

Status: Fully Open

Paper Number: HSC/06/76

Meeting Date: 5 September 2006

Type of Paper: Below the line

Exempt material: None

Internet / Intranet embargo: None

HEALTH AND SAFETY COMMISSION

Summary of responses to the Health and Safety Commission's consultation on proposals for the revision of the Construction (Design and Management) Regulations 1994 and the Construction (Health, Safety and Welfare) Regulations 1996

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Issue

1. The summary report of responses to HSC's consultation on proposals for the revision of the Construction (Design and Management) Regulations 1994 (CDM 1994).

Timing

2. Routine.

Recommendation

3. That the HSC notes the summary report attached at Annex 1. The CDM 2007 proposals are currently being refined in the light of the consultation findings and ongoing discussions with key stakeholders. The HSC will consider the proposals at its October meeting before it makes formal proposals to Ministers in time for the revised Regulations to come into force in April 2007.

Background

4. On 8 March 2005, HSC agreed to publication of a Consultative Document (CD) on proposals for revised construction Regulations and supporting guidance material. Public consultation on the proposals ran from 31 March to 29 July 2005. The proposals consolidate the current legislation (CDM 1994 and the Construction (Health, Safety and Welfare) Regulations (CHSW) 1996) and aim to help industry by simplifying and clarifying the law and raising health and safety standards through improved planning and management of construction projects. Both sets of existing Regulations were made, in part, to implement the Temporary or Mobile Construction Sites (TMCS) Directive.
5. At its meeting in December 2005, HSC discussed a report on the emerging findings of the consultation (**HSC/05/123**) and decided that the

new Regulations should be supported by a “shortish” Approved Code of Practice (ACoP) and industry-produced guidance.

6. The more detailed analysis work has now been completed, and a summary report is attached at Annex 1.

Argument

7. Detailed analysis of the responses to the consultation has confirmed what was reported to the HSC in the ‘Emerging Findings’ paper presented to the HSC in December 2005 (**HSC/05/123**). The analysis report shows 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.
8. The Trades Union (TU) responses were strongly in favour of the consolidation of the two sets of Regulations, and welcomed the restructuring of the Regulations according to duty holder. They were particularly pleased to see the enhanced duties on clients and clarified designer duties, and felt that these should help to deliver gains which were envisaged by the original Regulations, but which had not materialised. All TU respondents made a strong plea for an ACOP, and have since welcomed the HSC decision to produce one. They also asked for strengthened guidance in the ACOP on competence assessment and worker engagement. The need for a comprehensive launch package and consolidation plan to ensure the benefits are realised was also emphasized.
9. The CBI gave wholehearted support to the objectives of the revision, particularly the need to place responsibility with those who had most influence over the levels of risk during the project. They were against the bringing together of the two sets of Regulations as they felt that each set of Regulations covered different aspects of risk and were relevant to different dutyholders. The CBI gave support to the preparation of an ACOP as this should provide clarity and command respect because of its special legal status. They welcomed the focus on ‘managing risk’ and reducing bureaucracy.
10. Responses from the Department for Trade and Industry (DTI) and Office of the Deputy Prime Minister (ODPM) were also supportive, but the DTI raised concerns about the ability of small and ‘one off’ clients to comply with the enhanced Client’s duty. They called for better guidance as to what was required of small clients, and felt that more detail was needed on the proposals relating to competence assessment. The ODPM suggested that there could be better integration between the new regulatory package and the Building Regulations, and felt that this could bring benefits for small clients in particular.
11. The initial review of responses revealed concerns about the ability of small and ‘one off’ clients to comply with their strengthened duties. There were

also concerns about the small number of responses from this group and their representative bodies. In response to this, in January 2006, HSE recruited an industry secondee for 3 months, to look in more detail at these concerns. Tim Kind (Senior Policy Adviser with the Forum for Private Business and a member of the Commission's Small Business Trade Association Forum) was tasked with making contact with organisations whose membership would include significant numbers of SMEs and micro businesses with the potential to be occasional clients in construction. He reported at the end of March 2006, and his findings are available on the HSE website.

12. 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. Any necessary changes to HSE's current enforcement or administrative arrangements will be incorporated into HSE's Simplification Plan and submitted to the Better Regulation Executive (BRE). The Guidance in the ACOP has been strengthened so that it gives clear and simple messages about what smaller clients are expected to do. In addition, the HSE is working with the CCG to produce simple industry guidance which will be distributed by Local Authority building control and planning departments so that it will be available at the point of need.

Presentation

13. The summary report at Annex 1 and a more detailed analysis of the consultation responses will be made public via HSE's Information Centre (Bootle), HSE's website and online CDM webcommunities after circulation of this paper to Commissioners. Details of how the proposals have been changed in response to the consultation will be presented to the Commission when the regulatory package comes to them for approval in October.

Action / Next Steps

14. The summary report will be made publicly available as described at Paragraph 13. The CDM 2007 proposals are currently being refined in the light of the consultation findings, the additional work carried out by Tim Kind and ongoing discussions with key stakeholders. CONIAC is currently considering the revised package and is expected to clear the proposals early in September. The HSC will consider the proposals at its October meeting before it makes formal proposals to Ministers in time for the revised Regulations to come into force in April 2007.

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Summary of responses to Public Consultation on the Revision of the Construction (Design and Management) Regulations (CDM) 1994, Construction (Health, Safety and Welfare) (CHSW) Regulations 1996, Approved Code of Practice and Guidance

Introduction

1. 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.

Question 1 - Responses to the DD (published 2002) indicated a clear view that the Regulations needed to be revised. Having seen the proposals do you:

- a) **support the changes proposed (in general terms);**
- b) **feel you would rather stick with the current Regulations and ACOP; or**
- c) **neither of the above?**

2. The proposals were supported generally by 275 respondents (83%), including the key stakeholders in both the CBI and Trades Unions:
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. and:

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. Again:

Yes, we support the change of cut off point for application of the regulations and welcome the emphasis on the client responsibility. and:

The split of notifiable [projects] v non-notifiable is much clearer.

3. Some saw a need for additional work: *We agree in principle to the proposals but feel that certain details need to be further developed to ensure that the objectives of the revision of CDM are achieved.*

A few did not oppose the initiative but were pessimistic about benefits: *I generally support the changes, but do not expect them to have a dramatic effect.*

4. 22 respondents (7%) preferred the existing Regulations. They suggested that: *The current regulations are generally adequate; and that HSC should:*

Retain the current Regulations [as] the new proposals [would] further confuse an already complex situation. and that:

Time and energy would be better spent maintaining the existing regulations and training the industry to root out the cowboys.

