liability may encourage more attention to health and safety aspects of the design, construction and maintenance.*
- *This may lead to an increase in litigation, however this may focus risk management within the construction industry. Well planned and managed construction work may potentially give rise to fewer accidents.*
- *This should concentrate the mind on what is being designed and who are to be harmed in this way you can ensure the designer will concentrate on what can be done and not aesthetics alone.*
- *Removing the civil liability exclusion would generate a culture of defensiveness that would be at odds with other efforts to eliminate bureaucracy.*
- *This makes sense and doesn't accelerate the already prolific claims culture that the industry is presently suffering.*
- *This is sensible to prevent a proliferation of spurious civil claims and class actions.*

Fair to the self-employed?

221. A significant proportion of those who commented clearly felt that the proposals were unfair to the self-employed.

- *The GMB would like to see all workers included in this and not just employees. Otherwise there is*

a two tier definition of workers' legal status even though they may be carrying out the same operation.

- Self-employed and third parties have as much right to compensation for injury caused by breach of the law as any other person.
- We have concerns about the number of self employed workers who are actually employees but not regarded as such.
- The construction industry is reliant on many self-employed personnel, who need to be protected from health and safety risks to the same standard as employees. Civil liability for breaches of the Regs should be open to all, including self-employed, temporary workers and members of the public. In the long term the removal of this constraint should strengthen health and safety standards on construction sites.
- Self-employer workers could potentially be placed at a disadvantage. Some employers (large or small) could see a potential to reduce costs with no increase in commercial risk by lowering standards & shifting to more self-employed workers.

222. One respondent felt that the right to take action for injuries resulting from negligence made this provision unnecessary. However, the proposed changes follow EU comments about a similar exclusion in the Management Regulations.

- If the right to take action for breach of contract or negligence already exists for all workers no more is needed for any category. To do so will enhance the litigious nature and spawn a further industry of claims with the attendant wasteful protection regimes. Put the resources into improvement.

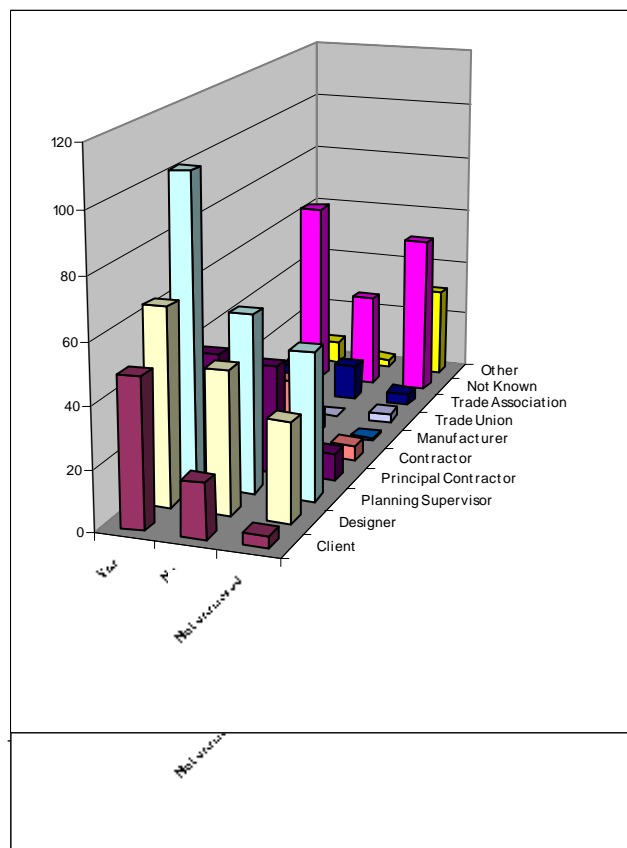
223. Some felt that the limitation was too severe:

- If there is a significant breach of duty that leads to an accident the person who breaches that duty should be held liable in both criminal and civil courts.
- It is not clear from the wording why regulation 17(b) is not included along with regulation 11.
- The client, the designer and the employer should be liable for breaches of any Regulations. The employee is trying to make a living the best way he can.
- An innocent injured member of the public should also have recourse through the Regulations to a Client who does not properly manage a project.

Q20 – Do you agree with our suggested changes to CDM enforcement demarcation?

224. 86% (227) of respondents agreed with the proposed changes to the demarcation between HSE and Local Authorities (LAs) for the enforcement of health and safety in construction. Responses indicate that many respondents do not understand the current demarcation arrangements.

- CDM must be managed by LA's when they are over-viewing construction work.
- I welcome the simplification of what was always a confusing demarcation between Local Authority (LA) and HSE



responsibilities.

- *Allowing the Local Authorities to take enforcement action will improve compliance with the Regulations.*
- *Strongly agree with giving Local Authorities “the opportunity to use CDM”.*
- *We are supportive of the intent to remove the barriers to LA enforcement of CDM, and the proposed approach seems appropriate, bringing clarity, greater consistency and simplicity to enforcement.*
- *Many incidents happen on smaller projects. The industry is now familiar with the current enforcement rules, don't undo 10 years work*
- *No demarcation all CDM enforcement should be by the HSE*
- *Additional enforcing bodies would cause public confusion. There is also the possibility of different enforcing bodies denying responsibility for a particular are. I disagree with this suggestion very strongly.*
- *Leave this situation as it is to avoid confusion.*
- *We do not agree with the changes. The construction work enforced by local authorities is trivial and the distinction is not well understood. It would be simpler to make HSE the enforcing authority for all construction work.*

Competence

225. There were some concerns about competence of LA staff to undertake the work, but they already deal with these non-notifiable projects, the only change proposed is their involvement with the CDM issues. There may be a need for some additional training, but that is equally true of HSE Inspectors. There are existing arrangements for LAs to obtain support from HSE when necessary.

