

Consultation on replacement of the Construction (Design and Management) Regulations 2007

This consultative document is issued by the Health and Safety Executive in compliance with its duty to consult under section 50(3)* of the Health and Safety at Work etc Act 1974.

Comments should be sent to:

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to reach there no later than **06 June 2014**.

The Executive tries to make its consultation procedure as thorough and open as possible. Responses to this consultation document will be lodged in the Health and Safety Executive's Knowledge Centre after the close of the consultation period where they can be inspected by members of the public.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 (EIR)). Statutory Codes of Practice under the FOIA and EIR also deal with confidentiality obligations, among other things.

If you would like us to treat any of the information you provide, including personal information, as confidential, please explain your reasons for this in your response. If we receive a request under FOIA or EIR for the information you have provided, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will be disregarded for these purposes. Requests for confidentiality should be made explicit within the body of the response.

HSE will process all personal data in accordance with the DPA. This means that personal data will not normally be disclosed to third parties and any such disclosures will only be made in accordance with the Act.

* Please note: Until 9 April 2014 the front cover of the Consultation Document referred to the wrong section number. For the avoidance of doubt, the consultation is for the purposes of section 50(3) of the Health and Safety at Work etc Act 1974. This has now been corrected, along with a few broken links, but is identical in all other respects.

The closing date for replies to this public consultation is 06 June 2014

Consultation Document

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Consultation by the Health and Safety Executive (HSE)

HSE has a statutory duty to consult stakeholders to seek their views on its proposals. It believes that public consultation provides an open and transparent approach to decision-making which is necessary if policies and decisions are to reflect the needs and aspirations of the people they will affect. Following this consultation, HSE will analyse the feedback and results to make recommendations to the Secretary of State on the best way to proceed.

How to respond

Our preferred method for receiving comments is via the [online questionnaire](#). Following this structure helps us to consider and analyse the responses.

However, you can also respond by completing the [electronic form](#) and sending it by email to: cdm2015@hse.gsi.gov.uk.

If either of the above options is not possible, please use the response form at Annex 5 to provide background information along with your comments to:

Essien Ekpenyong
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2 Southwark Bridge
London
SE1 9HS

We would be grateful if stakeholders can include their email address when providing a response. This is so that we can inform you when HSE intends to publish information concerning the consultation responses on its website.

NB. Responses to this consultation must be received by **06 June 2014**.

If you require a more accessible format of this document please send details to creative@hse.gsi.gov.uk and your request will be considered.

What happens next?

HSE will acknowledge all responses and give full consideration to the substance of views expressed towards the proposals. We may also contact stakeholders again if, for example, we have a query in respect of your response.

We will tell stakeholders when HSE will publish information concerning the consultation responses. We will provide a summary of those who responded to this consultation and we will produce a summary of the views expressed to each question. All this information will be placed on HSE's website. We will also place information on the website which will explain how the Government will proceed with the arrangements and any necessary legislative change that is proposed arising from this consultation.

Queries and Complaints

HSE follows the Government's Consultation Principles. These can be found at <https://www.gov.uk/government/publications/consultation-principles-guidance>.

If you have any comments or complaints about the way this consultation has been conducted, please contact the HSE Consultation Co-ordinator by writing to:

Teresa Farnan at:
Health and Safety Executive
7th Floor, Caxton House
6-12 Tothill Street
London SW1H 9NA

Or send an e-mail to: teresa.farnan@hse.gsi.gov.uk.

We aim to reply to all complaints within 10 working days. If you are not satisfied with the outcome you can raise the matter with HSE's Acting Chief Executive, Kevin Myers, at Health and Safety Executive, Redgrave Court, Merton Road, Bootle, Merseyside L20 7HS.

Stakeholders can also write and ask their MP to take up their case with us or with Ministers. Your MP may ask the independent Parliamentary Commissioner for Administration (the Ombudsman) to review your complaint.

Summary

1 This Consultation Document sets out HSE's proposals to replace the Construction (Design and Management) Regulations 2007 (CDM 2007) and the linked Approved Code of Practice (ACoP). The draft Regulations at Annex 1 are in draft form and will be subject to change. The policy objectives behind the proposed Construction (Design and Management) Regulations 2015 (CDM 2015) are to:

- maintain or improve worker protection;
- simplify the regulatory package;
- improve health and safety standards on small construction sites;
- implement the Temporary or Mobile Construction Sites Directive (TMCSO) in a proportionate way;
- discourage bureaucracy; and
- meet better regulation principles.

2 In developing this proposed regulatory package, HSE has considered a broad range of evidence. This has included the evaluation of CDM 2007 through independent research, the views of a cross-industry working group established under the Construction Industry Advisory Committee (CONIAC) and a substantial body of evidence through HSE's engagement with the construction industry.

3 There has been significant improvement in the industry's performance on health and safety over recent years. However, it remains one of the highest risk industry sectors in which to work - with unacceptable standards, particularly on smaller sites still routinely encountered. Despite the improvements made the industry still accounts each year for:

- 53 deaths to workers from accidents (averaged from 2007/08 to 2011/12)
- 31,000 new cases of occupational disease/ill health (3-year average LFS).

Background to the proposals

CDM 1994

4 CDM was first introduced in 1994 following publication of the 1992 European Directive 92/57/EEC on minimum safety and health standards for temporary or mobile construction sites¹.

5 The CDM 1994 ('CDM 1994') Regulations were a significant change from what had gone before by outlining management arrangements for safety and health on construction projects, placing responsibilities on those who procure and design construction projects as well as those managing sites. The physical safeguards that applied to all construction sites remained, for the time being, in the raft of Factories Act era regulations dating back to the 1960s.

6 CDM 1994 was considered structurally complex, and many in the industry struggled with its systematic approach and concepts. Concerns developed that the Regulations were not delivering what was intended, but instead drove bureaucratic behaviours.

7 In 2000/01, 105 fatal injuries were recorded to GB construction workers – the highest for more than a decade. The then Government called the industry to account at a high-level

¹ Directive 92/57/EEC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992L0057:20070627:EN:PDF>

summit, challenging the industry to improve its health and safety performance or face further regulation.