5. 34 respondents (10%) did not like the existing Regulations or the proposals: *Our view is that the existing regulations do need to change but that the current proposals are unlikely to make a significant difference and that a more fundamental review and change is required.* and:
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.

Question 2a – Do you think the proposals will help to reduce bureaucracy?

6. A very slight majority of respondents, 53% (164:148), agreed (or strongly agreed) that the proposals would help to reduce bureaucracy. : *In general the proposals do seem to be a step in the right direction.* and:
The reduced requirements for non-notifiable projects will reduce the bureaucracy for smaller projects and is welcomed.

7. Key stakeholders including the CBI trade associations and Trades Unions emphasised the need for a change in behaviour in relation to the bureaucracy associated with the regulations, and made the point that this will not be achieved by changing the Regulations alone. Those disagreeing or strongly disagreeing thought that bureaucracy might increase: *... the increased duties on the client will result in more paperwork to demonstrate compliance.* and:
The belief that HSE is targeting designers whilst failing to comprehend their role has added impetus to the need to produce documentary proof of every action as the penalty for failure is litigation. And again:
The requirement for an F10 form to be submitted early would lead our organisation to have to complete and send off a lot of forms for work that may never go beyond the concept and feasibility stage.

8. Finally, some respondents considered that bureaucracy (ie paperwork) was unavoidable and not always a bad thing: *... concerned that the emphasis on reducing bureaucracy will lead to a further deterioration in safety standards. It is ... accepted that in many cases risk assessments are not carried out and [we] believe there is a danger that this situation will get worse.* and:
Bureaucracy is inevitable in a system where compliance has to be confirmed and where the penalty for failure is prosecution. Or, more positively:
We do not see that the changes in the regulations will reduce bureaucracy per se. However, the 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.

Question 2 – Do you think the proposals will encourage team working?

9. A large majority of respondents, 74% (224:79), agreed (or strongly agreed) that the proposals would encourage team-working: *The proposals do encourage team working as a practical solution to addressing H&S issues.*

10. Those disagreeing or strongly disagreeing thought that factors other than regulation were key: *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.* and:
Better teamwork can be better encouraged by the involvement of the Trade Unions and their Safety Representatives.

11. Some saw industry culture as important: *Team-working within the construction industry can only be achieved if changes are made to its culture and to current normal terms of engagement and contractual forms.* The influence of government as a major purchaser of construction work was pointed out:
Whilst changes in CDM will encourage partnership working, changes to CDM in isolation will not achieve these ends in local government. There is a need for the HSE to consider wider government requirements such as procurement rules and use their influence to encourage other government departments to encourage the choice of procurement routes to allow greater partnership working.

12. The proposals introduce a new statutory role of Co-ordinator. Respondents saw value but also some risk in this: *The role of the 'co-ordinator' will be key to ensuring a team-working environment. The grouping of requirements by duty holders ensures that specific responsibilities are identified and also enables cross mapping of requirements.* but:
The new 'co-ordinator' role could cause trouble and disrupt team working and effective project management by cutting across existing lines of responsibility and interfering in other people's work.

Question 2c – Do you think the proposals will support effective project management?

13. The majority of respondents (72% (216:86)) agreed (or strongly agreed) that the proposals would support effective project management, including the key stakeholders from industry and the Trades Unions: *The regulations and guidance set a clear framework for effective project management.* and
CDM will be a supportive tool if it is embraced by the Project Managers/Leaders.

14. Some stressed the need for competence: *The proposals do support effective project management through the requirement for competence. However, although the regulations require that all parties are competent, there is no clear guidance as to how this competence is to be assessed. The HSE*

should work with industry to establish and support a common, clearly defined standard of competence.

15. Others urged the importance of early appointments, especially of the co-ordinator: *Effective project management will be encouraged through the early appointment of the Co-ordinator. If this is achieved then health and safety will be a consideration from the outset. and: [The proposals] are likely to support good project management - with the early appointment of a competent co-ordinator who can give positive guidance from an early stage on the health and safety and design issues so that the cost, quality and time parameters are successfully achieved. Time (or lack of) is always a major issue in project management - the new requirement to have a realistic mobilization period before construction starts on site is a new major benefit here. Again the new duty on the principal contractor to manage is very positive and will assist this.*

16. 28% of respondents disagreed (or strongly disagreed) that the proposals would support effective project management: *We believe 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. and: 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.*

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

17. This question attracted many submissions. The Trades Unions in particular emphasised the need for clearer guidance on competence assessment, and a number of industry associations made the point that competence assessment is one of the areas that gives rise to increased bureaucracy which is not always helpful in improving the management of risk on site. The following give a flavour of the contributions received: *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 curriculums. It is felt this would be a totally inappropriate area in which to have Regulation as it would stifle 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.

Question 4 - Are clients' duties reasonable and appropriate?

18. A significant majority of respondents (68% (207:96)) thought that the proposed duties on clients were reasonable. There was also strong support (75% (47:16)) among the clients who responded. The comments were fairly evenly divided between those who thought that the proposals were about right, went too far or not far enough. Some of the concerns that the proposals went too far related to drafting issues where respondents took a duty to be absolute, when it was only intended to require reasonable steps.

19. The CBI accepted that 'clients have a pivotal role in setting the overall framework in which the construction takes place (including the provision of adequate resources etc), but they and some industry bodies (notably the Construction Clients group) expressed concerns about the ability of small or 'one off' clients to meet the new duty without further guidance on what was required. Such clients were underrepresented among respondents (34 of the clients who responded were from organisations employing more than 500, while only 5 had less than 50.) Consequently, in January 2006, HSE recruited for three months an industry secondee – Tim Kind (Senior Policy Adviser with the Forum for Private Business) - to examine the concerns of these clients. Tim reported at the end of March 2006. (His findings are available on the HSE website.) The CDM 2007 proposals were subsequently refined in the light of this work, responses to the consultation, and ongoing discussions with key stakeholders before the HSC made its formal proposals to Ministers.

20. In response to Tim Kind's report, and related representations from the Construction Clients' Group (CCG), HSE 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 (LAs) 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.

