

Health & Safety CDM REGULATIONS 2006 ANTICIPATED KEY CHANGES & PUBLICATION TIMESCALE AMENDMENT

CDM Regulations 2006 aims for reduction in bureaucracy

BACKGROUND

Following the introduction of the CDM 1994 Regulations and its accompanying Approved Code of Practice, the HSE were disappointed, not with the Regulations, but with the way they were being implemented. They wanted, amongst other things, *“to substantially reduce the amount of bureaucracy in the CDM process”*. In February 2002, a new Code of Practice and Guidance was published seeking to redress this. One part of the introduction reads: *“Any paperwork should contribute to the management of health and safety.. . If you are asked to do something under CDM which does not produce a health and safety benefit, there is probably a misunderstanding of what the Regulations require.”*

All of the hoped for benefits did not follow. Later that year, the HSE published a Discussion Document: *“Revitalising Health and Safety in Construction”* and this has led to the proposed new CDM 2006 Regulations, which went out for consultation in the first half of 2005. The consultative document is available at <http://www.hse.gov.uk/consult/condocs/cd200.pdf> . Responses were to made by the 29th July 2005 when *“more weight will be given to responses that provide reasoned arguments.”* The aim is to have the new Regulations in place by October 2006.

COST OF ACCIDENTS

The Regulatory Impact Assessment (Partial) with the Consultative Document states that, while Construction accounts for 6% of the workforce, it accounts for 25% of workplace fatalities! In a typical year they estimate that the estimated annual costs of accidents in Construction is **staggering**:

Reportable	£ 640,000,000
Minor	£ 19,500,000
Non-injury	£ 1,075,500,000
TOTAL	£ 1,735,000,000 (10% of GDP)

KEY PROPOSED CHANGES

The Consultative Document begins with a Summary and Introduction which include the following useful comments:

“The proposals 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 documents adding to bureaucracy without adding value.”

“The proposals ... recognise that competence is crucial, and that the person best placed to do something may not necessarily be the best suited.”

“Although the Consultation Document focuses on proposed legal changes, we must not lose sight of the need to promote changes in attitudes and behaviour within the industry. Without such changes, no set of regulations can achieve the step-change in health and safety that we want to see.”

“The key objectives for the revision of CDM should be to improve the management of risk by:

- simplifying the Regulations to improve clarity - so making it easier for duty holders to know what is expected of them;*

- *maximising their flexibility - to fit with the vast range of contractual arrangements;*
- *making their focus, planning and management, rather than the plan and other paperwork emphasizing active management and minimize bureaucracy;*
- *strengthening the requirements regarding co-ordination and co-operation, particularly between designers and contractors - to encourage more integration;*
- *simplifying the assessment of competence (both for organisations and individuals) to help raise standards and reduce bureaucracy.”*

The Document continues with a Key Changes section, the proposed Regulations, and the proposed Guidance document.

The main points raised are:

Application and Notification

There will only be two types of construction project

- notifiable and non-notifiable.

For all projects

- non-domestic clients to check competency of appointees;
- designers to eliminate/reduce risks and provide information;
- contractors to plan, manage, monitor, train, etc.; and
- appointees to take on only what they are competent to take on.

For notifiable projects (more **than 30 days** on site or more than **500 man days** on site):

- clients to appoint Co-ordinator and Principal Contractor, ensure plan and welfare in place before work starts, and ensure that the H&S File accessible.
- Co-ordinators (Planning Supervisors mark 2) to advise and assist clients, notify HSE, manage communication, prepare and update H&S File.
- Designers to check that the client is aware of his duties, check that the HSE has been notified and provide information for the H&S File.
- Principal Contractors to plan, manage and monitor the work on site, ensure welfare in place, etc.
- Contractors to check client aware of duties, that a Co-ordinator has been appointed, that the HSE has been notified; and to provide information for the H&S File.

Competence

- Appointees have a new duty to make sure that they are competent to do what they are appointed for.
- The emphasis is on competence for the actual job and not a bureaucratic process.

Co-operation

- all involved are to co-operate, including different projects on the same or adjoining sites.

Worker engagement

- there must be management commitment and effective procedures for achieving proper consultation with the workforce.
- evidence will be required that workers' views are properly taken into account.

Client's role

- Clients are the key dutyholders. Of the seventeen Regulations in the section replacing CDM 1994, seven relate to client duties.

"We are ... proposing a new duty on clients to ensure that suitable project management arrangements for health and safety are in place. Clients are not expected to develop these arrangements themselves and few have the expertise to do so. They should be able to rely on the advice and support of their construction team and, in particular, the Co-ordinator."

- no more agents (*"the anomalous freedom ... to absolve themselves of their legal obligations."*) though several clients can come together under common management.
- developers are no longer separately addressed.
- client will be the default Co-ordinator and the default Principal Contractor.

Planning Supervisor

- to be called "Co-ordinator". The use of 'planning supervisor' has long been misunderstood as they neither plan nor supervise. 'Co-ordinator' comes from the Temporary or Mobile Construction Sites Directive which used the term 'pre-construction health and safety co-ordinator'.