Consistency

- *If LA's are allowed to enforce CDM would standards remain/ enforcement be constant to the way the HSE implement the regs?*
- *Care should be taken that a multi agency approach maintains clarity and consistency of standards.*

Rail

- *We query who would be the enforcing authority for railway premises given the transfer of HSE responsibilities to ORR. (The demarcation between HSE and ORR is set out separately in [the Health and Safety \(Enforcing Authority for Railways and Other Guided Transport Systems\) Regulations 2006](#)⁵. There is also a [memorandum of understanding](#)⁶ between the Health and Safety Executive and the Office of Rail Regulation which explains the demarcation at paragraphs A67-A72.)*

⁵ <http://www.opsi.gov.uk/si/si2006/20060557.htm>

⁶ <http://www.rail-reg.gov.uk/upload/pdf/279.pdf>

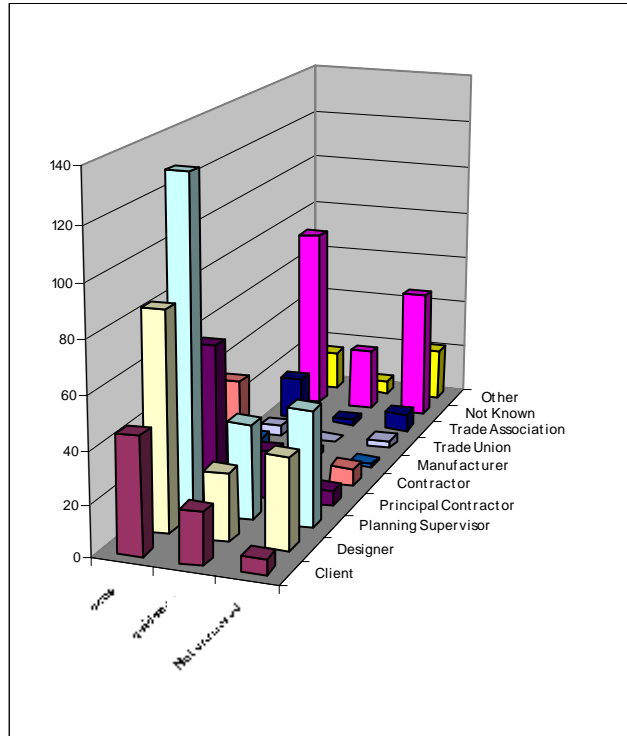
Q21 Having compared the current ACOP and guidance (HSG224) with the revised draft guidance, which do you think communicates more clearly what duty holders need to do to comply with the Regulations?

- a) ACOP and guidance (HSG224 style)**
- b) Guidance only (as in the draft CD)**

226. 76% (236) of respondents wanted to see an ACoP to support the Regulations rather than just guidance. This was one of the most frequent themes in the comments received.

227. The HSC has already considered the industry views on this point and has agreed to the production of an ACoP, supported by industry guidance. In view of this only a small sample of the comments received are included below to give a feeling for the range of views and strength of feelings on the issue.

- *ACOP's are well understood in the industry and provide an essential benchmark for those arrangements that need to be in place to ensure compliance with the Regulations.*
- *The TUC is gravely concerned that supporting the regulations by guidance and not an Approved Code of Practice will be interpreted by industry and by those that work in construction, as a demotion of the standards.*
- *The CC strongly supports the view of CONIAC that the Regulations should be produced with ACOP and Guidance, rather than the 'guidance only style' presented in the Consultative Document. The overwhelming feedback from our members is that the significance of ACOP material is well understood in the industry, and is an essential benchmark for the arrangements that need to be in place to comply with the Regulations. ACOP material has been invaluable to construction SMEs, who find CDM complex and difficult to understand. Without an ACOP, there would be greater uncertainty amongst smaller contractors and one-off clients, both of whom may be involved in a CDM notifiable project for the first time. HSE should make clear to Government that the industry sees this as an area where the regulatory burden is significantly less if an ACOP is produced. There appears to be a dogmatic view in Government that ACOPs are associated with over-regulation, and this must be confronted.*
- *The NFB believes that an ACOP is actually beneficial and does not necessarily equate to more regulation but makes life simpler for SMEs.*
- *CIC recognises the improvements made in the current CDM ACoP/Guidance (HS(G)224) and the clarity brought to the industry. We would expressly support the need for an ACoP preferably with guidance and would leave the format to the Executive.*
- *With regard to the ACOP/Guidance debate I believe it is vital that an ACOP be issued. Whether this also combines 'guidance' or remains a document in it's own right is debatable. On balance a combined document would probably be more beneficial as it is unlikely that a 'lay' person would*



go to the trouble of obtaining two documents for what may well be a once and only 'brush' with construction.

- *In such a high-risk sector, it's hard to understand why HSC ever thought it was appropriate to drop the need for the strength of an ACoP*
- *It is useful for task holders and users of the proposed Construction Regulations to have a similar document to HSG224 so that there is clear interpretation of the regulations, together with guidance and examples.*
- *The split ACOP/guidance gives a confused situation with some parts given greater emphasis than others. It is better to give it all equal status, but why can it not all be an ACoP?*
- *Frequent easy access to Guidance is required during Construction Work. A clear single purpose Document permits this.*
- *Some people's failure to understand the distinction between ACoP and guidance, or others ignoring the guidance, should not be used as an excuse not to produce one.*

Greater legal status/persuasiveness of ACoP

- *This gives greater weight when dealing with client organisations to persuade them of the need to carry out the actions and responsibilities laid out.*
- *If only "Guidance", then people may think that it doesn't count and so can be ignored. Therefore an ACoP would be preferred as it has a stronger legal standing as well as a perception of a stronger legal standing.*
- *An ACoP is recognised by those who comply with health & safety duties. For others, including uninformed clients, an ACoP is a much more influential tool. Ultimately an ACoP should be supported by guidance.*
- *Guidance is often swept aside by many with the comment "that is only guidance it is not the law"*

Protection of ACoP

- *ACOP gives a greater level of legal protection to those who are trying to comply with the Regulations.*
- *by having an ACOP in place & following it, you would generally be complying with the law*
- *The ACOP gives certainty and comfort that management arrangements, and actions taken by duty holders, will satisfy legal requirements*
- *Without an ACOP, there would be greater uncertainty amongst smaller contractors and one-off clients, both of whom may be involved in a CDM notifiable project for the first time.*

Guidance preferred

- *Now that the regulations are much clearer and stronger than before the need for ACoP has reduced. While HSG 224 was a wonderful document, the amount of ACoP made full compliance almost impossible and it certainly required immense effort to understand and apply it all. As a trainer I see huge benefits in having regulation and guidance only as it provides delegates with very clear boundaries and a sensible amount of mandatory requirements to understand and remember. With one or two adjustments to the regs to iron out contradictions they should be robust enough to be effective without ACoP.*
- *The Guidance only style is easier to follow.*
- *The latest version of the ACOP is good. However the draft guidance is an improvement.*
- *The guidance is written in a 'user friendly' style that will appeal to all.*
- *Guidance only style (as in the CD draft) is preferable for raising awareness among various*

participants in construction and the clients.