One-off clients

21. Respondents pointed out that the majority of clients in the industry are one-off, rather than repeat, clients and almost all business in the UK will at some point engage the services of the construction industry, and the majority of these businesses are small or occasional clients. The proposed duties do not distinguish between one-off and repeat clients although they have very different knowledge and expertise and a large industrial or commercial client will have the expertise to be able to carry out their duties. A small farmer will not. The proposals make clients responsible for ensuring that key duties of their team are carried out, as is the case in other health and safety and tax legislation. Some respondents thought that this was unfair: *on inexperienced clients as if they have an inept coordinator, the client seem to be responsible for the coordinator's failings and clients should be able to rely on advice of the lead designer whether architect, engineer or project manager. Allocating responsibility to those without expertise does not seem a sensible way to ensure that health and safety is observed and achieved.* and:

There should be nothing wrong with a client taking great care to appoint a competent team to undertake the duties he requires to carry out his project and then be able to leave them as being legally responsible. The new regs do not permit this and this will merely add to the cost and amount of backside covering that goes on already.

OK or toughen

22. 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. Under the existing CDM regulations, once duty holders were appointed the client could step back from reviewing and revising the arrangements. *The client frequently attempts to direct projects by placing time restraints, budget restrictions and quality issues. In the majority of cases this comes at the cost of health and safety.*

It is right and appropriate, that there should be duties on clients to ensure that there are suitable management arrangements in place. This will influence

clients to look more closely at funds allocated and whether in practice this is achievable within the actual tender price submitted;
Clients have been the main problem in getting CDM on board. They are generally not interested in CDM and treat it, at best, as a penance. They frequently make late appointments and resist attempts to delay the start of work until the necessary CPH&S Plans are in place. 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;
It would still be too easy for the client to delegate most of their responsibilities. Currently, once pre-qualification competence checks have been undertaken - often a cursory exercise - client interest in the Regs wanes and the proposals do not appear to address this;
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" & make the duty absolute.

Client's Agent

23. The proposals would remove the option for a client to appoint an agent and, by doing so, absolve themselves of any criminal liability. Concerns were expressed by the CBI and Construction Client's group about the proposal to remove this provision, but relatively few people commented on this. Overall, there was a slight majority in favour of its removal: *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.* and:

The loss of Clients Agent is going to affect X. We believe that X does not have the resource to undertake the onerous duties that are spelt out in the new draft regulations.

The construction Clients Group, which is the main representative body for clients have subsequently written to HSE opposing the removal of the Client's Agent provision. HSE has responded to this concern, and discussions with the CCG continue.

Joined up government

24. There is a strong desire for a more joined up approach by government to ensure that clients are made aware of their duties and that basic health and safety issues are addressed. This suggestion was supported by the Office of the Deputy Prime Minister who felt that there was scope for better integration between the Building control, planning and CDM regimes.: *Get some "joined up government" to integrate Town and Country Planning with Building Regulations and CDM. A check system should be put in place at the Planning stage, at the very latest, by the Local Authority on the Planning Application. Small clients (say, a shop keeper wanting to extend his premises) are likely to be totally unaware of the regulations, they will form the group that will need*

most assistance. Their duties could be detailed in literature supplied with Building Regulations or Planning Applications.

The issue of achieving greater integration between the CDM and Building Control and planning regimes is a key theme of work carried out by HSE subsequent to the consultation exercise -see paragraphs 19 and 20 above.

Guidance and publicity

25. There was a clear desire for strong and specific guidance and publicity on the role of clients to direct them and to avoid further bureaucracy or interference in the roles of other team members. This call came in particular from the bodies representing this group of stakeholders: *It is important that HSE makes available necessary resources to ensure that the uninformed clients are aware of the proposed changes. Guidance is needed on whether employing consultants and contractors shifts the responsibility from the Client on the grounds that the Client has then taken reasonable steps. The meaning of 'reasonable' will doubtless have to be decided in the Courts;*

What is needed is better explanation of how a client is supposed to carry out the duties. Many will not understand what they are required to do. If appointed a Co-ordinator should be able to fill in the gaps, but there must be a clear ACoP backed up with practical guidance to ensure Clients can easily see what is required of them;

From the Clients point of view the new duties impose greater liability and the danger is that the Client will impose yet more bureaucracy in order to demonstrate that they have "ensured so far as they reasonably can";

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;

The HSE needs to leverage the networking arrangements with Trade Associations and Trade Unions to publicise the pivotal role of the 'Client' in ensuring that projects are adequate resourced in terms of competence and funding.

Question 5 - Is it clear that clients have to ensure things are done, not to do those things themselves?

26. The majority (74% (223:80)) of respondents thought that this was clear. A significant minority would like it to be made even clearer in the Regulations and would benefit from an ACoP. Some clearly thought that clients would have to take on a direct management role, completely contrary to the intention:

The Client may interpret the regulations if reading them without the ACoP as having an obligation to act as a Project Manager and directly manage the Design Team and contractors... the draft ACoP does clarify this. Having said this, it is difficult to see how to improve the present wording in the regulations, as it is unambiguous when read carefully.

Question 6 - Are clients' duties re management arrangements beneficial?

27. A substantial majority of respondents (75% (224:73)), including clients 78% (50:14), favour the proposed duty on clients to ensure that there are suitable management arrangements for construction projects. The role of the co-ordinator was seen as central by many, particularly getting competent co-ordinators involved early enough: – *they [need to be] experienced, pragmatic and non bureaucratic. Otherwise: there will be even more paperwork generated as the clients pass down risk; 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. 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 proposed duties on Clients to ensure there are arrangements for managing projects are likely to have a beneficial effect on safe planning and arrangements for work as long as the Client can be made fully aware of their duties and the HSE has the resources to support these proposals. It is imperative that this balance is achieved and the message that the HSE will seek to prosecute only those who step outside the Law is put across to Industry forcefully.

Publicity

28. *Good early decisions and actions should benefit planning and arrangements for projects. Examples required to demonstrate the added value of these arrangements in practice. Uneducated clients will need to be told of their duties. Bad coordinators will not bother to take action if not instructed by their clients and will say that it is the client's problem.*

Enforcement

29. *Part of the communications programme surrounding these Regulations should, incorporate the principal that breaches are a criminal offence and will be enforced.*

By thinking about these issues and recording them earlier on in the project we should see better quality arrangements and less duplication at a later stage. 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.

It appears that the change from the existing Regs, ACoP and Guidance to the proposed Regulations is simply to move the existing guidance and ACoP up to the level of Regulation. ... This will have no effect on informed clients such as ourselves, as the need was there from the 2002 HSG224, but will

eventually have an effect on the occasional or uninformed client as more prosecutions are made and publicised.