8 At the summit the industry made a number of commitments to improve health and safety performance through stronger leadership, worker engagement and taking ownership of the issues. The industry also set a series of tough industry targets.

9 Following the summit, HSE published a wide ranging Discussion Document 'Revitalising Health and Safety in Construction'². The debate this prompted led to wide discussion in the industry about the fitness for purpose of CDM 1994. This started the process of a review of CDM 1994 followed by consultation on revised regulations in 2005 and 2006. Emerging concerns included:

- inadequate client focus;
- complexity of the Regulations and their structure;
- the failure of the planning supervisor role; and
- bureaucracy.

10 The review of CDM also provided an opportunity to consider developing a single set of regulations for construction to include both revised proposals for CDM and also the physical safeguard requirements of the then Construction (Health, Safety and Welfare) Regulations 1996.

11 In 2005, as part of the review, HSE commissioned an independent baseline study³. This provided an important snapshot of attitudes prevalent at the time and has provided a very useful comparison for the evaluation of CDM 2007.

CDM 2007

12 The proposed revised package was presented to the then Health and Safety Commission in 2006. The aims were to:

- simplify the Regulations, to make them easier to apply to the diverse range of contractual arrangements;
- improve co-ordination by creating a 'client advisor' role of the CDM co-ordinator (CDM-c);
- improve client focus;
- increase the focus on competence assessment; and
- bear down on bureaucracy.

13 HSE worked closely with industry stakeholders in preparing CDM 2007 through CONIAC and other forums. CDM 2007 came into force on 6 April 2007, supported by an extensive Approved Code of Practice (ACoP), which had originally been written as guidance.

14 At the time CDM 2007 was introduced the Regulations were debated in Parliament⁴ and a commitment was given by the then Government to carry out an early review. This was agreed to mean after three years instead of five.

² Revitalising document: <http://www.hse.gov.uk/consult/disdocs/dde20.pdf>

³ Baseline Study: <http://www.hse.gov.uk/research/rrpdf/rr555.pdf>

⁴ Hansard debate: <http://www.publications.parliament.uk/pa/cm200607/cmgeneral/deleg3/070510/70510s01.htm>

Evaluation of CDM 2007

15 The evaluation of CDM 2007 was one of the largest post-implementation evaluations undertaken by HSE, reflecting the more than two million workers subject to its requirements. A pilot exercise was undertaken in 2009 to develop a question set and methodology, and the main evaluation started in 2010.

16 The evaluation consisted of three elements. Firstly, an external research project which consisted of a substantial questionnaire, structured interviews, focus groups and open meetings and workshops. Secondly, a formal working group under CONIAC was convened, and thirdly, HSE invited informal submissions from industry stakeholders. Feedback was also received from HSE inspectors.

17 The external research was published in April 2012⁵ and along with the other elements of the evaluation the broad conclusions were that:

- CDM 2007 was viewed more positively by dutyholders than the 1994 version;
- its broad structure was fit for purpose;
- problems generally arose through mis- and over-interpretation of the Regulations;
- significant concerns remained, however, in several areas:
 - the Regulations had not borne down on bureaucracy as hoped;
 - the Regulations had led to an industry approach to competence which was heavy-handed and in many cases burdensome, particularly on SMEs;
 - the co-ordination function in the pre-construction phase was not in many cases well-embedded.

18 During the evaluation process the Government announced the Löfstedt Review whose terms of reference were, among others, to:

- be evidence based;
- examine costs and benefits of health and safety regulations;
- look for provisions which go beyond Directive requirements;
- look for how legislation might have driven inappropriate litigation and compensation claims.

19 Additionally, in July 2011, health and safety came under the three week 'spotlight' of the Red Tape Challenge⁶. This is a Cabinet Office led initiative seeking comments from the public on all Government regulations. A number of comments were made on the CDM Regulations.

20 The evidence from both the Löfstedt Review and the Red Tape Challenge were used to inform the development of the revised CDM Regulatory package.

UK Government policy on regulation

21 The Government has carried out a number of general reviews of regulation such as 'Your Freedom' and 'The Red Tape Challenge', and of the health and safety system in particular, including:

⁵ RR920 - <http://www.hse.gov.uk/research/rrhtm/rr920.htm>

⁶ Red Tape Challenge website: <http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/health-and-safety-spotlight/>

- Lord Young’s review of the health and safety system, culminating in ‘Common Sense, Common Safety’⁷;
- ‘Good Health and safety, Good for everyone’; and
- Professor Löfstedt’s review of health and safety regulations⁸.

22 The Government has clearly stated policies on the introduction of new regulations. They are backed up by a number of stated principles⁹ at the heart of Government policy on regulation, including:

- one-in-one-out policy on regulatory costs (now one-in-two-out);
- a “copy-out” approach to transposing European Directives into domestic law; and
- the establishment and use of Government mechanisms to ensure that these principles are maintained – the Regulatory Policy Committee (RPC) and Reducing Regulation Committee (RRC) – to provide scrutiny of proposed regulatory measures.

23 In addition, in developing the revised regulatory package, HSE has taken into account the Government’s wider strategy on construction, including the Government’s industrial strategy for construction (published July 2013), Construction 2025¹⁰. The proposed revision will principally support the strategic objectives of improved co-ordination, better value for money, improved efficiency and procurement and use of technological changes, for example, building information modelling (BIM).

Europe

24 During the process of developing a revised regulatory package, HSE has considered the implementation of the Temporary or Mobile Construction Sites Directive (TMCS D) and the Government’s policy on implementation of EU Directives. The following two issues in CDM 2007 have been identified as requiring re-alignment with the Directive:

- the client definition – the CDM 2007 definition includes ‘by way of trade or furtherance of a business’ thus excluding ‘domestic clients’; and
- the threshold of appointments (currently contained in Part 3 of CDM 2007) - the requirement to appoint the CDM-c is currently set at the same threshold as for project notification. TMCS D requires it whenever there is more than one contractor.

25 The UK remains committed to fully implementing EU Directives and the proposed changes to the Regulations will meet that aim.