- *I find the guidance style very readable/digestible*
- *The proposed document is simply a better document - the information is relevant and easy to locate.*
- *The removal of the ACOP requirements provides for greater flexibility in contractual arrangements, which suits the diverse nature of the industry, whereas the guidance provides a benchmark against which all can be measured.*
- *With HSG 224 style guidance could be overlooked whilst focusing upon ACOP (bold type)*
- *The redrafting of the Regulations by duty holder has brought them much more into line the current ACoP. As such, there is less need for the ACoP with the new Regulations, and the new guidance provides more comprehensive advice.*
- *ACOP is too restrictive and bureaucratic*
- *I think that the guidance gives information on what needs to be done rather than getting bogged down with its legal status.*
- *Our preference is for Guidance rather than ACOP/Guidance as this allows us to develop a proportionate response to the Regulations which is suitable for our industry.*

Q22 – Would there be a benefit from specific, integrated guidance drafted for your sector of the industry? (This would probably work best if it addressed health and safety alongside other relevant issues.)

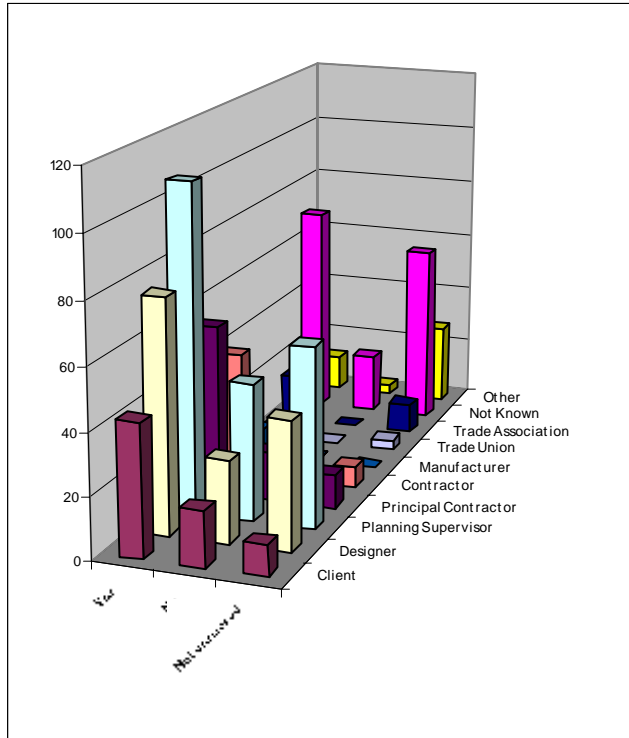
If you are willing to develop such guidance in discussion with the key players in that sector, please let us know.

228. 75% (210) of respondents thought that sector specific guidance would be useful.

- *Addressing health and safety alongside other relevant issues would help health and safety to be viewed as an integral responsibility of all those involved in the construction process and not just an 'add on' or the duty of those with health and safety in their job title.*

Offers

- *The Energy Industries Council is considering issuing guidance to both its Manufacturing Members and Construction Contractor Members.*
- *The water industry through Water UK would welcome the opportunity to draft guidance for the sector.*
- *The CC is already preparing CDM Performance Standards with the Association of Project Safety. Their purpose will be to provide a framework of best practice on key management arrangements that will be supported by Coordinators and Principal Contractors. The NFB believes this will alleviate much of the conflict and distrust between the Coordinator and Principal Contractor, and provide a straight forward model for one-off clients with little grasp of good practice. We would welcome HSE support for this work.*
- *As a member of the Designers Initiative on Health and Safety Group (DIOHAS) we are already looking into this.*
- *Demolition is one area that would benefit from specific guidance - aspects such as structural safety, protecting the environment, safe recycling and drawing together the legislation that demolition works must consider (eg asbestos, pollution and control of waste) could be identified and guidance provided. The IDE is very keen to produce guidance notes for clients employing our sector.*



229. There were a number of other offers to produce guidance or to help. There were also some reservations:

- *But I am not volunteering!*
- *I am due to retire 2006.*

Guidance wanted

- *In the rail sector, the design and construction of infrastructure works is closely linked to operational safety of trains and other operational issues such as track possessions, train delays*

and passenger interface. Because of the large number of regulations that govern the industry, we have also found that the CDM regulations are perhaps given less prominence by rail clients than clients in other sectors. Therefore, we consider that industry specific guidance would be most useful.

- *Utilities often have to assume differing roles dependant upon the type of project and may find themselves taking all or some of the roles of client, co-ordinator, designer & principal contractor. Clearer guidance for diversionary works projects would be very useful and may help to establish a common approach. We suggest that utility industry guidance could be prepared through the auspices of NJUG (National Joint Utilities Group) of which the majority of utilities are members.*
- *We feel there would be a benefit from additional sector guidance for Nuclear Decommissioning.*
- *Yes, most definitely for the Telecommunications sector.*
- *Clear guidelines for specific areas, e.g., schools, social services, would be beneficial.*
- *Specific guidance for Fire and Rescue Services would have some obvious benefits in terms of consistency of approach and application of any duty to enforce etc, however this is best developed within Fire and Rescue Services preferably on a national or regional basis, with advice and assistance from the HSE.*
- *Guidance to suit the different types of project such as: demolition, refurbishment, design & build, partnerships & PFI projects would be advantageous*
- *for street works (civil engineering, highways, bridges, tunnels), as the application of the CDM regulations over the past 10 years has required considerable industry interpretation to "fit" the requirements to the contractual and operational interfaces*

Against

- *The more you make the guidance specific and detailed, the less incentive for people to think through what they are actually trying to achieve and the greater the tendency to throw paper at it - the weight of evidence etc.*
- *Not sure that it would benefit. The likes of CIRIA etc are bound to issue such info in due course.*
- *This will only add to the confusion.*
- *We are not in favour of proliferation of documents. Inevitably there will be different nuances, which will confuse the picture. In any case the current set of documents is more than ample.*

Co-ordination and control

- *We urge that all guidance should continue to be both overseen and published by the HSE. This is to ensure an objective and independent approach to managing health and safety and also one which is perceived to have come from the enforcing authorities. Otherwise there is a strong possibility that it will be largely ignored.*
- *An important consideration when working with stakeholders to develop guidance is the avoidance of conflicting standards and approaches. HSE needs to avoid the proliferation of numerous quasi-official guides to health and safety in construction which could add to the various areas of conflict between duty holders. Care needs to be taken to support only those publications that carry significant support from across the appropriate range of stakeholders.*

Enough already!