A cohort of clients in certain sectors will continue to ignore the legal requirements and be prepared to take the risk of non compliance. They know the penalties for non-compliance are rarely enforced and Inspectors often assist them in compliance rather than seek penalties.

The text is far too complicated and detailed and many clients will ignore this duty knowing that they will get away with non-compliance as the HSE is poorly staffed etc. The client has the reins on three matters only - the gathering of essential information and the allocation of time and money to the whole process. That is what the Regs should concentrate on. Everyone else then gets on with their job and their health and safety duties.

Question 7 - Do you think the explicit duty on clients to allocate sufficient time and resources is helpful?

30. Again a substantial majority (89% (277:34)), including clients (88% (57:8)), favoured this new requirement and there was general agreement of its importance: *this is the most critical parameter affecting health & safety. 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.*

This is a positive addition to the Regulations. However, there should be clearer guidance, backed by an ACoP about what is "reasonable". The time allowed for design and mobilisation should be stated on Form 10.

Insisting on dates for starting and completing works and dictating resources by means of cost control are foremost among the ways that a client influences the way a project is managed. This change makes the responsibility of the client clear.

The length of time allowed by the client between appointment and commencement on site is a continual source of problems for contractors. The provisions at Regulation 10 (1) d, that require the client to specify the minimum notice which will be allowed to the PC and contractors for planning and preparation, go some way to dealing with the habitual tendency for clients to press contractors onto site without time to prepare H&S management arrangements. However, the CC feel that the HSE need to be stronger on this issue, and wish to see; a change to Schedule 1 to include a requirement for the mobilisation period to be specified on the Form 10.

31. There were, however concerns about how clients could decide how much time was sufficient, particularly as they won't normally have the experience to decide and so should be advised by the Co-ordinator and then be reviewed by the Principal Contractor. What people wanted to get away from was where: *the end date of a project is often 'cast in stone' before the project has gone out to tender, contractor are then obliged to meet the deadlines if they want the work.*

32. A number of respondents favoured specifying a minimum mobilisation period for all projects as: *there is the possibility that clients will place pressure*

on co-ordinators and Principal Contractors to reduce lead in times where milestone dates are to be met on projects. A two (or three or four) week minimum should be written into the contract to ensure that time is allowed, as a legal minimum with only an emergency being allowed to lapse this time limit. On the other hand others concluded that: there cannot be specific time constraints - these would be too proscriptive given the wide range of project types covered.

Question 8 - Will the proposed role of the co-ordinator provide the support needed by clients, particularly inexperienced ones?

33. 70% of respondents (225:66) thought that the new co-ordinator role could provide the support that clients need to comply with the proposed regulations. Strong support for the changes was received from the Association for Project Safety (APS- the main representative body for planning supervisors) and the Construction Confederation (who represent contractor organisations). This support was spread across all the different roles responding: *If the co-ordinator does take up the issues of early planning and preparation then the role will be a success. This facilitation role of the co-ordinator will be far more practicable than the Planning Supervisor if the emphasis does remain on ensuring all parties involved in the design elements do meet and discuss the necessary details to ensure health and safety during construction work.*

34. On the other hand some thought that 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'.* However, there are a significant numbers within the industry who would prefer the work to be carried out by another member (or members) of the project team: *The new Regs would work better if the architect or consultant engineer could explain that there are certain tasks (or functions) that are required to be carried out and give some indication of the competence needed. The explanation could go on to state that it is recommended that there be an early appointment of the principal contractor and that the three parties agree who will undertake which co-ordination function. In reality some of the functions are carried out as part of the designers role. Some of the functions will work better if managed by a Principal Designer or Principal Contractor.*

35. Others wanted an independent role that was empowered to require other project team members to carry out particular tasks. Many wanted the lead designer to take on all or part of the role: *as a holistic part of the design process and must not be seen as a stand-alone activity.* Others wanted the Project Manager to be the co-ordinator, though some did not think it was feasible for them to obtain the required health and safety expertise.

Competence

36. There was some concern that those undertaking the Planning Supervisor role now will carry on as though there are no changes. In doing so they could dilute the effect of the improvements. If so there was some doubt

that they possessed the required competence. The APS response called for clearer guidance on the competence standards which would be needed by the new dutyholder. Examples of comments include;

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.

There is a real need for a robust method of co-ordinator's being able to demonstrate their competence.

Some thought that the role is: *an incredibly demanding one, given the levels of general and specific technical expertise likely to be needed for the co-ordinator to be effective.*

Timing of appointment

37. *If the co-ordinator is appointed early, yes the role will provide the support needed.*

Title

38. There was a lot of discussion about the proposed title. *CDM Co-ordinator* was the preferred title, and this had strong support from the APS. *An increased emphasis on the Coordinator as primarily the Client adviser, rather than as a duty holder with a pivotal role in itself, would be welcome.*

Question 9 – Do the proposed changes address the issues of late appointment and lack of influence currently faced by Planning Supervisors?

39. 68% (197:93) of respondents who answered thought the proposals addressed the issues identified in the question. The APS response welcomed the emphasis on early appointment, but felt that the role needed further development if it was to be successful in achieving the gains originally envisaged for planning supervisors.

40. Those answering 'yes' to the question approved that: *The legal responsibility for Designers not to start work before a Co-ordinator is appointed is excellent. Often the damage is done at planning approval stage. Co-ordinators can now influence this.* and:

The prohibition on Designers carrying out a design without a Co-ordinator is a good deterrent ... This change needs some structured, well publicised education. and:

... the fact that the Co-ordinator's ... role is to ensure that the Client understands and carries out his/her duties addresses the underlying commercial reality on projects.

41. Others stressed the need for guidance and enforcement: *Yes - but these need to be clearly spelled out in a new ACOP - there must be no more excuses from parties about not being clear as to what's expected of them ...* and:

... Clients [should be] left in no doubt that it is their duty, to ensure Co-ordinators are able to carry out their functions ... the Client must ensure this

person is set at a senior level within the management structure in order to exercise authority. and:

The proposed changes begin to address these issues - but what sanctions will be applied in practice for late appointment ... both to the Client for allowing the design to proceed and to the Designers for doing it?

