

## The HSE publishes report into the outcome of the public consultation on proposed revisions to the CDM Regulations 2007

The Health and Safety Executive (“HSE”) has reported on the public consultation into proposed amendments to the Construction (Design and Management) Regulations 2007 (“CDM Regulations 2007”) conducted earlier this year. The report recommends action with a view to the CDM Regulations 2015 coming into force in April 2015.

The HSE opened a public consultation into its proposals for the revision of the CDM Regulations 2007 on 31 March 2014. The consultation annexed a proposed new draft of the CDM Regulations and cited the key areas of change as follows:

- Significant structural simplification of the Regulations;
- The replacement of the Approved Code of Practice (“ACOP”) with targeted guidance;
- Replacement of the CDM coordinator role with a new role, that of the ‘principal designer’;
- Removal of explicit competence requirements and replacing with a specific requirement for appropriate skills;
- Addressing areas of the Temporary or Mobile Construction Sites Directive relating to domestic clients;
- The threshold for appointment of co-ordinators; and
- Notification on domestic-client projects where revised notification thresholds are reached.

The consultation sought views on the proposed changes and draft Regulations. The consultation closed on 6 June 2014 and following this, the HSE has now issued its report into its findings and proposals for amendments to the draft Regulations.

### Key outcomes of Consultation

Following consultation, the HSE report recommends:

- New CDM Regulations to come into force in April 2015
- More flexibility introduced into the Transitional Provisions drafting
- Revisit drafting replacing competency requirements with a more general framework
- Removal of ‘domestic clients’ exception from the client responsibilities drafting

The HSE recommends that the revised CDM Regulations remain broadly as proposed in the Consultation, but proposes that a new ACOP should replace the Guidance previously proposed.

The report summarises the outcome of the consultation. In essence the report finds as follows:

## **1. Structural Simplification of the Regulations**

The consultation shows general support for simplification of the Regulations.

However, the HSE reports that respondents to the consultation were concerned that the transitional provisions to the revised Regulations lacked flexibility. Recognising this, the HSE proposes to redraft these provisions to include more flexibility.

## **2. ACOP v Guidance**

The proposal to replace the ACOP with Guidance was not generally well received with only 33 per cent of respondents in favour. The main dissenting argument was a concern that Guidance would not have the same authoritative legal status as an ACOP. Instead, the HSE proposes developing “a new, shorter signposting ACOP, complemented by the HSE and joint HSE-industry guidance” and seeks agreement for work on this to take place in 2015.

## **3. Replace CDM Co-ordinator role with Principal Designer**

Following the consultation, the HSE has found that replacement of the CDM co-ordinator role with that of the principal designer in order to entrench the pre-construction co-ordination function within the existing project team should proceed. However, the HSE amended the Impact Assessment to reflect the comments that the co-ordination role will still sometimes be delegated.

#### **4. Replacement of the detailed competence requirements with more general framework**

The HSE reports that in the consultation document, the HSE proposed to create a “more general and less prescriptive legal framework for competence, backed by comprehensive guidance.”

Whilst the HSE concludes that the consultation shows general support for replacement of the detailed competence requirements, the consultation also highlights concerns with the proposed form of general framework. The HSE proposes to revisit the drafting of this provision.

#### **5. Notification Requirements**

Following consultation, the HSE reports that its proposed amendments to the notification requirements and its plans to introduce notification on domestic-client projects when the thresholds are met remain appropriate. Currently, projects must be notified when (a) expected to last more than 30 days; or (b) expected to involve more than 500 person-days of labour. The HSE proposes amendments to (a), requiring notification when a project is expected to last ‘more than 30 working days **and** more than 20 workers simultaneously’.

#### **6. Client Duties**

The consultation document proposed removal of the exemption from client responsibilities for ‘domestic clients’ but that duties which would otherwise fall to domestic clients would instead be carried out by the contractor, principal contractor, or with the client’s approval, the designer. Whilst the HSE will continue with this approach, it has recognised the need to revisit and clarify the drafting of this provision.

#### **7. Impact Assessment**

The Impact Assessment was quite heavily criticised, especially in relation to wage rates for design professionals fulfilling the principal designer role, transitional costs and assumed savings from replacing the CDM co-ordinator role with that of the principal designer.

Following meetings with industry organisations, the HSE has revised these figures and has amended the Impact Assessment (amendment annexed to the report).

Please click [here](#) to view the HSE’s Report.



Those reviewing appointments will need to consider how the current CDM Coordinator Role will be replaced within the framework of the revised Regulations, when they come into force. However, we wait to see how the HSE proceeds following the outcomes of the consultation as detailed in the report and whether the current government will pass the new legislation in the proposed time-frame, given the upcoming election.

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