- *I believe that info such as the HSE website, www.safetyindesign.org and CIRIA Report C611 go a long way to making guidance crystal clear. There is already plenty out there for those interested.*
- *We are already suffering from information overload - I visit the HSE website with trepidation, wondering what new documents have appeared this week!*

Question 24 – Other comments

230. There were nearly 60 pages of general comments by respondents. It is obviously impossible to cover all of them in this summary, so preference has been given to practical comments/suggestions not covered in the other more specific questions.

General

- *There is no doubt in our minds that the CDM Regulations have made a major contribution to considerably improved health and safety awareness and performance in the past ten years. Working conditions on construction sites are much better and everyone in the design team gives far more consideration to health and safety than ever before. We are certain that this has resulted in far fewer accidents on building sites than would have been the case if the CDM Regulations had not been introduced.*
- *The success of the revision will, however, depend on how it is viewed and applied by the industry. The document recognises that specifically by stating: "the industry culture is the biggest hindrance to progress".*
- *I am concerned about the wooliness of the REVISED regulations. They are so unspecific and leave so much to interpretation that I cannot see them working properly.*
- *The proposed Regulations are clearer to understand than the 1994 version, with duty holders responsibilities clearly set out. It is also clear that bureaucracy should be reduced, however there is a concern that the Information Pack and increased involvement of the Co-ordinator could get out of hand, as is currently the case with the H&S Plan and Planning Supervisor.*

Communication

- *For the projects that we have dealt with as Planning Supervisors it is the exception rather than the rule that a Pre Tender plan has been sent out to prospective contractors. However I am not aware of any contractor that has not visited the site of work and is aware for example of traffic conditions, adjacent land uses, the presence of overhead services. In many cases the work is taking place in the contractors local area and he knows far more detail about the area than would ever be included in a pre-tender plan.*
- *The revised guidance should have a greater emphasis on effective communication and there should be a requirement for project planning to be discussed and agreed to avoid the current problem of plans being 'sent and filed' without proper consideration of the contents.*

Dutyholders

Clients

- *The client may ultimately have to pay more but why should society bear the cost in the short, medium & long term.*
- *Royal Mail Group plc – The proposed Construction (Design and Management) Regulations (CDM) are potentially more helpful to the client, and the role of Project Coordinator should be more effective than that of Planning Supervisor.*
- *As a Client RM is in overall support of the draft CDM Regulations, because RM recognizes that clients have ultimate control over the resources and time devoted to a project.*

Co-ordinator

- *RM is keen to make safety management central to the management of construction projects, combining the roles of Project Manager and Project Coordinator. It must be recognized that the*

market may not be able to provide persons and firms who have the necessary competence.

- *I believe one of the main reasons for late appointment of the planning supervisor currently is that his only tangible output is the pre-tender health and safety plan. The perception of ill-informed/less competent organisations is therefore that the planning supervisor is only needed when the project is ready to be tendered. This is a self-fulfilling prophecy in that late appointment leaves the planning supervisor's hands tied with respect to the design. The view has managed to persist following ten years of working to CDM. It is therefore unlikely to be changed overnight by the introduction of the new regulations.*

Designers

- *The definition of designers must be expanded to include designers of large fixed plant that goes inside a building but whose construction/erection at site also falls within the scope of these Regulations.*
- *When I attended an RIBA CDM training course in 1994 (ish), the implication was that site safety risks should be considered as part of the feasibility design process, and influence the creation of a building project from conception. In reality, the die is often cast by greedy landowners, who obtain an Outline Planning Permission with an indicative layout which has given no thought whatever to safety issues.*

Principal Contractors

- *CDM2006 should remain as flexible as possible in allowing PCs to achieve the goal-setting requirements of better risk management & improved safety for workers.*

Contractors

- *Contractors have to provide information and training to their employees regardless of whether or not a project is notifiable under the Management Regulations.*
- *How are the new regulations going to improve H&S in construction if contractors are to monitor own work, check competencies etc.*

Enforcement

- *The competency of HSE field inspectors is of great concern to the industry. It has become evident that in many instances they are not qualified to comment on construction management and methods. A more effective and acceptable resource would be having dedicated special inspectors for the construction industry.*
- *UCATT – The role of enforcement is crucial to ensure compliance with the proposed Regulations. Many of the difficulties identified with the current Regulations could be overcome if contractors and clients knew that they were likely to be brought to account if they failed in their duties. The current level of inspection means there is little possibility of a site being inspected.*

Guidance

- *The guidance section needs to be sharpened and made more concise. At present it will not encourage use for reference. The examples may look good but they take up a lot of space and are likely to be read once and not used for ongoing reference and support.*
- *greater emphasis on effective communication and there should be a requirement for project planning to be discussed and agreed to avoid the current problem of plans being "sent and filed" without the proper consideration of the contents.*
- *the proposals still assume that the processes in the industry follow a straightforward, sequential route whereas in reality they are circuitous, convoluted and complex - particularly with the*

multitude of procurement methods that presently exist.

- *A worked example of a Project Risk Register would assist many practices to understand what is being suggested.*

Regulations

- *The language used in the drafting lacks precision, leaving too much open to the interpretation of the Courts.*

Title

- *The title of these proposed regulations does not suggest that they contain the remainder of the Construction (Health, Safety and Welfare) Regulations 1996. A suggestion for a new title would simply be the "Construction Regulations" (as was the original suggestion).*
- *Suggest brackets removed from title and comma inserted between "Construction" and "Design", i.e. The Construction, Design and Management Regulations - this would convey the change in emphasis proposed by the combination of the 2 sets of Regs.*

Application

- *There are frequent cases where large domestic projects take place that exceed 30 days or 500 person days. There is no question that such cases should be notifiable as they often involve significant hazards.*

