
Health and Safety Executive**CD261 - Consultation on replacement of the Construction
(Design and Management) Regulations 2007****Reply Form****Completing this Questionnaire**

You can move between questions by pressing the 'Tab' / 'Shift-Tab' or 'Page Up' / 'Page Down' keys or by clicking on the grey boxes with a mouse. Please type your replies within the rectangular grey boxes, or click on the square grey boxes to select an answer (e.g. 'Yes' or 'No').

Respondent's details:**Name:**

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Size of organisation:

Choose one option:

Not applicable

1 to 9 employees

10 to 49 employees

50 to 249 employees

250 to 1000 employees

1000+ employees

Self-employed

Type of organisation:

Choose one option:

Academic

Charity

Consultancy

Industry

Local government

Member of the public

National government

Non-departmental public body

Non-governmental organisation

Pressure group

Trade association

Trade union

If you chose 'Other' please
specify:

Professional body

Is your response being made in your capacity as:

Choose one option:

An employer	<input type="checkbox"/>	An employee	<input type="checkbox"/>
Health and safety professional	<input type="checkbox"/>	Self-employed	<input type="checkbox"/>
Trade union official	<input type="checkbox"/>	Training provider	<input type="checkbox"/>

Other – please specify:

A professional body incorporated by Royal Charter that exists for the public benefit.

If you are a dutyholder under CDM 2007 which role best describes you?

Choose one option:

Client	<input type="checkbox"/>	CDM co-ordinator	<input type="checkbox"/>
Designer	<input type="checkbox"/>	Principal contractor	<input type="checkbox"/>
Contractor (including sub-contractor)	<input type="checkbox"/>	Worker	<input type="checkbox"/>

Other – please specify:

Our members comprise all of the above. Our response has been informed by our Health and Safety Advisory Group, comprised of experts from various disciplines within the industry as well as academia.

Confidentiality

Please indicate below if you do not wish details of your comments to be available to the public. (NB if you do not put a cross in the box they will be made available to the public. This takes precedence over any automatic notes on e-mails that indicate that the contents are confidential.)

Structural simplification

Please read in conjunction with paragraphs 33 to 35

Q1. This consultation document sets out a new approach to CDM. HSE believes that this approach will be more easily understood by small or medium-sized employers than the current one (set out in CDM 2007). Do you:

Agree	<input type="checkbox"/>
Disagree	<input checked="" type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

It is difficult to comment on how easily SME employers will understand the new approach to CDM without us having sight or knowledge of the targeted guidance that is intended to replace the ACoP. In essence, how well SMEs will understand the new approach is dependent on the complexion of the guidance. Subject to how the targeted guidance is worded or prescribed, there could well be cases where parts of the new regulations are interpreted differently, leading to confusion among dutyholders and a wide variation in achieving compliance.

We can gauge from the consultation that, while the approach appears to have been simplified, the CDM regulations themselves are actually expanding in scope to encompass more projects and will, at the very least, require greater consideration from SMEs of how to apply the regulations. This is not a negative as we agree with HSE's intention to extend CDM responsibilities to smaller construction sites, where a disproportionate number of accidents, injuries and deaths occur. As per our previous paragraph, though, if the draft guidance is not worded in an easily understandable way, this could actually create more administration and bureaucracy.

To be effective, we believe that the definitions of dutyholders needs to made clearer so that SMEs who are unfamiliar with CDM are able to better understand it. For example, incorporating all dutyholders' duties within the same Part of the regulations may make more sense than the current structure, which appears to separate duties.

Q2. Please comment on any of the definitions in draft regulation 2 that you think are problematic.

'Pre-construction information' can be better defined. It is currently very vague and, with the intention of the CDM regulations to put more emphasis on designers' roles, we believe that the information requires expanding.

The definition of Principal Designer also needs greater clarification in order for

clients to better understand who they can appoint, particularly as someone other than a traditional designer could well be appointed as a PD.

Q3. The technical standards have remained effectively unchanged. These are contained in Part 4 of the proposed Regulations. Is this approach acceptable to you?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

The technical standards are widely understood by contractors.