Small sites

26 The balance of where serious and fatal injuries occur has shifted dramatically in the past 10-15 years. Two thirds or more of fatalities now occur on small sites – sites where fewer than 15 people work – which is the reverse of the historical picture.

⁷ Common Sense, Common Safety: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60905/402906_CommonSense_acc.pdf

⁸ Löfstedt review: <https://www.gov.uk/government/policies/improving-the-health-and-safety-system>

⁹ Guiding principles: <https://www.gov.uk/government/publications/guiding-principles-for-eu-legislation>

¹⁰ Construction 2025: <https://www.gov.uk/government/publications/construction-2025-strategy>

27 The larger, more structured part of the industry has made significant progress in improving its management of health and safety risks over this timeframe. Its motivation for achieving higher standards is often one of continuous improvement and innovation leading to best practice, rather than just meeting regulatory requirements.

28 A more pronounced two-tier industry has arguably emerged and the challenge is to provide an effective regulatory framework which is more applicable to smaller construction sites, and to appear more relevant to their needs. To deliver this, a radical rethink is needed on the length, complexity and accessibility of the package and the value that the current ACoP provides to those who run such sites.

Implications for developing CDM

29 Given the various background considerations, the desire to improve standards in the SME sector and reduce bureaucracy across the industry a more comprehensive revision of CDM is proposed.

The proposals

30 The draft Regulations therefore propose significant changes in the following areas. Each of these is then considered in detail:

- Significant structural simplification of the Regulations;
- The replacement of the ACoP with targeted guidance;
- Replacement of the CDM-c 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 TMCS D relating to domestic clients; and
- The threshold for appointment of co-ordinators.

31 The public consultation will be run in accordance with Government consultation guidance. Nothing is set in stone, but we need to present current thinking. The proposed regulatory package is subject to amendment in the light of consultation and HSE's final proposals will be subject to approval by the HSE Board and Ministers.

Timetable

32 It is proposed, subject to Ministerial and Parliamentary scrutiny, that the revised Regulations will come into force in April 2015.

Structural simplification of the Regulations

33 The scope of CDM 2007 is broad, covering a large industry across many sub-sectors with a wide range of approaches to delivering projects. The Regulations apply to all construction work from major infrastructure and civil engineering projects to small scale works at domestic premises, eg replacing guttering. The definition of construction work is substantially unchanged from CDM 2007, except for clarification that it does not include pre-construction archaeological investigations.

34 HSE proposes a substantial simplification of the structure of the Regulations to make them more straightforward, linear and easier to navigate and understand. There will be less duplication – for example the overlap between current Part 2 and Part 3 requirements - and the structure aims to follow the process of a project more logically. This will make the Regulations significantly more accessible and relevant to those involved in small projects.

35 We do not propose significant changes to the current Part 4 and Schedule 2, which set out the specific technical requirements relating to health and safety on construction sites, as these have not proved controversial, have stood the test of time and are not covered by other legislation.

Replacing the ACoP with targeted guidance

36 The primary purpose of an ACoP is to assist dutyholders over the standards expected of them in complying with the law. The CDM ACoP is one of the longest of those supporting health and safety regulations. It attempts to define a system of management arrangements which applies to the entire breadth of the industry from minor refurbishment works to major infrastructure projects. Large parts of the CDM ACoP were originally written as guidance but were eventually published as an ACoP. The reality is that those who would most benefit from the ACoP find it inaccessible and do not read it because it is too long, complex and does not appear relevant to them. Those who have the specialist resources to manage construction health and safety find aspects of it difficult to apply in a proportionate manner and often over-interpret it.

37 One argument put forward for the retention of the ACoP is that the status of ACoPs gives power to health and safety professionals and others in persuading senior managers and Boards that a particular course of action is needed. HSE's position is that businesses should be focused on what outcomes they want to deliver rather than the status of a document.

38 Another relevant factor is that guidance documents are easier and quicker to revise than ACoPs, in order to keep their contents current.

39 HSE proposes to consult on removal of the CDM ACoP and replace it with a suite of tailored guidance, with clear guidance on interpretation and material that is particularly aimed at small businesses. This will be in plain English, explaining what is required to be done in order to comply with the law. For example, HSE will provide template health and safety plans for typical, high risk, small projects such as roof replacement, loft conversions or extensions. We propose to work closely with the construction industry in developing this material and also in supporting better-organised parts of the industry to produce their own guidance which meets their own purposes.

Replacing the CDM co-ordinator role with the principal designer

40 HSE proposes to remove the CDM-c role. There is a widely held view, supported by evidence, that the current approach is often bureaucratic and adds costs with little added value. As such it is often ineffective. This view has been expressed partly in the evaluation, but has been more clearly voiced in one-to-one discussions with industry stakeholders. Appointments are often made too late, too little resource is made available, and those involved in fulfilling the role are often not well embedded into the pre-construction project team.

41 Pre-construction co-ordination is required by the TMCS. We therefore aim to replace the role with one called the 'principal designer' (PD). The responsibility for discharging the function will rest with an individual or business in control of the pre-construction phase. It is this element of control and influence over the design which are the fundamental differences between the CDM-c role and the PD role. The default position will be that the responsibility for discharging of the function is within the existing project team, facilitating an integrated approach to risk management. We expect that moving away from a default position where an external contractor is appointed will deliver considerable economies of scale.

42 The PD will be responsible for planning, managing and monitoring the pre-construction phase of a project in the same way that the Principal Contractor (PC) is responsible for planning, managing and monitoring the construction phase. In summary, the PD will be responsible for:

- planning, managing and monitoring the pre-construction phase;
- ensuring that where reasonably practicable, risks are eliminated or controlled through design work;
- passing information on to the PC;
- ensuring co-operation and co-ordination;
- ensuring designers comply with their duties;
- assisting the client in preparing the pre-construction information; and
- preparing the health and safety file.

43 The duties of the PD (and of the PC) make reference to the 'general principles of prevention' contained in Schedule 1 to the Management of Health and Safety at Work Regulations 1999. These general principles of prevention establish a hierarchy of control of risk which are entirely consistent with effective management of risk on construction sites.