Worker involvement

- *Amicus feels the Regulations should encourage companies to have working relationships with trade unions, and the appointment of trade union safety representatives. The Regulations should mention the importance of setting up safety committees with adequate authority to make appropriate decisions. We are not asking this as a matter of course and we are familiar with the concept of wider worker involvement, as opposed to one, which is, trade union influenced. However, the opinion of well researched material shows, trade unions instigate superior training and support for Reps and that those Reps benefit all persons on construction sites.*
- *We would want the Regulations to stipulate that documents concerning health and safety issues such as risk assessments and method statements be automatically provided to safety representatives. We are not suggesting that the requirements in the SRSCR are unnecessary repeated. But we wish to emphasise in these Regulations specifics to this industry and to encourage procedures to be automatic rather than requested.*
- *In Regulation 19 the requirement for Contractors to provide their workers with the results of their risk assessments as a matter of course before work begins should be extended to include all other persons who have a responsibility to carry out risk assessments for their employees working on the site. The Regulations should encourage the appointment of trade union safety representatives and the setting up of safety committees. All risk assessments should be provided to safety representatives as a matter of course.*

Information pack

- *The change toward a broader definition of the type of information required may reduce the tendency for Clients, Co-ordinators and designers to provide 'generic' pre-tender plans and design risk assessments, but does present some difficulties. The reference to this information as 'the information pack' is likely to reinforce the unwelcome tendency to produce generic documents and should be removed from the ACOP/Guidance. The robust stance taken in the guidance material is welcome and should if anything be expanded upon to ensure that only meaningful,*

relevant, project specific information is provided. Although other values such as team working and support for effective project management may be influenced by the Regulations it is the culture within the various organisations that will determine this success.

Health and Safety File.

- *271, (e) details of contractors and designers. This information should be provided in the health and safety files. Few Clients receive or even want design information for their structures at first. However when they subsequently consider modifying their structures/premises they need this information. It is important that salient design information can be tracked down by contacting the original parties.*
- *Safety File requirements should apply to all construction work, i.e. notifiable and non notifiable since contents will be required in future etc.*

Schedules

- *Section 8 (4) (ii) - Details the requirements for retention of reports, would it not be advantageous to use similar wording to the new 'Work at Height' Regulations 2005 which states in Regulation 12 (8) (b) 'thereafter at an office of his for 3 months'. It would be of value to use the same type of wording in the CDM Regs. as this would start to give consistency and a better interpretation of requirements across industry.*
- *Schedule 3 Reg 2(2) - why restrict to projecting nails? What about screws, staples, glass, etc?*
- *Schedule 3 - 6 (4): "Excavations" this should not be limited to "supported" excavations but apply to all excavations.*

Welfare

- *Provision of Welfare Facilities on site as a duty of both the Principal Contractor and the Client is an excellent change, as many clients encourage contractors to cut corners and do not consider the welfare of operatives as any of their concern.*
- *We support the onus placed upon duty holders to ensure that adequate welfare facilities are in place at the start of the construction phase.*
- *My Union finds it unacceptable that the proposed amalgamation of the Construction (Health, Safety & Welfare) Regulations will create a dilution of the current regulatory provisions insofar as welfare arrangements are concerned. At present there is an absolute duty on employers to provide or make available suitable welfare facilities on construction sites, but under the new arrangements this absolute duty would be transferred to the Client and Principal Contractor which would only apply if the work is notifiable. The contractor (or employer) would instead only have to ensure such provision so far as reasonably practicable.*
- *For those workers engaged on non-notifiable work, this would take them back nearly ten years when often the railway employers would argue there were practical difficulties in providing welfare facilities for short term work. The proposed lowering of the legal standard obviously reflects an attempt to resurrect this view, yet fails to recognise the practical difficulties for the workers who for example, may have no access to a toilet for an entire shift.*
- *It is my Union's clear view that the nine years in which the employers have been required to comply with an absolute duty would have obviously overcome any practical difficulties there may have once been e.g. by the use of specially adapted vehicles. Accordingly, we can see no justification as to why in this modern day it is now felt necessary to revert back to a dilution of the certainty of the employer's legal duty to provide or make available adequate toilet and washing facilities for their staff.*
- *But now is the time to review the provision of welfare facilities which are being moved from the*

Construction (HSW) Regs. They are currently too weak in their requirement.

- *It is not unreasonable for the client to have to allow for welfare facilities and for a period of time to prepare for the commencement of site works. However, the Principal Contractor is best equipped to assess the need for welfare facilities. Therefore, the Principal Contractor should be required to advise the Client, and to confirm that any arrangements that are put in place are adequate and will be maintained.*
- *The requirements for welfare facilities (Schedule 2) do not appear to contain any requirements for heating. We suggest that all of the facilities outlined should have stated requirements for cleaning, heating, lighting ventilation and maintenance.*

F10

- *I find it difficult to see the logic and benefit of the F10, in its present form, because it is widely accepted that the HSE do not have the resources to review the vast majority of them.*
- *Redesign the F10 along the following lines (Think of the "special waste" consignment note arrangements whereby all the duty holders sign on to acknowledge their duty)*
 - *Multiple copy sheets. (Gateway procedure)*
 - *Signed and dated by the Client to give the form authority.*
 - *Signed and dated by the first appointed project co-ordinator (1 copy retained by him)*
 - *Signed and dated by the lead designer (1 copy retained by him)(1st co-ordinator)*
 - *Signed and dated by the Principal contractor (1 copy retained by him)*
 - *Signed by the Client/project co-ordinator and the Principal contractor when all the conditions and requirements of the regulations have been met, giving authority for the construction work to begin. All parties should retain a copy of this sheet and the original sent to the HSE.*
 - *The Completed F10 should then be displayed in the traditional manner. Copies of the final F10 can presented to other contractors / designer etc, to enable them to fulfil their duty to ensure that the Client is aware of his duties, a co-ordinator and principal contractor have been appointed and that the HSE have been notified about the project.*

Transition

- *Transitional period unclear*
- *The period of transition must consider those projects in an advanced state upon introduction of the Regulations that have an extensive construction programme in progress. In addition the new role of Co-ordinator is potentially much more onerous and will require greater resourcing.*
- *There will be significant potential contractual and fee implications for Planning Supervisors if a reasonable transition period is not allowed for the change over from Planning Supervisor to Co-ordinator role on existing projects as the new role is potentially much more onerous and will require greater resourcing.*
- *for projects that are underway, e.g. the design and/or construction phases, at the time of the new Regulations coming into force there should be a transition period of at least six months.*

DTI

- *The intention of this regulatory change fits with DTI's improvement agenda for the construction industry. We place a particular emphasis on improving the Sector's Health and Safety record as part of the wider Rethinking Construction Accelerating Change industry improvement agenda, and*

we consider the proposed change to be important in achieving this. It is important to make the CDM revisions, clear and accessible to all involved. It is essential, however, that all types of client and suppliers are capable of complying with the Regulations (through adequate experience, possession of guidance etc).