42. Those answering 'no' to the question offered a wide range of comments. Some saw difficulties of practicality: *We are concerned that the Regulations require appointment [of a Co-ordinator] before any design or planning can begin. This will cause problems with concept schemes or feasibility studies that may then be abandoned, and could even apply to structural reports which recommend remedial works, or emergency work to stabilise a dangerous structure. If this is not what the Regulations intend then a clearer definition of design is required.*

43. Others maintained that the Co-ordinator needed more independence and must be appropriately competent: *If the client does not wish to embrace the requirements of the law what difference does it make if [the Planning Supervisor is given a new title]. If they have no power they have no power. The situation would be different if the Co-ordinator was able to stop works and block client's actions. and: ... Co-ordinators will only have real influence where they are competent and have relevant experience and then contribute in meaningful ways to the design and construction process.*

44. Some thought the Co-ordinator should have more of a role in the construction phase: *... the proposals do nothing to address the primary reason why Planning Supervisors have had negligible influence on site safety - the fact that they have no involvement in the work on site. and: ... much design is carried during the construction phase, the limitations imposed on the Co-ordinator written into the Regulations needs to be removed.*

Question 10 – Do you think the proposed designers' duties are appropriate, reasonable and proportionate?

45. 70% (218:92) of respondents who answered the question said 'yes', including those from the Specialist Engineering Contractors Group (SEC), the Construction Industry Council and the Trades Unions. The Institution of Civil Engineers (ICE) and the Institution of Structural Engineers (IstructE) responded negatively to this question, both suggesting that further work need to be done to clarify what was required of designers. They also felt that further clarity was needed in explaining who was and was not a designer. The ICE felt that some of the responsibilities placed on Designers by the regulations should in fact be placed on the client.

46. Some expressed doubts about the value or practicality of the new designer duties: *There is however a danger that the Regulations, in apparently attempting to 'eliminate all risks at source', may cause the Designer to impose prescriptive solutions on the Contractor or Clients. and:*

There is a shortage of suitably trained and experienced designers who will be able to meet the enhanced requirements of the Regulations. Also: It is not reasonable and possible for a Designer to check that the Client is aware of his duties if working on a design and build contract where his contact with the Client may be limited. The new Regulations seem to have been drafted without a full understanding of all current procurement practices.

47. The new duty on Designers to not start work before the appointment of a Co-ordinator attracted a range of comments: *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.* and:

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. But:

It is not considered reasonable to give Designers an absolute duty not to start any work on a project until a Co-ordinator has been appointed and the project has been notified as these issues are outside of the Designer's control ...

and:

In many cases Designers will be carrying out feasibility study work or non-project specific design work where such appointments/notification are not appropriate. [This requirement] should only apply from a more realistic point in the project programme.

48. Others argued that if Designers were to design out risks, as required by the Regulations, then their competence and the guidance or the definitions must be improved: *It is essential that the definition of 'design' is clarified, explicitly pointing out that it includes both temporary and permanent works and also not confined to formal paper documents drawings, calculations and bills of quantities.* and:

The duties are reasonable, however, there should be more guidance in the Regulations on a risk management hierarchy, similar to that in the ... Work at Height Regs. This should be backed up by an ACOP that [has] case studies on the type of practical actions that can be taken. and:

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.

Question 11 – Do you think that the proposed duties on designers, when read with the supporting guidance, are clearer and easier to understand?

49. 79% (240:65) of respondents who answered said 'yes', including the SEC, and the IstructE. The ICE did not feel that the regulation was clearer, but they did think that taken as a whole, the regulations and guidance were useful in helping designers to understand what was required of them.

50. Among the comments of those agreeing were: *Much clearer ... easier to convey in a training course too. The use of examples and 'What designers can do' is powerful, I like 'What designers don't have to do'. and: Better than current regulations ... still not clear enough. Also: 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. and: ... overall the guidance was considered to be useful. Perhaps further thought should be given to the importance of the health issues.*

51. Those disagreeing considered: *They appear to be less clear than the [existing] CDM regulations. More simplicity, clarity and guidance needed. and: The duties are no more or less clear than they used to be. ... 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. Additionally: Some examples given in the ... [guidance] are very helpful for designers but others make suggestions that are outside the scope of the design activities. This is often because the suggestions are beyond the contractual authority of designers. and: There needs to be clearer guidance on what is considered to be hazardous and how to eliminate and minimise these risks in practice. and: There is little guidance and no clear regulation on the appropriate time for providing information.*

Question 12 – 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?

52. 88% (278:37) of respondents who answered said 'yes', including the ICE, SEC and supportive comments from the Construction Industry Council. The IStructE felt that designers already had this duty under other health and safety legislation, and did not feel that CDM was the right place to repeat the requirement. They also felt that the primary responsibility for ensuring workplaces complied with the Workplace Regulations should rest with the client.

53. Points made by those in favour included: *The extension of the Designer's duty to cover 'use' is most sensible as it promotes an integrated health and safety approach. and: Making [Designers' consider] 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. Also: Effective design is usually the best method of reducing lifetime hazards and thus risk. and:*

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.

54. A few were critical of the proposed duty. Some opposed it outright: *The Designer should not be responsible for the health and safety of people using a structure designed as a place of work. For example, how does the Designer of speculative industrial units fulfil this duty?*

Others wondered about the connection with other legislative requirements: *The relationship between this duty and the Building Regulations will need to be carefully explained.*

55. Finally, some were concerned about the ability of Designers to comply: *[It must be] expressly limited to the extent to which the requirements fall within the Designer's brief and the extent to which he is aware of what the building will be used for. and:*

The scope of the duty is not defined clearly enough. A Designer can only consider these matters to the extent that he has been told about them by the Client and is in a position to influence them. and:

Only in as far as they can be aware of the use. Sometimes the Designer may not be privy to this information particularly where the designer is at the end of a supply chain that may include other designer's to which he is a sub consultant.

Question 13 – There is a proposed duty on designers to provide the information needed by contractors and others to comply with their duties under these Regulations. Does this describe the information needed and discourage the unhelpful generic risk information?

56. 60% (175:199) of respondents answered 'yes' to this question, including the ICE. The IstructE and SEC both answered 'no', commenting that clearer guidance was needed on the nature of the information which needed to be supplied.

57. Not everyone was critical of information with a generic character: *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.*

58. Others gave reasons why it would be difficult to get away from unhelpful generic information: *Unfortunately it is very likely that unhelpful generic risk information will still be produced by the designers ... it requires a step change in the industry. The increased emphasis on communication and team working should make a difference. and:*

Many designers are not experts in construction techniques and so will find it difficult to provide the correct information that will be of help to the expert builder. and:

However far more emphasis must be placed on communication between the designer and principal contractor and the co-ordinator. Without the principal contractor talking to the designer and telling him where potential problems lie and without the co-ordinator prompting and asking questions, the designers will continue to supply generic information.