44 In short, we want to realign the way in which the co-ordination function is delivered, and we want it to be seen as an integral business function rather than a separate and in many cases an externalised add-on.

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

45 There is strong evidence to suggest that there is a need to bear down on the excessively bureaucratic response in many parts of the industry to complying with CDM 2007. Such approaches waste valuable resources which could be better targeted at achieving improved standards.

46 The CDM evaluation showed real concerns over how the industry has responded to the challenge of assuring corporate competence and a competent workforce. Aside from the evaluation, there is a great deal of industry concern about the balance between costs and benefits in the competence arena. This is true of both individual and corporate competence.

47 Promoting competence within the construction industry remains a key priority for HSE and developing individual competence is crucial to reducing accidents and ill health. HSE's vision for competence in the construction industry is one where:

- competence is seen by employers as a long-term issue, building on the basics of selection, training, management of experience and life-long learning. Supervision is vital, but is not a substitute for competence;
- small contractors should only have to complete the minimum amount of paperwork possible to demonstrate their health and safety arrangements at the prequalification stage;
- third party schemes all use the standards for prequalification in health and safety set out in Publicly Available Standard 91 ('PAS91'). Where clients require higher standards this must be explicitly recognised;
- third party schemes all belong to a common framework of accountability e.g. Safety Schemes In Procurement ('SSIP') Forum;
- clients do not insist, at the prequalification stage, on a contractor filling in their own in-house questionnaires, where similar paperwork has already been completed for another client or procurement scheme;

- clients take seriously their responsibility, at the award stage, to ensure that contractors have the capacity in terms of time, resources, managerial and supervisory capability to deliver the project;
- the site-based workforce is demonstrably qualified through qualifications based on agreed national standards;
- PCs do not insist that occasional site visitors, including professionals or ancillary trades require a competence card.

48 The requirements of regulation 4 of CDM 2007 and the detailed framework of competence assessment supporting it at Appendix 4 of the ACoP have promoted an industry response which, in general, is costly and bureaucratic. Furthermore, this response has diverted attention from the delivery of competent businesses and workers to the processes involved rather than the outcomes.

49 HSE considers that regulation 4 should be removed given that competence is most effectively promoted through cultural change and leadership in the industry rather than regulation. The regulation introduced the concepts of 'individual' and 'corporate' competence, the latter being a potentially misleading term. Experience has shown that extending the language of competence to organisations has caused widespread confusion, and that it is not easy to determine whether the legal requirement for competence has been met.

50 Regulation 4 has facilitated the proliferation of commercially-driven third party schemes. Although these assessment schemes aim to comply with the core criteria in Appendix 4 of the ACoP, differences between the assessment requirements and the frequency of re-assessments between different schemes have resulted in the process becoming both bureaucratic and costly to construction organisations – particularly for smaller organisations. Instead, we would wish to see such schemes uniting under the banner of theSSIP Forum.

51 Additionally, regulation 4 has not established the correct balance of responsibilities between the employer, the self-employed, the employee and third party competency card schemes, such as the Construction Skills Certification Scheme (CSCS) and others. We will work with the various Sector Skills Councils, Awarding Bodies, colleges and nationally-recognised training providers in the industry to promote a greater joint responsibility for agreeing standards of assessment and co-ordinating training and achievement of competence in health and safety.

52 We plan to retain a general requirement under the revision of CDM (new regulation 8) for those appointing others to carry out construction work to ensure that they have received appropriate information, instruction, training and supervision to allow them to work safely. This aligns with the general requirements under Sections 2 and 3 of HSWA.

53 HSE believes that the competence of construction industry professionals should be overseen by, and be the responsibility of, the relevant professional bodies and institutions.

54 HSE acknowledges the presentational difficulties associated with removing regulation 4 and Appendix 4 of CDM, and we remain committed to supporting the industry in ensuring its workers are competent. The proposed removal of the detailed competence requirements is intended to create an environment in which HSE can work with the industry through non-regulatory approaches to ensure the systems it operates for individual and corporate competence assurance suit the industry's needs. The proposed approach on corporate and individual competence aligns with work on client capability and procurement and capability of the workforce outlined in the Industrial Strategy: government and industry in partnership - Construction 2025.

Clients' duties including domestic clients

55 Clients remain central to the success or otherwise of construction projects. The proposed Regulations seek to maintain a strong focus on clients and encourage them to take an active role in ensuring that construction work being carried out on their behalf is planned and managed in the right way.

56 CDM 2007 defines a client as any person who '...in the course or furtherance of a business' has or seeks to have construction work carried out. This phrase effectively exempts owner occupiers from client duties. TMCS D does not make this distinction. We propose to address this through the redrafting of CDM, but to do so in a way that is proportionate.

57 We therefore propose to remove the domestic client exemption, but to create the default position whereby duties that would fall on a domestic client instead fall to the contractor (or PC where there is more than one contractor). However, regulation 4 also allows a domestic client the option of appointing a PD to carry out regulations 5, 7 and 8 and contains a fall back position if no appointments are made.

58 HSE wants to ensure that effective co-ordination of health and safety is carried out on all projects regardless of whether they are carried out for domestic clients. We are also clear that we expect these requirements to be discharged in a sensible and proportionate manner. For the majority of small, domestic projects this will mean no change to how these projects should currently be managed for health and safety. As part of our proposed guidance we will make this clear, as well as the associated enforcement expectations.

Threshold for appointment of co-ordinators

59 Under CDM 2007 the threshold for the Part 3 requirements to apply (appointment of the CDM-c, PC etc.) is the same as the notification threshold – 30 days or 500 person-days. TMCS D requires the appointment of co-ordinators wherever there is more than one contractor.

60 HSE similarly plans to revise CDM to satisfy this requirement, but in a proportionate way. We aim to set out clearly as part of our proposed guidance the sensible and proportionate arrangements for co-ordination on smaller projects which fall within the scope of this requirement. We estimate that there will be just less than 1 million additional small projects per year for domestic and non-domestic clients which will require the appointment of co-ordinators. For the vast majority of these projects we would expect little more than is currently carried out for these duties to be discharged appropriately, given the existing requirements for co-operation and co-ordination in regulation 11 of the Management of Health and Safety at Work Regulations 1999.