Launch

- *We urge that these new regulations and the approved code of practice are widely publicised and the opportunity is seized to remind employers - and other duty holders - of their obligations particularly as there are new duties and new roles. Providing free information on the HSE website and elsewhere will be crucial in getting the message over*
- *Training on the new Regulations, and particularly their practical application on a variety of schemes, will be crucial. This applies to existing staff who need to swap from the current Regulations, but equally to new starters who are currently being trained through Further and Higher Education routes. These are the engineers of the future, and a strong emphasis on health, safety and welfare at college/university will ensure that the industry continues to improve its record.*
- *How will these changes be publicised throughout the parties they relate to as we all know there are significant numbers involved in all stages of Construction from Design to Management when asked state "What are CDM Regulations? Never heard of them should I know about them?" - to succeed with improvements the publicity needs to reach as near as possible 100 percent of those involved. I would suggest a campaign similar to the current advertising for the back campaign.*

Other

- *In para 7(2)(b)(iii) of the draft Regulations there is a duty imposed on the client to appoint persons engaged as designers or contractors in a "suitable sequence and in good time" This only hints at the need for early appointment of consultants and contractors to engage in constructive dialogue together. But to achieve such an objective, we need much more than oblique signposts. Unless appointments are made early enough, how can the coordinator effectively discharge his functions in para.13?*
- *We propose, therefore, that para 7(2)(b)(iii) is replaced as follows:*
- *"Ensuring that persons are appointed under Regulation 8 or persons having a significant involvement in design, planning or other preparation for construction work are appointed before the construction phase begins."*
- *The design process is iterative. It demands a dialogue between all designers - consultants, contractors and manufacturers - to develop solutions that help eliminate or reduce health and safety risks. There is little communication between the various parties. It is, therefore, not surprising that recent research has reinforced the point that the most significant area of weakness - as far as health and safety is concerned - is at the design and planning stages.*
- *The key aim of the revisions is to promote changes in behaviour and attitudes towards safety and health issues within the construction industry, whilst improving clarity of what is required of the duty holders. We must now ask, has this aim been achieved? My own view is that whilst changes seeking clarity have been attempted, extra complications have now been introduced, which could cloud the issue.*
- *CDM Regulation should include responsibilities for the **manufacturer** of materials and components which are now the responsibility of designers. A few examples are;- heavy blocks, plasterboard sheets, rolls of roofing felt etc. etc.*
- *All those involved in the construction industry should be committed unequivocally to reducing further on-site risks and hazards with an ultimate goal of preventing all fatalities. Any moves to*

ensure better forward-planning must in our view represent positive steps forward in helping to prevent tragedy or simply unnecessary and costly accidents. Health and safety management should be an integral part of good business and project management as, ultimately, healthier and safer projects result in more profitable projects.

References to early involvement and integrated teams are of course welcome, but these should be put in the context of overall Project Management Best Practice with reference to the CIOB Code of Practice, APM Body of Knowledge etc. Also, references to management arrangements and the definition of roles and responsibilities appear to ignore the Project Execution Plan, which is a widely used project management tool.

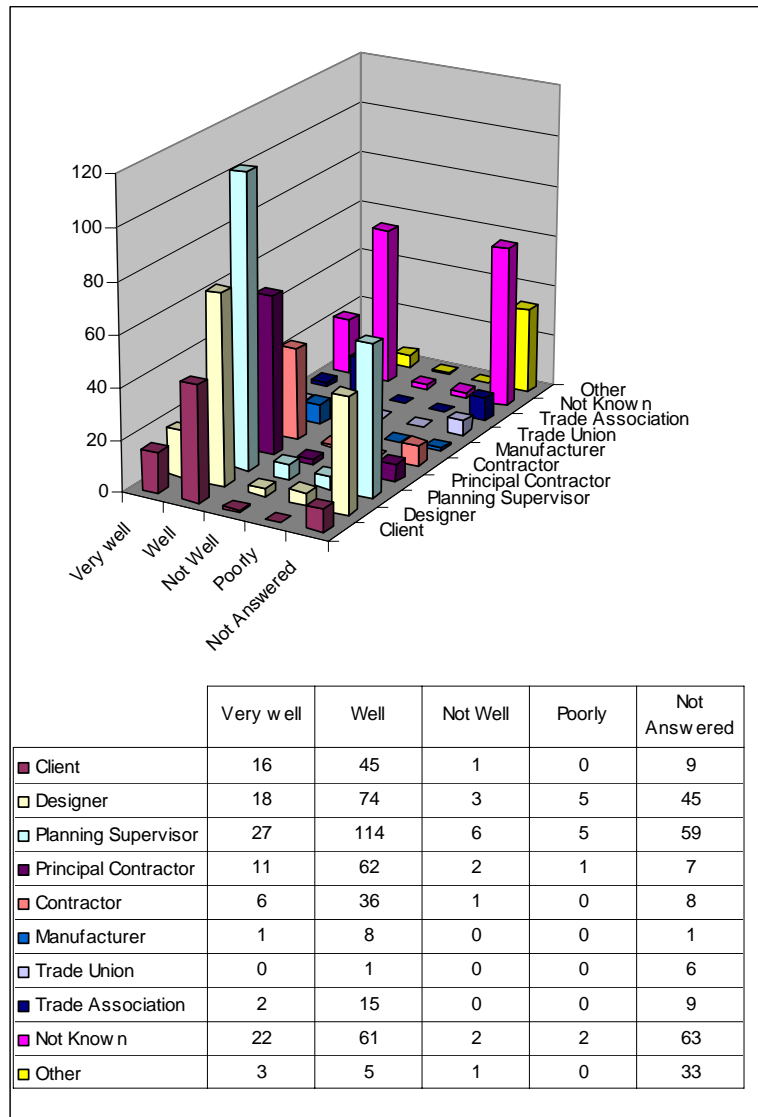
As such, we fully support the aims of this review to integrate health and safety into the management of projects and to encourage everyone involved to work together to:

- *improve the planning and management of projects from the very start*
- *identify risks early on so that they can be eliminated or reduced at the design or planning stage and the remaining risk can be properly managed*
- *target effort where it can do the most good in terms of health and safety*
- *discourage bureaucracy.*

Q25 – In your view, how well does the Consultative Document represent the different policy issues involved in this matter?