59. Finally, some suggested a need for appropriate guidance: *Guidance ... for Designers needs to be more explicit on what competent Contractors should be aware of so that Designers can focus on the exceptions.*

Question 14 – Do you think buildability/maintainability/usability reviews provide a practical way of reviewing designs to ensure they satisfy the requirements of the proposed Regulations?

60. Although not a requirement in the proposed Regulations, views were sought on the value of these reviews.

61. 91% (270:27) of respondents answered 'yes', including the main institutions representing designers.

62. Points made by those respondents generally in favour of the reviews included: *Yes, appropriate design reviews are a good solution. They would be more effective if they included the client, [Principal Contractor] and specialist contractors' teams as well. As ever, time and contractual sensitivity will impact upon this process and its effectiveness.*

Yes but... In principle a structured brainstorming approach provides a good method for the evaluation of designs, however the benefits are directly related to the knowledge of the team. This approach requires the contractor to be onboard early in the design process which could prove difficult for traditional projects.

Yes - I believe that the review process is of great value during the design and construction periods. The difficulty here is that many programme and budget decisions will have been reached well before the detail design and construction of a project is undertaken ...

Generally yes, but there is a danger of producing a lot of unnecessary paperwork to little benefit.

Useful tool, avoid making this an ACoP item as it is not appropriate for all projects.

63. A small number were not in favour of the reviews: *These issues are already addressed in the existing design process. Making them a legal requirement is unlikely to change anything, except the amount of paperwork generated. and:*

No [because it implies] a continuing responsibility on the designer beyond construction. ... The building owner should be the duty holder here.

Question 15 – 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?

64. 61% (185:117) respondents answered 'yes', including the main contractor organisations and Trades Unions. Many of those saying 'no' qualified their answer in one way or another.

65. Among those who commented there was widespread acceptance that spelling out mobilisation time was beneficial and practical: *This is a positive move and provides substance to better planning.* and: *... 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.* and: *We currently do this and it works well.*

66. A few warned of conflict between commercial pressures and the new duty: *Yes. But there are severe reservations as to whether this requirement will have any effect on what happens at the present, where other project drivers and constraints take [precedence].*

67. Many said that the time allowed by the Client for mobilisation by the contractors should be required to be entered on the project notification form (the F10) that must be submitted to HSE: *... this will be helpful but should also include the duty to notify the HSE on Form 10 of the time allowed for mobilisation and design.*

68. A large number considered that the length of notice period not be left entirely to the parties involved. Some thought the regulations should specify a minimum notice period: *[we] would like to see an absolute minimum time stated in the regs.* However, a smaller number disagreed: *the mobilisation time required for a project varies widely ... and this cannot (and should not) be defined by law... [a good] contractor can get work under way very quickly indeed without compromising safety ... passing a law to delay and slow such projects in accordance with preconceived rules of guidelines is completely wrong.*

69. Specific minimum times were frequently suggested, ranging from 1 week to 3 months: *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 it activities earlier than previously.*

70. Others thought that the guidance should advise on minimum times: *... 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.* and: *... guidance on the minimum periods for mobilisation. Otherwise, Clients will still be able to pressurise parties.* and:

... guidance on minimum lead in times for various types of project (gained from real projects) is required. Otherwise the Client's timescale will be that which he needs whether or not it's realistic.

Question 16 – 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.

71. A large majority agreed with this 96% (298: 14), including the main organisations representing industry and the Trades Unions:
Strongly agree, the format allows ease of access to the information, particularly those not used to finding or reading and understanding legislation. and: Grouping the regulations' requirements by duty holder does makes responsibilities clearer and therefore more easily understood.

72. However, some pointed out drawbacks: *... there is a danger that the duty holder will consider their aspects of the project in isolation, complying with their duties but not that of the whole team.* And others asked for further improvement: *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).*
and:
It would be helpful if the duties of individuals (to highlight personal responsibility) were also listed out as part of the Regulations in a manner similar to Employees duties in the Management Regulations.

Question 17 – 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 reasons for your preference.

73. The large majority (87% (273:42)) of respondents supported the idea of amalgamating the Construction (Design and Management) Regulations (CDM) with the Construction (Health, Safety and Welfare) Regulations (CHSW). The main organisation not supporting this was the CBI, who felt that the Regulations covered different topics, and therefore were best left separate (though they did not answer this specific question).

74. Consultees who supported amalgamation saw benefits in team-working and simpler documentation: It would provide a: *Single point of reference for client and contractor.* and:
All duty holders working to one set of documents will assist all being aware of each others duties and roles. Additionally:
... it will help to show that the Planning stage and Construction phase are all part of a single project.

Others considered that welfare issues would get more attention: *The inclusion of the CHSW Regulations within CDM is sensible and will ensure that welfare issues are brought much more to the forefront.*

A few thought that more should be done: ... *the Construction (Head Protection) Regulations should also be brought into the new package.*

75. Consultees who opposed amalgamation saw no need for it: *CDM and CHSW deal with different but related issues. One is related to the overall framework and planning processes, the other with specific site based requirements. In view of those differences the consensus is that the two issues should be kept separate.*

76. Some saw a risk that the application of the CHSW requirements would be mistakenly assumed to be the same as those for the CDM requirements: ... *there is a danger that many of the requirements of the previous [CHSW] will be disregarded or considered to be not applicable on projects that are not notifiable under CDM.* and:

It must be made clear that [the CHSW aspects] will apply even if the CDM aspects do not apply.

Others saw a danger of non-expert clients being drawn to interfere in the detailed management of the construction work: *It should be noted that the core duty on clients to manage ... is explicitly in relation to ensuring construction work can be carried out safely. This invokes the [CHSW aspects]... This will create more confusion than clarity and may well lead to conflict.*

77. While agreeing with the principle of amalgamation, some criticised the detailed approach. In particular, several thought that relegating the CHSW requirements to Schedules to CDM devalued their importance: *There are concerns however over the way it is proposed to incorporate the remainder of the CHSW Regs into the new CDM Regs. By including them as schedules it could be that some will take the view that they are not as important as they do not form part of the main body of the Regulations. We feel they should form part of the main body of Regulations.*

Question 18 – 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.