61 We expect that the PD role will be discharged by the person responsible for the design work, which may be a contractor, an architect, an engineer, etc. In practice, little additional work, over and above what is currently expected of a responsible designer will be required by this change. Overall we believe that there should be more effective co-ordination, particularly of smaller and poorly managed projects involving significant health and safety risks.

Notification

62 The requirement for notification of construction projects to HSE has been brought into line with the Directive. HSE proposes a stand-alone duty to notify projects lasting longer than 30 working days and on which more than 20 workers are working simultaneously or

exceeding 500 person days. This no longer acts as a threshold triggering additional duties as is the case in CDM 2007, avoiding the complexity of the current structure.

Impact assessment

63 HSE has to estimate the costs and benefits of its proposals and we do this by means of an Impact Assessment (IA). Our initial IA is at Annex 2. This sets out our analysis and numerical estimates for all of the key changes behind HSE's proposals to replace CDM 2007.

64 We invite you to consider the IA and submit your comments on it, supported where possible by any quantitative data that you have. If you believe that there are cost or benefit implications of the proposals that have not been covered by the IA please submit your comments on this too. The information that HSE receives will be used to improve the accuracy and completeness of the IA.

65 The IA shows that, assuming the preferred option is followed in relation to removing the exemption for domestic clients - ie the 'deeming' approach (Option 2) rather than the copy-out approach (Option 1) - the following significant impacts are expected:

- a one-off net cost of familiarisation of £5 million in the first year;
- savings of £30 million a year from more efficient delivery of the co-ordination function;
- savings of £3 million a year from the change in threshold for the project notification requirements;
- unqualified but potentially significant savings from the removal of the explicit competence requirements; and
- costs of £6 million a year from applying the Regulations to domestic clients of construction work.

What the consultation seeks

66 This consultation therefore seeks views on the following areas:

- structure of the draft Regulations – The proposals adopt a more straightforward structure that follows the progression of a construction project;
- clients' duties including domestic clients – The proposals remove the exemption for domestic clients from client responsibilities. Domestic clients procuring work can assume the appointments to the co-ordination roles will happen automatically;
- co-ordination roles (principal designer and principal contractor) and appointment thresholds – The proposals remove the CDM co-ordinator role. Instead the client appoints (where there is more than one contractor) a principal designer at the pre-construction stage;
- contractors' duties – Few changes from CDM 2007 but simplified;
- designers' duties – The proposals retain explicit duties on designers since their role is crucial in considering and reducing risks during project design and beyond;
- competence – The concept of competence remains central to the rationale behind the proposed new Regulations, but a general requirement for information, instruction, training and supervision is proposed in place of a separate regulation on competence;
- notification – Amended to align with the threshold in the Directive;

- consideration of withdrawal of ACoP – Proposes that the ACoP be withdrawn and replaced by guidance aimed at particular sectors in particular smaller projects;
- impact assessment – The assumptions and conclusions made in the impact assessment.

The consultation questions

Structural simplification

Please read in conjunction with paragraphs 33 to 35.

Question 1: 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?
Disagree?

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

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

Question 3: The technical standards have remained effectively unchanged. These are contained in Part 4 of the proposed Regulations. Is this approach acceptable to you?

Yes
No

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

Question 4: CDM 2015 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
No

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

Question 5: Do you think that these general duties on designers would be effective in considering relevant health and safety risks during subsequent construction work?

Yes
No

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

Question 6: 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 any impacts for projects that currently do not require a plan?

Yes

No

What will these be?

Replacing the ACoP with targeted guidance

Please read in conjunction with paragraphs 36 to 39.

Question 7: 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

No

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

Question 8: Please comment on whether there is any additional guidance that would be helpful.

Replacing the CDM co-ordinator with the principal designer

Please read in conjunction with paragraphs 40 to 44.

Question 9: 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

No

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

Question 10: 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.

b) at the construction phase?

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

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.

Question 11: 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 clear to those reading the Regulations. Do you:

Agree?

Disagree?

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

Question 12: 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?

Question 13: The draft Regulations replace the specific requirements for individual worker competence in CDM 2007 with a more general requirement. Under CDM 2015 those arranging for or instructing workers to carry out construction work should ensure that 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?

Disagree?

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

Notification

Please read in conjunction with paragraph 62.

Question 14: 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?

Clients including domestic clients

Please read in conjunction with paragraphs 55 to 58.

Question 15: 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

No

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

Question 16: 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

No

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

Impact assessment (Annex 2)

Question 17: Do you agree with the analysis of the impacts (including costs and benefits) on commercial projects presented in the IA? Yes/No

Yes - Please provide comments if you wish.

No – What steps would you take to improve it? Please include numerical data to aid appraisal if relevant.

Question 18: Do you agree with the analysis of the impacts (including costs and benefits) on domestic projects presented in the IA? Yes/No

Yes - Please provide comments if you wish.

No – What steps would you take to improve it? Please include numerical data to aid appraisal if relevant.

Question 19: Are there any costs or benefits (positive or negative) that we have missed that you believe should be taken into account? Yes/No

Yes – Please provide details, including numerical data where possible.

No – Please provide comments if you wish.

Other

Question 20: Do you have any other comments on the proposals covered by this questionnaire? Please provide comments if you wish.

 STATUTORY INSTRUMENTS

2014 No.

HEALTH AND SAFETY**Construction (Design and Management) Regulations 2014**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 15(1), (2), (3)(a) and (c), (5)(a), (8) and (9), 47(2) and (3), 80(1) and (2) and 82(3)(a) of, and paragraphs 1(1) and (2), 6, 7, 8(1), 9 to 12, 14, 15(1), 16, 18, 20 and 21 of Schedule 3 to, the Health and Safety at Work etc. Act 1974(a) (“the 1974 Act”).

The Regulations give effect without modifications to proposals submitted to the Secretary of State by the Health and Safety Executive (“the Executive”) under section 11(3) of the 1974 Act. (b)

Before submitting those proposals to the Secretary of State, the Executive consulted the bodies that appeared to it to be appropriate as required by section 50(3) of the 1974 Act.(c)

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Construction (Design and Management) Regulations 20xx and come into force on [date].