231. 19% (52) of respondents thought that the Consultative Document explained the policy issues **very well**, 74% (203) **well**, 3% (9) **not well**, 3% (9) **poorly**, but 38% (167) 93% did not answer the question.

232. More detail is shown in the graphs and tables opposite.



Q26 - Is there anything you particularly liked or disliked about this consultation exercise?

- *Overall, I have found the consultation to be stimulating, enlightening, depressing, confusing & ultimately, quite tiring.*
- *I think that the review and consultation process has been of great value and I hope that the responses from the industry in general have been informative.*
- *It feels like genuine consultation. I hope I won't be disappointed, and discover when the final regs are published that they have not taken on board valid comments that people have made.*
- *I also get the strong impression that all decisions have been made already, and that this is merely "lip service". Prove me wrong. (Maybe this was because discussion of the issues has been underway since the revision of the ACoP and, particularly through the Discussion Document 'Revitalising health and safety in construction.' As a result we did not enter this consultation with a clean slate.)*
- *In general I am most grateful to have the opportunity to view a consultation document and to learn from people in this way. I look forward to perhaps contributing more in the future.*
- *The language is suspiciously chummy for those who are about to sink their fangs into designers.*
- *The variety of means of accessing information, debating issues and submitting responses was particularly appreciated as it allows participation in accordance with the working methods of personal preference.*
- *The CD could have addressed the arguments relating to the needs of SMEs in some more detail. In particular, there is a strong body of opinion amongst contractors that some limited prescription is essential to ensure a minimum standard of acceptable practice on some issues. This was not accurately reflected in the CD, which clearly favours a goal-setting approach.*
- *I particularly liked the consideration shown to S.M.E.s who in the past have been burdened by Paperwork and Bureaucracy. Also the simplification of "Application" and "Notification" is long overdue.*
- *Consultation period too short*
- *Dislike length of time whole process is taking! If it is indeed evolution, many of the changes are overdue.*
- *Consultation exercise gave the opportunity for the HSE and industry to work together during this phase of the process. Opportunities for participation by groups and individuals were welcome. It is hoped that exercises such as these should help raise the health and safety standards within the industry.*
- *Profession institutions working in partnership with the HSE in these matters is very useful and should be strongly recommended for future consultations.*
- *Good use of plain English in all the documentation. File sizes kept to a sensible size for downloading.*
- *Dislike it was very long*
- *Not widely advertised outside the construction industry. The company was only made aware of the new proposals via membership of BHSEA.*
- *The extended period of prior consultation and the effort put in by both HSE and industry, especially the Institutions and Constructing Excellence, has ensured a wide range of those involved and wide range of comments. It has also resulted in a draft set of regulations and guidance largely in line with what was being asked for by the industry.*
- *Members have complimented the efforts of HSE at branch level where talks have been provided to look at this document. It has brought many like minded people together, encouraging further*

dialogue and understanding.

- *Proposals easy to understand and objectives made plain. Stats given in RIA are useful to give context.*
- *Feels to be insufficient understanding of the reality of the industry. Proposals are slightly academic and naïve.*
- *I liked the openness and accessibility.*
- *Particularly liked the on line consultation and discussion commentary provided with the selected questions.*
- *Some of the key issues as I see them are not included with the questions. Some of the questions did not seem important.*
- *The consultation appears to be have been wide ranging - I don't envy you the task of making sense of all the various responses! (Tell me about it!)*
- *Most will have got bored and committed too much time by this stage of the excise and will be reluctant to continue with further comment on each Regulation as follows - I know I am!*
- *There has been more effort to reach a wider audience than in previous consultations and the internet discussion forum has been interesting and useful.*
- *Better thought out and less radical proposals would have been easier to interpret, assess and comment on.*
- *I liked the explanations given, layout of the Regulations, format for the Guidance and the ease of reference and reading, not sure about your example of Integrated Risk Management - this may blow the minds of the smaller company management who are less likely to understand qualitative and quantitative, the flow charts may well be helpful to many in their planning and management of projects. Reference and H&S legislation tables are also helpful.*
- *The CD is well written and is easily understood.*
- *The role that the HSE have played in the consultation has been very good. This includes the use of the HSE web site and discussion forum, and also the series of consultation events that have been run.*
- *The iterative approach that the HSE have used between drafts has given the impression that views will be considered.*
- *It is helpful to have the questions presented throughout the consultative document and to be asked for specific responses, with an additional opportunity to present views. The HSC has been frank about the thinking behind the proposed regulations.*
- *This is the first consultation exercise of its kind that I have experienced. I found the whole process very well planned and managed. The website is excellent, the document clear and readily available and the consultation meetings very well organised and publicised. The timescale allowed for the consultation period has also been generous and much appreciated.*
- *Overall, very many thanks for the time and efforts being put into the exercise. I came away from Keele really believing that our opinions and feedback were both genuinely sought and would be carefully considered. It has spurred me on (very late in the day) to make this formal submission.*

Questionnaire

- *The questionnaire appeared to miss some key / critical areas of the Regulations - see my response to Q24 for my extra comments*
- *The statistical system does not seem to be accurate - you can answer a question (Y/N) but if you do not comment, the answer is not counted! (The number or people that didn't answer particular questions were counted, but it is difficult to deduce why someone didn't answer. It may be that*

they didn't like the question, or possible answers, that it was not relevant to them, or that they were in a hurry. The comments boxes were intended for those who wanted to say more, but could have been designed better.)