78. 78% (237: 67) of respondents agreed that the definitions were satisfactory, including the SEC, ICE and the main Trades Unions: *The definitions of ‘construction work’ and ‘structure’ appear to cover everything the Regulations should apply to.*

However, a considerable minority had reservations, usually some matter of detail of particular importance to them: *The Regulations are focused on terms from the building industry. ... However the Regulations apply to more general civil engineering works.*

Site investigations or feasibility studies appear to be excluded from the definition in 2(d). If this is intentional it needs to be made clear, if not then the wording needs revising.

The inclusion of scaffolding and temporary works may give cause for concern, as the detail of such works are a specialist area and are not generally included as part of the main project designers' remit. This requirement could bring the process of scaffolding into the project design arena rather than, as at present, with the specialist sub contractors.

The definitions appear to be comprehensive, however it would be of benefit to retain the reference to 'laying or installing the foundations of the structure' currently within CDM 1994.

However, this might be an opportunity to clarify whether structures such as lighting columns and road signs are included in the definition of 'structure'. Although the definitions are very extensive, 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.

Question 19 – 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.

79. There was very substantial support for this proposal (87% (252:37)), including strong support from the Trades Unions, though they did express concerns about the large number of self employed workers who are in fact more likely to be employees.

We support the proposal to provide employees with a right of action in civil proceedings in relation to breach of duties by the employer.

Several of those who commented disliked the fact that the proposal was to permit employees to base a claim on breach of the regulations, but not others such as the self-employed or members of the public: ... *it is not clear why, as there are so few employer/employees relationships left in construction, that Civil liability should be limited thus.* and:

Civil Liability should extend to all legitimate visitors to site.

In contrast, others considered that, regardless of provision in the Regulations, sufficient bases for action existed: ... *civil litigation is not limited to the employer/employee relation but a function of the relationship defined by negligence, and is applicable to all.*

80. Some thought that the proposed relaxation would, in practice, encourage bureaucracy with adverse impact on effective health and safety management. *We agree with the limitation. Removing the civil liability exclusion would generate a culture of defensiveness that would be at odds with other efforts to eliminate bureaucracy.* and:

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.

81. But the opposite point of view was also heard: *The removal of civil liability exclusion may lead to an increase in litigation, however this may focus risk management within the construction industry. and 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.*

Question 20 – Do you agree with our suggested changes to CDM enforcement demarcation?

If not, please explain why you disagree.

82. Local Authorities have enforcement responsibility for the relevant statutory provisions in a wide range of premises. However, in these premises LA responsibility for construction health and safety is limited to an extremely narrow set of circumstances, generally consistent with low risk, with HSE having responsibility in all other circumstances. Additionally, where Local Authorities do have responsibility for construction work, they have no power to enforce CDM and must instead rely on the other relevant statutory provisions.

The proposal is to maintain the very narrow set of circumstances in which LAs have responsibility for construction health and safety but to give them power to enforce the new CDM Regulations to the limited extent that it would apply in these situations.

83. 86% of respondents (226:37) indicated agreement to the proposed change. Some thought that HSE should have responsibility for all construction work: *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.*

84. Others were concerned for consistent enforcement of the new CDM Regulations: *[In agreement] provided enforcement in both areas is uniform and LA inspectors are competent in CDM requirements, etc. A few thought that the demarcation between HSE and LA enforcement responsibilities was unclear, and should be spelt out in guidance: Guidance is required, as it stands, the split is not generally understood.*

Question 21 – 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?

85. A large majority of respondents (76% (237:73)) preferred the current style of guidance (a mixture of ACOP and non-ACOP material) to the proposed guidance (non-ACOP material only). There was strong support for an ACOP from both the industry associations and the Trades Unions.

86. Those wishing to retain ACOP gave as their reasons: greater persuasiveness, regulatory certainty and presentational familiarity:
There is strong support within the industry for the Regulations to be produced with an ACOP and Guidance Document. ACOP's are well understood in the industry and provide an essential benchmark for [compliance] with the Regulations. ACOP's have shown to be of particular value to [SMEs] who find CDM complex and difficult to understand. Without an ACOP there would be greater uncertainty among smaller contractors and one off clients. The ACOP gives certainty and comfort that management arrangements, and actions taken by duty holders, will satisfy legal requirements. and: ... the industry sees this as an area where the regulatory burden is significantly less if an ACOP is produced.
The industry understands the seriousness of ACOP guidance. ACOP is an excellent tool to encourage reluctant participants. and I prefer ACOP to guidance ... the ACOP carries greater authority and is a valuable aid to the safety professional in influencing others to establish clear minimum acceptable standards in/at the workplace.
An ACOP requirement is much stronger than guidance. Practitioners and trainers will also greatly benefit from an ACOP and this should help support the introduction of the changes to CDM with defined interpretation based on the ACOP.
All ACOP would be my preference as mixing the two could lead to confusion.

87. Some preferred non-ACOP only guidance: *Now that the regulations are much clearer and stronger than before the need for ACOP has reduced. The proposed guidance [ie non-ACOP only] is preferable. While both approaches have their place, ACOPs can misdirect readers into a 'compliance' line of thought rather than successfully managing the risks. Provides flexibility, some clients want ACOPS followed to the letter with no assessment in relation to the risk.*

Question 22 – 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.

88. There was good support for sector-based guidance (76% (212:68)). *Current guidance, although useful, is sometimes difficult to apply to all aspects of construction. and:*

Specific integrated guidance for all sectors of the industry would be of benefit and help in changing the culture for all stakeholders. Professional institutions have a role to play in this work and should work alongside HSE in this respect. and:

This would be helpful. As the question suggests, this would need to be industry lead.

Numerous organisations and individuals indicated their willingness to participate in the production of such guidance.

89. However, some wondered about the difficulties of producing such guidance and the value of it, especially if there were many documents and if they offered inconsistent advice: *Concerned this would be practical to achieve. If we get a good practical pragmatic ACOP would we need this? and: I would prefer to keep things as simple as possible - to attempt to provide sector-specific guidance, when the industry overlaps almost everywhere, would be unhelpful. Also:*

HSE needs to avoid the proliferation of numerous quasi-official guides to health and safety in construction ... and:

Care would need to be taken to avoid contradictions or different advice in essentially similar activities.