Interpretation

- 2.—(1) In these Regulations, unless the context otherwise requires –
- “the 1974 Act” means the Health and Safety at Work etc. Act 1974;
- “the 2007 Regulations” means the Construction (Design and Management) Regulations 2007(d);

(a) 1974 c.37; section 15(1) was inserted by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 6; S.I. 2002/794 amended section 15(1) and section 47(2) was amended by 2013 c.24, section 69.

(b) Section 11(3) was inserted by S.I. 2008/960.

(c) Section 50(3) was amended by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 16(3); it was further amended by the Health and Social Care Act 2012 (c.7), Schedule 7, paragraph 6 and S.I. 2008/960.

(d) S.I. 2007/320, as amended by S I.2012/632.

“the Management Regulations” means the Management of Health and Safety at Work Regulations 1999(a);

“business” means a trade, business or other undertaking (whether for profit or not);

“client” means any person for whom a project is carried out;

“construction phase” means the period of time starting when construction work in a project starts and ending when construction work in that project is completed;

“construction phase plan” means a document recording the health and safety arrangements, site rules and special measures for construction work which, where applicable, includes specific measures concerning work which falls within one or more of the following categories;

- (a) work which puts workers at risk of burial under earthfalls, engulfment in swampland or falling from a height, where the risk is particularly aggravated by the nature of the work or processes used by or by the environment at the place of work or site;
- (b) work which puts workers at risk from chemical or biological substances constituting a particular danger to the safety and health of workers or involving a legal requirement for health monitoring;
- (c) work with ionizing radiation requiring the designation of controlled or supervised areas as defined in Article 20 of Directive 80/836/Euratom;
- (d) work near high voltage power lines;
- (e) work exposing workers to the risk of drowning;
- (f) work on wells, underground earthworks and tunnels;
- (g) work carried out by divers having a system of air supply;
- (h) work carried out by workers in caissons with a compressed-air atmosphere;
- (i) work involving the use of explosives;
- (j) work involving the assembly or dismantling of heavy prefabricated components;

“construction site” includes any place where construction work is being carried out or to which the workers have access, but does not include a workplace within it which is set aside for purposes other than construction work;

“construction work” means the carrying out of any building, civil engineering or engineering construction work and includes—

- (a) the construction, alteration, conversion, fitting out, commissioning, renovation, repair, upkeep, redecoration or other maintenance (including cleaning which involves the use of water or an abrasive at high pressure or the use of corrosive or toxic substances), de-commissioning, demolition or dismantling of a structure;
- (b) the preparation for an intended structure, including site clearance, exploration, investigation (but not site survey) and excavation (but not pre-construction archaeological investigations), and the clearance or preparation of the site or structure for use or occupation at its conclusion;
- (c) the assembly on site of prefabricated elements to form a structure or the disassembly on site of the prefabricated elements which, immediately before such disassembly, formed a structure;
- (d) the removal of a structure or of any product or waste resulting from demolition or dismantling of a structure or from disassembly of prefabricated elements which immediately before such disassembly formed such a structure;
- (e) the installation, commissioning, maintenance, repair or removal of mechanical, electrical, gas, compressed air, hydraulic, telecommunications, computer or similar services which are normally fixed within or to a structure,

(a) S.I. 1999/3242.

but does not include the exploration for or extraction of mineral resources or preparatory activities carried out at a place where such exploration or extraction is carried out;

“contractor” means any person who, in the course or furtherance of a business, carries out, manages or controls construction work;

“design” includes drawings, design details, specifications and bills of quantities (including specification of articles or substances) relating to a structure, and calculations prepared for the purpose of a design;

“designer” means any person (including a client, contractor or other person referred to in these Regulations) who in the course or furtherance of a business—

(a) prepares or modifies a design; or

(b) arranges for or instructs any person under their control to do so,

relating to a structure or to a product or mechanical or electrical system intended for a particular structure, and a person is deemed to prepare a design where a design is prepared by a person under their control;

“domestic client” means a client for whom a project is being carried out which is not in the course or furtherance of a business of that client;

“excavation” includes any earthwork, trench, well, shaft, tunnel or underground working;

“the Executive” means the Health and Safety Executive;

“the general principles of prevention” means the general principles of prevention specified in Schedule 1 to the Management of Health and Safety at Work Regulations 1999(a);

“health and safety file” means the record referred to in regulation 9(f);

“loading bay” means any facility for loading or unloading;

“place of work” means any place which is used by any person at work for the purposes of construction work or for the purposes of any activity arising out of or in connection with construction work;

“pre-construction information” means information in the client’s possession or which is reasonably obtainable, which is relevant to the work and is of an appropriate level of detail and proportionate to the risks involved, including information about—

(a) the project;

(b) planning and management of the project;

(c) health and safety hazards, including design and construction hazards and how they will be addressed; and

(d) information in any existing health and safety file;

“pre-construction phase” means any period of time during which design or preparatory work is carried out for a project;

“principal contractor” means the contractor appointed under regulation 6(1)(b) to perform the functions in regulations 12 and 13;

“principal designer” means the designer in control of the pre-construction phase appointed under regulation 6(1)(a) to perform the functions in regulation 9;

“project” means a project which includes or is intended to include construction work and includes all planning, design, management or other work involved in a project until the end of the construction phase;

“site rules” means rules which are drawn up for a particular construction site and are necessary for health and safety purposes;

“structure” means—

(a) S.I. 1999/3242.

- (a) any building, timber, masonry, metal or reinforced concrete structure, railway line or siding, tramway line, dock, harbour, inland navigation, tunnel, shaft, bridge, viaduct, waterworks, reservoir, pipe or pipe-line, cable, aqueduct, sewer, sewage works, gasholder, road, airfield, sea defence works, river works, drainage works, earthworks, lagoon, dam, wall, caisson, mast, tower, pylon, underground tank, earth retaining structure or structure designed to preserve or alter any natural feature, fixed plant and any structure similar to those listed; or
- (b) any formwork, falsework, scaffold or other structure designed or used to provide support or means of access during construction work,

and any reference to a structure includes part of a structure;

“traffic route” means a route for pedestrian traffic or for vehicles and includes any doorway, gateway, loading bay or ramp;

“vehicle” includes any mobile work equipment;

“work equipment” means any machinery, appliance, apparatus, tool or installation for use at work (whether exclusively or not);

“workplace” means a workplace within the meaning of regulation 2(1) of the Workplace (Health, Safety and Welfare) Regulations 1992(a) other than a construction site.