- *Completing the questionnaire online and being able to see the responses is good*
- *Only one took place in NW England (Manchester) and we were unable to secure places. Also it was held late in the consultation period (14 July). In future more events should be held and timing improved. (There were actually 3 events in Manchester, 2 at the end and one at the start of the exercise organised by a local group, but supported by HSE. It was disappointing that we had refuse bookings for some of the events only to find that there was plenty of space because people who booked didn't come.)*
- *Online questionnaires not straightforward to use - registration difficulties.*
- *In the introduction to the document comments are invited on matters which were not referred to in the questionnaire. It would have been better if these matters were brought into the questionnaire for ease of response. (We didn't want to end up with a 100 page long questionnaire!) Although consultees were invited at the very end of the document to provide specific comments on the draft Regulations and Guidance, this should have been included as a question. By the time this was read, such comments had already been included in the answers to the questions.*
- *It would have been easier to answer if had been laid out in the regulation then ACOP then guidance style. To answer these questions & to review the document required constant flicking backwards & forwards through it.*
- *The questionnaire would have been helpful if it had been cross referenced with the clauses and or pages that the questions referred to but that would have proved my laziness in not being able to quickly do that myself.*
- *The questionnaire presumes agreement with the principles of CDM as current and proposed in the CD. No allowance has been made for alternative proposals different to the current regulation systems.*
- *No **neutral** or **don't know** voting options. (The answers were designed to discourage people sitting on the fence.)*
- *Like that could reply on line.*
- *I liked the fact that it was open to all and that I could participate from the other side of the world!*
- *You cannot revoke both the yes and the no answer once one of them is keyed, to leave the question unanswered.*
- *Insufficient options for a "Yes, but" answer. The format is too proscriptive. This is worse if you use the on line questionnaire which appears to offer only a Yes or No option for many questions. (Yes, but ... we'll try and do better next time!)*
- *Disliked Questions posed they were from regulator view not user view, and seemed skewed to looking at the issues from a very black and white perspective. No questions on CHSW Regs. (True, but we did invite comments on any aspect of the draft guidance or regulations and provided questionnaires to capture such comments.)*
- *You can't run a spell check. This is extremely irritating. (You should try reading all the comments with the spelling mistakes! This is a **feature** of the on-line questionnaire software and with protected forms in Microsoft Word. The only way round the Word problem is to use a macro, which many company systems won't allow, or to compose the response elsewhere and paste it in. Not ideal, I'm afraid.)*
- *The concern is that bodies such a TUC, MCG, IOSH etc do not carry enough weight in relation to individual responses. (Weighting responses is quite difficult. Large organisations can bring together the experience of many members, but any individual can have a real insight into a*

particular issue. What we have done is to compare the answers given by different groups, eg by dutyholder or size, and then to explore any obvious differences. As you can see from the graphs there weren't many such differences in this exercise.)

- *Liked the ability to develop the response over a period of time, the occasional reminder by email that the deadline was approaching. Liked the availability of the consultation manager to answer questions by email. Disliked the fact that I lost a whole section of answers because I did not press 'finish' before going back to another section to check something. When I went back to the section I had been working on, it was blank. As the coordinator of comments of a number of members for a professional institution I was able to give them my password so that more than one person could work on the document.*
- *Finally, it was helpful to know that we could just send comments if we couldn't find a section that matched our comment. Specific questions help consistency and statistical analysis but you run the risk of being too 'leading' in the consultation.*
- *On line system quite annoying.*
- *I have to say that aspects of the electronic approach that HSE adopted in this consultation (and other recent consultations) are quite frustrating. It is very difficult to read long documents for consultation on a screen and downloaded unbound pages are quite unmanageable. Please continue to keep paper copies available.*
- *The electronic format of the questionnaire was particularly annoying. Members of our Association prepare their comments that are then usually transferred to a form, which can be submitted electronically if desired. However the work of filling in the form is not carried out 'on line'. Forms that we prefer include ISO/BSI comment forms, forms used by the Scottish Executive and most forms issued by ODPM. These are simple Word documents that allow the respondent to work off line, to increase the space where a lengthy response is needed and reduce the space where appropriate.*

Road show

- *The debate at the road show meeting*
- *I thought that the Road Shows were good - and well attended, though the Leeds one made it seem as if the HSE agenda was to get designers doing the new role as a way to improve their H&S competence*
- *After attending the HSE Consutation Event at ICE, I was encouraged by the proposed changes*
- *The consultation road-show was excellent*
- *Good support for the consultation process with events all over the UK in numerous groups.*
- *The Roadshows were very well received and provided good feedback. They also fulfilled a valuable educational function across the industry.*
- *Taking the consultation process to the industry via the roadshow (supported by ICE, construct excellence) was a very good means of demonstrating HSE commitment.*
- *The briefing sessions held in May/June were also extremely helpful and informative.*
- *Overall, very many thanks for the time and efforts being put into the exercise. I came away from Keele really believing that our opinions and feedback were both genuinely sought and would be carefully considered. It has spurred me on (very late in the day) to make this formal submission.*
- *Disliked the fact that it appears that HSE have already decided what they want to happen. Reports from a number of consultation meetings indicated that the HSE speaker did not have an open mind, but spent most of his time justifying the case for retaining the wording in the document.*

On-line Forum

- *I read all the on-line contributions and whilst a few made worthwhile contributions the vast majority wanted to change the proposals. The competence debate was graphically illustrated with contributions by BS.*
- *I think the online comments were interesting and there were many good ideas coming out once we had got over the initial blowing of trumpets and tit for tat responses. On the more serious comments it was good to see comments being returned from HSE were perhaps other legislation dictates the way the regulations are drafted or people were getting ahead of themselves.*
- *too much haggling over unimportant pieces of the regulations instead of concentrating on the important issues, point scoring on designers or ps or contractors instead of trying to ensure that they are sorted out this time, a waste of time.*
- *The discussions by e-mail were good.*
- *The discussion on the intent was helpful to understand the framing and purpose of the various requirements.*
- *Although I read a (too) few interesting comments on the web site discussion page it all seemed rather unstructured & an excuse for some people to sound off on their own "pet" subject. No conclusions seemed to be reached. Could it have been structured to have discussions based on say Qs 1 - 24 or group them together. That way, if you were thinking about a particular question, it would be easier to check out that discussion page & check other opinions \ thoughts. (It was very difficult to impose any structure on the discussions, but it may have been more useful if we could have found a way to do so.)*
- *Liked the online discussion process very enlightening seeing the points of view of people in other sectors of the industry.*
- *The on-line discussion forum proved to be extremely usefull in understanding a broad spectrum of views , and is quite an eye opener . It's worrying to see that so many people who are presently carrying out the PS role have an unclear appreciation of what they should be doing .Conversly there were many contributors who were the total opposites - in having a clear understanding of how to provide a proffessional service - these later examples illustrate the qualities that all CDM coordinators should be aspiring to.*
- *At times is was undemocratic and that the views of those in the workplace were often given far less worth than the views of those in professional occupations removed from site responsibility.*
- *I thought the on-line discussions more interesting to start with however I trust that in future they will be more focussed. Fairly quickly I gave up looking at them to concentrate on the Regs.*