90. Finally, in addition to industry sector-based guidance, some expressed a desire for guidance for particular professional roles: *Separate guidance is required for Architects, Structural/Civil Engineers, Mechanical and Electrical Engineers, Interior Designers etc as their expertise varies so much. and for particular issues: Guidance to suit the different types of project such as: demolition, refurbishment, design & build, partnerships & PFI projects would be advantageous.*

Question 23 – The draft RIA is based on our “best guess” estimates of the likely impact of the proposals. Do you believe them to be reasonable?

91. 236 (52%) of those responding to the Consultation made no answer this question. Of those who did answer, 60% (126:85) thought that HSE’s estimates were reasonable. The Construction Clients Group was particularly concerned that the RIA did not properly reflect the potential costs which arise from the consolidated client’s duty.

92. A few thought that HSE had over-estimated costs: *Almost impossible to judge the accuracy of figures, but our gut feeling is that an overly pessimistic set of assumptions have been made and that costs will be lower than set out in the RIA.* But more took the opposite view: *No hard evidence available but whilst there may be an accepted methodology [we] believe that the costs of implementation are grossly under estimated - that is not to say that the benefits would not be worth it if they materialise ...*

93. Those asserting that the cost estimate was too low focussed on various matters, including: requirement to assess competence of appointees, familiarisation with new requirements, extension of client duties and the upgrading the planning supervisor role to that of co-ordinator: *Disagree with estimated times for checking contractor competence. In our experience it requires between 2 and 3 hours to process/assess contractor submissions. From feedback from the contractors it is evident that it takes a good deal longer than 0.5 hour to complete our questionnaire and bring together the necessary supporting documentation.*

The familiarisation costs for designers are underestimated (and may be true for others too – although I have not looked at these.). Combining the RIA figures, there must be an average of 12 to 13 designers per firm. It is impossible for that size firm to familiarise and develop forms procedures QA etc in just 6 hours, or half hour per designer. I suggest 40 hours. and No costs have been allowed for familiarisation by Planning Supervisors/Co-ordinators. and:

This will be a field day for training providers and demand will initially outstrip supply, leading to increased charges.

The RIA does not adequately address the costs that Clients may incur as a result of the proposed regulations. ... the client will be expected to ensure that reasonable arrangements for safety management continue throughout the project ...

Within our organisation we will need to have a fundamental look at how we manage and incorporate the changes to the co-ordinator role. This may lead to a significant additional cost of training and mentoring, particularly in design co-ordination issues. and:

There is good reason to believe there will be a shortage of suitably competent people to undertake the new role of the co-ordinator, leading to further costs and a reduction in benefits in the short to medium term.

94. The Regulatory Impact Assessment has been revised in light of the comments/information received.

Question 24 – Any other general comments?

95. This question attracted many submissions. The following merely give a flavour of the contributions received:

In general, the objectives of the review are good, particularly if greater emphasis can be given to 'active management' and the need to design out risks.

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.

It is my opinion that the proposals have been poorly drafted and would appear to reflect the views of major contractors (who have been antagonistic to the role of Planning Supervisors since the introduction of the regulations) ...

I am concerned about the continuation of 'double standards' between Notifiable and Non-Notifiable projects... The larger construction projects tend to be better organised yet the smaller ones remain exempt from appointments, plans and paperwork even although they have a proportionately high accident record.

Domestic projects are no more or less dangerous than any other projects and as a result should not have a less stringent safety management regime.

Just as the industry is finally understanding and becoming familiar with a Pre-construction Health & Safety Plan and acknowledging it as an effective tool, the new regulations propose to substitute it with a much looser arrangement.

I understand that there is no planned transition between the existing and new CDM Regulations ... I consider that this is totally unreasonable, and recommend that for projects that are underway ... at the time of the new Regulations coming into force there should be a transition period of at least six months.

The guidance [suggests] that a Principal Contractor is employed before the design is complete. This helps with providing a project that is safe to erect but [is incompatible with]most of the methods of procurement within the construction industry.

Enforcement is vital and I'm afraid not occurring enough to make the real difference that you are looking for.

Question 25 - In your view, how well does the Consultative Document represent the different policy issues involved in this matter?

(Respondents were asked to choose an answer from: "Very well", "Well", "Not well" or "Poorly".)

96. The question was not answered by 171 (38%) respondents. The responses of the 275 (62%) who did answer were as follows:

<i>Answer</i>	<i>No of Respondents</i>	<i>Percentage of Respondents</i>
Very well	54	20%
Well	202	73%
Not well	9	3%
Poorly	10	4%
Total	275	100%

Question 26 - Is there anything you particularly liked or disliked about this consultation exercise?

97. The formal Consultation exercise was based on a 170-page Consultative Document (CD) to present the proposals and explain the background to them, together with a 31-question questionnaire to focus consultees' attention on the key issues and help structure their responses, particularly with a view to subsequent analysis.

98. The formal consultation was complemented by an Internet discussion forum and, in conjunction with the Institution of Civil Engineers, a nationwide series of 25 Roadshows. The Roadshows were attended by about 2,500 persons and were reported on in **HSC/05/123**.

99. Many approved the approach to the consultation, both in general and in detail:

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. and:

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. and:

Access to the documentation was quick and easy, and the consultative document itself summarised the changes well and provided clear links with the questions being asked.

100. However, aspects of the consultation exercise were criticised by others. These criticisms included:

- not enough background information: *More discussion on the intent is helpful to understand the framing and purpose of the various requirements.*
- a suspicion that HSC/E's mind was already made up: *I also get the strong impression that all decisions have been made already, and that this is merely 'lip service'. and: ... the questions ... are "leading" in that they appear (whilst there is ample opportunity for general comment in Q24) to search for the answers that HSE want to hear.*
- insufficient attention to the needs of smaller companies: *The CD could have addressed the arguments relating to the needs of SMEs in some more detail. ... 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.*
- but, on the other hand: *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" [of the Regulations] and "Notification" [of projects to HSE] is long overdue. and:

- *over-emphasis of the CDM aspect of the proposals: We are very concerned that the CD does not invite comments on the changes to the existing Construction (Health, Safety and Welfare) Regulations ...*

101 *Finally, some thought that electronic form design could have been better: ... aspects of the electronic approach that HSE adopted in this consultation (and other recent consultations) are quite frustrating. ... The electronic format of the questionnaire was particularly annoying. ... Forms that we prefer include ISO/BSI comment forms, forms used by the Scottish Executive and most forms issued by ODPM. and:
One problem we found with answering these questions is that the electronic formatting would not allow us to answer "Yes, but" so ... we answered "No, but" when we would have preferred [the former].*