Q4. CDM 2014 continues to place general duties on designers. HSE has redrafted the duties to make them clearer. In your opinion, are the designer duties clearer?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

We do not feel that the duties are clearer as they fail to recognise the numerous interpretations of ‘designer’. Designers have the shortest list of duties in the draft regulations, but the definition of designer, and those who can be appointed as Principal Designers, is so wide that it includes quantity surveyors and consultants in addition to the traditional design roles, not to mention contractors who may have in-house design teams, as well as existing, appropriately skilled and experienced CDM-Cs. Up to 70% of the work in the design phase is carried out by suppliers and sub-contractors and CDM 2015 simply does not account for this.

As we see it, the definition is essentially stating that anyone who is not a contractor or a client is a designer under CDM. For example a project manager, who is often far more influential on pre-construction health and safety, could well be termed as a designer.

There also needs to be wider guidance on the use of non-architects/non-design engineers acting as Principal Designers under CDM, as this is a highly likely scenario

that does not appear to have been fully accounted for (see also response to Q2).

There needs to be someone championing H&S from the very outset on a project; this has to be the Principal Designer. The requirement not to proceed with design unless the CDM-C (now a PD) has been appointed appears to be missing and we believe that this should be placed back into the regulations, as it encourages design teams to consider risk management, health, safety and welfare from project inception. PDs should also have the capacity to call on other professionals for assistance if they do not themselves have sufficient skills, knowledge and/or experience.

Q5. Do you think that these general duties on designers would be effective in considering relevant health and safety risks during subsequent construction work?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

See answer to Q4.

Q6. Construction phase health and safety plans, proportionate to the risks involved, will be required for all projects. Currently, only projects lasting more than 30 days or 500 person-days need plans. Will there be any impact for projects that currently do not require a plan?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

What will these be?

There will of course be impacts, including the potential for additional bureaucracy. We believe that examples, or case studies, should be contained in the targeted guidance. These should outline what is required for projects of a certain size, and may help outline to clients and smaller contractors what is required of a construction phase health and safety plan.

Replacing the ACoP with targeted guidance

Please read in conjunction with paragraphs 36 to 39

Q7. HSE proposes to withdraw the CDM 2007 ACoP and replace it with a tailored suite of sector-specific guidance. Do you agree with this approach?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

Neither yes nor no, as we would want to actually see the guidance before making a full judgment.

Its needs to be made clear to the industry that the guidance is going to replace the ACoP, and will be badged by HSE. We envisage that this would be similar to the Control of Asbestos Regulations 2012 which has no CoP, but instead guidance that is followed almost to the letter by the industry.

The HSE needs to explain to the industry what the relevance of the new guidance is. It must be communicated that it is a replacement which has been made easier to interpret, and *not* the scrapping of legislation. It is important that the language used does not encourage organisations or clients to believe they can flout H&S legislation.

Q8. Please comment on whether there is any additional guidance that would be helpful.

Again, we would need to actually see the guidance before making any assessment. As per Q6, we believe that a set of different examples/case studies for different-sized organisations (from self-employed and SME's to large organisations with dedicated H&S professionals) be used in order to assist the industry in implementing good practice health and safety.

Replacing the CDM co-ordinator with the principal designer

Please read in conjunction with paragraphs 40 to 44

Q9. HSE believes that there is a need to bring the pre-construction co-ordination function into the project team that is in control of the pre-construction phase. This will be an effective way of achieving the aim of integrated risk management. Do you agree with this approach?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

Generally we agree with the approach of earlier appointments, though have a number of observations and concerns.

The title of this section is very emotive; the CDM-C is not being 'replaced' by a Principal Designer. As it is currently worded, this could be interpreted that every existing CDM-C will simply be able to become a PD, however, the PD is intended to be a member of a design team who takes on some of the existing CDM-C duties, and is appointed at an earlier stage. There are of course numerous similarities between the two roles and we believe that many existing CDM-Cs who have demonstrable skills, knowledge and experience in design, construction and health, safety and welfare (e.g. as proven by chartered membership of the CIOB or another relevant professional body where members have been assessed on H&S and abide by a Code of Conduct, or those on the APS CDM-C Register), would be able to take on the role of PD.