"Co-ordinators are not necessarily designers, and do not have to undertake any design work themselves, but in order to assess the health and safety implications, they must have sufficient knowledge of the design process to enable them to hold meaningful discussions with designers, and participate fully in relevant design team meetings."

- Skills required:
 - good interpersonal skills
 - sound working knowledge of:
 - health and safety in construction work;
 - the design process;
 - other aspects of planning and preparation for construction work; and
 - site processes
- to advise and assist the client (positioned as the "client's friend"). This is intended to give the Co-ordinator more teeth — snub the co-ordinator and you have snubbed the client!

- There is no longer a duty *“to ensure, so far as is reasonably practicable, that enough attention has been paid to health and safety during design; and that the design includes adequate information about anything which might affect the health or safety of people carrying out construction or cleaning work, or anyone else who might be affected by this work”*. There are to be no excuses for a designer who does not fulfill his own duties.
- The client to ensure that co-ordinators carry out their duties.

Designers

“We fully recognise that, as well as health and safety considerations, designers need to take account of issues such as aesthetics, buildability, and cost. The challenge is to ensure that health and safety considerations are not outweighed by aesthetics and commercial priorities and, conversely, that health and safety does not inhibit aesthetics.”

- to include risks to persons using the structure as a place of work.
- local authority or government officials requiring particular features included or excluded are designers under CDM.

Principal Contractors

- no longer have to be a ‘contractor’.

Contractors

- a new explicit duty to manage their own work.

Mobilisation

- the minimum mobilisation notice is to be specified by the client.
- the client to ensure adequate welfare in place at the start of work on site.

Pre-tender / Pre-construction plan

- to be called the *“information pack”* to focus on communication rather than paperwork.

Health and Safety File

- one per site rather than one per structure.
- no domestic job is notifiable (still no duties for the domestic client).

Structure of the Regulations

- combined with remainder of the CHSW Regulations. This reuniting of CDM 1994 and the Construction Regulations, always part of the same EC Directive, should serve to remind designers that what goes on on site is of concern to them.

Demolition

- a new and explicit duty for the arrangements to be recorded in writing.
- the benefits of specialist advice is stressed.

Civil liability

- as before under the current CDM Regulations (Plan in place before starting and keeping unauthorised people out) and all of the current Construction (Health, Safety and Welfare) Regulations.
- New additional rights for employees (as with the Management of Health and Safety at Work Regulations 1999).

Enforcement

- As before but giving Local Authorities the opportunity to use CDM in enforcement action,

Transitional Arrangements

- no need to revisit actions already taken or agreed under CDM 1994.

Status of Guidance

Ordinary guidance only is proposed.

“ACoPs provide practical guidance on how to comply with legal duties, and have special status in that if a breach of those duties is alleged, and the guidance in the ACoP has not been followed, the burden of proving that the duty has been complied with by some other means falls on the duty holder.”

“Ordinary guidance explains, in plain terms, what the law means or sets out best practice, but has no formal legal status. Following guidance is not compulsory, but if people do so, they will normally be doing enough for them to comply with the law.”

Revised Publication Timetable – CDM Regulations 2006?

On 28 February 2006 the HSE announces a revised timetable for the new CDM Regulations

The Health and Safety Executive (HSE) has announced the revised Construction (Design and Management) (CDM) Regulations would be implemented in Spring 2007. These Regulations will revise and bring together provisions in the existing CDM Regulations 1994 and the Construction (Health Safety and Welfare) (CHSW) Regulations 1996 into a single regulatory package.

In response to the three-month consultation exercise, which took place in 2005, the Health and Safety Commission (HSC) has agreed to postpone implementation from 1 October 2006.

The new timetable has the support of the Construction Industry Advisory Committee (CONIAC) CDM Review Working group.

Stephen Williams, HSE's Chief Inspector of Construction has recently said: “The revised CDM Regulations will replace the two key sets of existing regulations. When we began our review of those regulations, the HSC set us some important and challenging objectives. HSE and its partners believe we are well on the way to producing a set of replacement Regulations which will achieve those objectives, but we would be selling ourselves short if we rushed our proposals through. We need more time to make sure we get the changes right and the industry also needs to have adequate time to familiarise itself with the finalised CDM package.”

Stephen Ratcliffe from the Construction Confederation has recently said: “We recognise the importance of getting these changes right. Moving the proposed implementation date forward

gives us more time to prepare guidance for our members, and this will form an important part of the overall package”

HSC discussed a report on the emerging findings of the consultation at its open meeting in December 2005, and decided the new regulations should be supported by an Approved Code of Practice (ACoP) and industry-produced guidance. To give industry time to plan and prepare for the regulatory changes, HSE intends to make a final draft of the ACoP available 3 months in advance of the Regulations coming into force. In the meantime HSE will be working with the industry to co-ordinate production of industry-specific guidance as agreed by the HSC.

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SPORT ENGLAND INFORMATION NOTES

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