(2) Any reference in these Regulations to a plan, rule, document, report or copy includes a copy, or electronic version which is —

- (a) capable of being retrieved or reproduced when required; and
- (b) secure from loss or unauthorised interference.

Application

3.—(1) These Regulations apply—

- (a) in Great Britain; and
- (b) to premises and activities outside Great Britain to which sections 1 to 59 and 80 to 82 of the 1974 Act apply by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013(b).

(2) Subject to paragraph 3, these Regulations apply to a project.

(3) Part 4 only applies in relation to a construction site.

Application to domestic clients

4.—(1) This regulation applies where the client is a domestic client.

(2) Subject to paragraph (3) the duties in regulations 5, 7 and 8, must be carried out by —

- (a) the contractor for a project where there is only one contractor; or
- (b) the principal contractor for a project where there is more than one contractor,

(3) Where there is a written agreement between the client and the principal designer that the principal designer will fulfil the duties in regulations 5, 7 and 8, the principal designer must fulfil those duties.

(4) Where there is more than one contractor or if it is reasonably foreseeable that more than one contractor will be working on a project at any time, the client must appoint in writing as soon as practicable—

- (a) a principal designer to carry out the responsibilities in regulation 9; and
- (b) a principal contractor to carry out the responsibilities in regulations 12 and 13.

(a) S.I.1992/3004, regulation 2(1) was amended by S.I 2002/2174, regulation 6(b); there are other amendments not relevant to these Regulations.

(b) S.I. 2013/240.

- (5) Where no appointment is made as required by paragraph (4)—
 - (a) the first designer appointed during the pre-construction phase is deemed to be appointed as the principal designer; and
 - (b) the first contractor appointed during the construction phase is deemed to be appointed as the principal contractor.
- (6) Regulation 6 does not apply to a domestic client.

PART 2

Client Duties

Client duties for managing projects

5.—(1) A client must make arrangements for managing a project (including the allocation of sufficient time and other resources) that are suitable for persons with a duty under these Regulations to ensure that—

- (a) construction work is carried out so far as is reasonably practicable without risk to the health and safety of any person;
 - (b) the requirements of Schedule 2 are complied with in respect of any person carrying out construction work.
- (2) A client must provide pre-construction information as soon as practicable to —
- (a) each designer involved in the design of a structure; and
 - (b) each contractor who is or might be engaged by the client in relation to a project.
- (3) A client must take reasonable steps to ensure that the arrangements referred to in paragraph (1) are maintained and reviewed throughout the project.
- (4) A client must ensure that—
- (a) the principal designer complies with the duties in regulation 9;
 - (b) the principal contractor complies with the duties in regulations 12 and 13;
 - (c) before the construction phase begins—
 - (i) if there is more than one contractor, the principal contractor, or
 - (ii) if there is only one contractor, the contractor

draws up a construction phase plan; and

- (d) the principal designer prepares an appropriate health and safety file for the project, which—
 - (i) includes information provided by the client as specified in regulation 4(9)(c) of the Control of Asbestos Regulations 2012(a);
 - (ii) is revised from time to time as appropriate to incorporate any relevant new information; and
 - (iii) is kept available for inspection by any person who may need it to comply with the relevant legal requirements.
- (5) If a client disposes of the client's interest in the structure, the client will comply with the duty in paragraph (4)(d)(iii) by providing the health and safety file to the person who acquires the client's interest in it and ensuring that that person is aware of the nature and purpose of the file.
- (6) Where there is more than one client in relation to a project—

(a) S.I. 2012/632.

- (a) one or more of the clients may elect in writing to be treated for the purposes of these Regulations as the only client or clients;
- (b) no client other than the client agreed in paragraph (a) will be subject to any duty owed by a client under these Regulations except for the duties in regulations 5(2), 5(4)(d) and 8(2), to the extent that those duties relate to information in the client's possession.

Appointment of the principal designer and the principal contractor

6.—(1) Where there is more than one contractor or if it is reasonably foreseeable that more than one contractor will be working on a project at any time, the client must appoint in writing as soon as practicable—

- (a) a principal designer to carry out the responsibilities in regulation 9; and
- (b) a principal contractor to carry out the responsibilities in regulations 12 and 13.

(2) If an appointment in accordance with paragraphs (1) (a) or (b), or both is not made, the client must fulfil the unfulfilled role or roles.

Notification

7.—(1) A project is notifiable if the construction work on a construction site is scheduled to —

- (a) last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project; or
- (b) exceed 500 person days.

(2) Subject to paragraph (4), where a project is notifiable, the client must give notice to the Executive as soon as is practicable before the construction phase begins.

(3) The notice must—

- (a) contain the particulars specified in Schedule 1; and
- (b) be clearly displayed on site in a comprehensible form where it can be read by any worker engaged in the construction work and, if necessary, periodically updated.

(4) Where a project includes construction work of a description for which the Office of Rail Regulation is the enforcing authority by virtue of regulation 3 of the Health and Safety (Enforcing Authority or Railways and Other Guided Transport Systems) Regulations 2006(a), the client must give notice under paragraph (2) to the Office of Rail Regulation instead of to the Executive.

PART 3

Health and safety duties and roles

General duties

8.—(1) Any person who is responsible for appointing a contractor to carry out work on a construction project must ensure so far as is reasonably practicable that the contractor—

- (a) has received the necessary information, instruction and training; and
- (b) has appropriate supervision,

to comply with the relevant statutory provisions and to secure the health, safety and welfare of persons affected by construction work.

(2) Any person on whom a duty is placed by these Regulations must co-operate with any other person in relation to a project at the same or an adjoining construction site so far as is necessary to enable that person to perform any duty or function under these Regulations.