It is important to note that the design phase is dynamic, often continuing through to the construction phase, and so to depict the PD role as simply a pre-construction phase only appointment is wrong and may lead to a PD disregarding their duties after the pre-construction phase.

A large proportion (though not all) of design/consultancy organisations at SME and microbusiness level do not currently have in-house construction experience or relevant health and safety knowledge. In cases like this, provided the client is aware of their CDM duty to appoint an effective PD, it is highly likely that the design organisation will subcontract the PD role out. If the client is not aware, or indeed looking to avoid the cost that comes with appointing a PD, they may force an inexperienced designer to take on the PD role, which will not be carried out correctly as they have neither the expertise nor resource to do so. This is a situation that must not be allowed to happen.

On that note, we do welcome that the client themselves has to appoint a PD, as this places the onus on them to consider H&S from the outset and to budget for it appropriately. This requires ensuring that clients are fully aware of their new duties under CDM and so must be communicated appropriately. Clients are not always conscious of the cost implications of having effective health, safety and welfare measures in place before, during and after a project, and so should be made aware both of costs and benefits. This can be made clear in the targeted guidance, again perhaps through the use of case studies that are easily understood.

The PD appointment threshold also needs to be made clearer: will the appointment

threshold be in a situation where there are two (or more) contractors on a project simultaneously, or will it be when there are two (or more) contractors at any one point?

Q10. CDM 2015 requires the appointment of a Principal Designer (PD) and Principal Contractor (PC) if a project involves more than one contractor. What would be the impacts for projects that do not currently require such appointments:

a) at the pre-construction phase? Please provide comments, including evidence where available, if you wish.

A well-managed, risk based approach should be more cost effective, though there is the chance that designers or individuals acting in the PD role will charge higher fees.

b) at the construction phase? Please provide comments, including evidence where available, if you wish.

Greater costs, initially at least. Ultimately, this would lead to a more integrated approach.

Replacing the explicit requirement for individual competence with new regulation 8 and removing CDM's explicit requirement for corporate competence

Please read in conjunction with paragraphs 45 to 54

Q11. The draft Regulations do not explicitly require clients to check the competence of organisations, before they are appointed to carry out construction work. However, this requirement is implicit in the duty in regulation 5 for clients to ensure adequate management arrangements. HSE believes that this will be clearer to those reading the Regulations.

Do you:

Agree	<input type="checkbox"/>
Disagree	<input checked="" type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

HSE could have, and still have the opportunity to, put a stop to bureaucratic competence checking by taking a competence register in-house in the same way as

Gas Safe have.

Q12. What should be required of clients to ensure the competence of those they appoint and / or engage in addition to ensuring project management arrangements are adequate and effective?

A proven and demonstrable track record and membership of a relevant professional body. All evidence sought should be proportionate to the scale and risk of the work to be undertaken.

Q13. The draft Regulations replace the specific requirements for individual worker competence in CDM 2007 with a more general requirement. Under CDM 2014 those arranging for or instructing workers to carry out construction work should ensure they have received sufficient information, instruction and training and have adequate supervision. HSE believes that this will have no adverse effects on health and safety.

Do you:

Agree	<input type="checkbox"/>
Disagree	<input checked="" type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

“Who instructs the instructors?” There is no similar provision made for designers, Principal Designers or Principal Contractors to have received sufficient information, instruction and training, and so it should be made clearer to clients that they should appoint a PD and PC on the basis of their demonstrable skills, knowledge and experience in design, construction and health, safety and welfare, to prevent appointment on lowest cost alone.

Notification

Please read in conjunction with paragraph 62

Q14. CDM 2015 changes the notification threshold to cover projects lasting more than 30 working days and having more than 20 workers working simultaneously at any point in the projects; or exceeding 500-person days. This will reduce the number of projects that need to be notified, but will require notification of domestic clients’ projects that exceed this threshold.

What do you think will be the impact of this?

HSE themselves will not be notified as much for smaller projects – these are the very same projects that the HSE state in the consultation document are the most suspect areas for breaches of construction health and safety regulations. In addition, HSE’s own statistics state that 75% of all accidents occur on sites with fewer than 15 people working on them. We struggle to see, therefore, how this will actually improve worker protection in the construction industry.

Clients including domestic clients

Please read in conjunction with paragraphs 55 to 58

Q15. Clients’ duties in proposed regulations 5, 7 and 8 maintain a strong focus on the way that construction work is carried out on their behalf. Do you think this is the best approach for commercial clients’ projects?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

Q16. HSE’s preferred approach in relation to domestic clients’ projects is set out in regulation 4. By default this deems that their duties will be fulfilled by the contractor (or principal contractor where there is more than one contractor). There is also the possibility that a domestic client can instead have a written agreement with a principal designer that the principal designer will fulfil those duties. HSE believes this would be a proportionate approach.

Do you agree with this approach for domestic clients’ projects?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

Please provide comments, including evidence where available, if you wish.

Clarity is required regarding at what point a domestic client becomes a contractor and/or a designer i.e. a client who is involved in designing and/or building.

Domestic clients will not fully understand their responsibilities. Who is going to tell the domestic client what their responsibilities are when there is not a CDM-C available to advise? This could have adverse impacts upon worker and project health and safety.

Impact Assessment (Annex 2)

Q17. Do you agree with the analysis of the impacts (including costs and benefits) on commercial projects presented in the IA?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If you have answered 'Yes', please provide comments if you wish.

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If you have answered 'No', what steps would you take to improve it? Please provide numerical data to aid appraisal if relevant.

The IA does not appear to account for the cost of increased fees that may be charged by designers who are initially understanding and then taking on the Principal Designer role.

Q18. Do you agree with the analysis of the impacts (including costs and benefits) on domestic projects presented in the IA?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

If you have answered 'Yes', please provide comments if you wish.

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If you have answered 'No', what steps would you take to improve it? Please include numerical data to aid appraisal if relevant.

The IA does not appear to account for the cost of increased fees that may be charged by designers who are initially understanding and then taking on the Principal Designer role.

Q19. Are there any costs or benefits (positive or negative) that we have missed that you believe should be taken into account?

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>

If you have answered 'Yes', please provide details. Including numerical data where possible

The cost of unemployed CDM-Cs does not appear to have been taken into account. While some could become PDs, not all will and some currently make their livelihood acting as a CDM-C. The effect on small CDM-C businesses has not been sufficiently taken into account.

Another cost to take into account are those associated with transitional arrangements and the need for some individuals within the industry to upskill and familiarise themselves with the new regulations.

If you have answered 'No', please provide comments if you wish.

Other

Q20. Do you have any other comments on the proposals covered by this Consultative document? Please provide comments if you wish

There is a risk that the wording, which may potentially be used by HSE and others in communicating the CDM changes, is of a nature that highlights the “cutting of red tape” and the deregulation agenda. While we have no opposition to changes that make it simpler for the industry to implement effective health, safety and welfare measures, it is important that the language used does not encourage organisations or clients to believe they can flout H&S legislation. CIOB strongly believes that the health and safety of the workforce is the most important issue affecting those working in construction and the built environment, and is crucial to the success of the sector.

Transitional arrangements, even as far as letting existing CDM-Cs know what is required of them in order to qualify as a PD, are required.

Feedback from CIOB members suggests that the ACoP is well understood and accepted within the industry. Indeed, comments indicate that contractors, in particular, like having the framework of the ACoP to work with as it provides a recognised structure. The proposed targeted guidance should not water down the content of the ACoP, and instead should look to improve it, clarify parts where information may be vague, and signpost to further information.

There needs to be distinction of dutyholders’ roles and consistency within the regulations. The current document makes mention of ‘Principal Designer’ and ‘principal designer’; ‘Principal Contractor’ and ‘principal contractor’ etc. Instead of this inconsistency, which could cause confusion, each dutyholder term should be capitalised in order to make it more distinctive. Distinction is also required between whether the legislation is to be called CDM 2014 or CDM 2015 – both are referred to regularly throughout the consultation document.

Overall, CIOB is supportive of a simplified regulatory package for the CDM regulations, but the current proposed changes do require serious consideration by the HSE in order to provide appropriate levels of clarity and ensure that they result in tangible improvements, and not a watering down, of worker protection in the construction industry.

Please send your response by 06 June 2014 to:

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Thank you for taking the time to complete this questionnaire