(a) S.I. 2006/557 as amended by S.I.2007/1573.

(3) A person involved in a project working under the control of another person must report to the person in control anything that person is aware of which is likely to endanger their own health or safety or that of others.

(4) Any person who is required to provide information or instruction by these Regulations must ensure the information is comprehensible and provided as soon as is practicable.

Duties of a principal designer for health and safety at the pre-construction phase

9. A principal designer must plan, manage, monitor and coordinate the pre-construction phase of a project, taking into account the general principles of prevention to ensure —

- (a) that so far as is reasonably practicable, the project is carried out without risks to health or safety;
- (b) that assistance is provided to the client in the preparation of the pre-construction information required by regulation 5(2);
- (c) the identification, elimination, or control, so far as is reasonably practicable, of foreseeable risks to the health or safety of any person—
 - (i) carrying out or liable to be affected by construction work,
 - (ii) maintaining or cleaning a structure, or
 - (iii) using a structure designed as a workplace;
- (d) the cooperation of all persons working on the project;
- (e) designers comply with their duties in regulation 10;
- (f) the preparation and subsequent appropriate revision from time to time of a health and safety file which must contain information relating to the project which is likely to be needed during any subsequent construction work to ensure the health and safety of any person;
- (g) the prompt provision of pre-construction information in a convenient form to:
 - (i) every person designing the structure; and
 - (ii) every contractor who has been or may be appointed by the client; and
- (h) liaison with the principal contractor as appropriate for the duration of the project and in particular regarding any information which the principal contractor may need to prepare the construction phase plan or which may affect the planning and management of the construction work.

Duties of designers

10.—(1) A designer must not commence work in relation to a project unless satisfied that the client is aware of the client duties under these Regulations.

(2) When preparing, or modifying a design the designer must take into account the general principles of prevention and any pre-construction information to eliminate, so far as is reasonably practicable, foreseeable risks to the health and safety of any person—

- (i) carrying out or liable to be affected by construction work;
- (ii) maintaining or cleaning a structure; or
- (iii) using a structure designed as a workplace.

(3) If it is not possible to eliminate the risks in accordance with paragraph (2), the designer must so far as is reasonably practicable—

- (i) take steps to reduce and control the risks through the subsequent design process;
- (ii) provide information about those risks to the principal designer; and
- (iii) ensure appropriate information is included in the health and safety file.

(4) The designer must take all reasonable steps to provide with the design sufficient information about aspects of the design of the structure or its construction or maintenance to adequately assist—

- (a) clients;
- (b) other designers; and
- (c) contractors,

to comply with their duties under these Regulations.

Designs prepared or modified outside Great Britain

11. Where a design is prepared or modified outside Great Britain for use in construction work to which these Regulations apply—

- (a) the person who commissions it, if established within Great Britain; or
- (b) if that person is not so established, the client for the project,

must ensure that regulation 10 is complied with.

Duties of the principal contractor

12. The principal contractor must plan, manage, monitor and coordinate the construction phase taking into account the general principles of prevention to ensure that—

- (a) so far as is reasonably practicable, construction work is carried out without risks to health or safety;
- (b) a construction phase plan is drawn up, or arrangements are made for it to be drawn up as soon as practicable prior to setting up a construction site;
- (c) the construction phase plan is appropriately updated, reviewed and revised from time to time so that it continues to be sufficient to ensure that construction work is carried out so far as is reasonably practicable without risk to health and safety;
- (d) there is coordination of the implementation of the relevant legal requirements for health and safety to ensure that employers and, if necessary for the protection of workers, self-employed persons—
 - (i) apply the general principles of prevention in a consistent manner in particular when complying with the provisions of Part 4;
 - (ii) where required, follow the construction phase plan;
- (e) where necessary for health and safety, site rules are drawn up, which are appropriate to the construction site and the activities on it;
- (f) a suitable site induction is provided;
- (g) the necessary steps are taken to prevent access by unauthorised persons to the construction site;
- (h) welfare facilities that comply with the requirements of Schedule 2 are provided throughout the construction phase;
- (i) there is liaison with the principal designer as appropriate for the duration of the project and in particular regarding any information which the principal designer may need to prepare the health and safety file or which may affect the planning and management of the pre-construction phase;
- (j) the health and safety file is appropriately updated, reviewed and revised from time to time to take account of the work and any changes that have occurred.

Principal contractor's duties to consult and engage with workers

13. The principal contractor must—

- (a) make and maintain arrangements which will enable the principal contractor and workers engaged in construction work to co-operate effectively in promoting and developing measures to ensure the health, safety and welfare of the workers and in checking the effectiveness of the measures;
- (b) consult those workers or their representatives in good time on matters connected with the project which may affect their health, safety or welfare, so far as they or their representatives have not been similarly consulted by their employer;
- (c) ensure that workers or their representatives can inspect and take copies of any information which the principal contractor has, or which these Regulations require to be provided to the principal contractor, which relates to the planning and management of the project, or which otherwise may affect their health, safety or welfare at the site, except any information—
 - (i) the disclosure of which would be against the interests of national security;
 - (ii) which the principal contractor could not disclose without contravening a prohibition imposed by or under an enactment;
 - (iii) relating specifically to an individual, unless that individual has consented to its being disclosed;
 - (iv) the disclosure of which would, for reasons other than its effect on health, safety or welfare at work, cause substantial injury to the principal contractor's undertaking or, where the information was supplied to the principal contractor by some other person, to the undertaking of that person;
 - (v) obtained by the principal contractor for the purpose of bringing, prosecuting or defending any legal proceedings.

Duties of contractors

14.—(1) A contractor must not carry out construction work in relation to a project unless satisfied that the client is aware of the client duties under these Regulations.

(2) Each contractor must plan, manage and monitor the way in which construction work is carried out either by the contractor or by workers under the contractor's control in a way which ensures that, so far as is reasonably practicable, it is carried out without risks to health and safety.

(3) If there is no principal contractor, a contractor must ensure that a construction phase plan is drawn up, or that arrangements are made for it to be drawn up as soon as practicable prior to setting up a construction site.

(4) Each contractor must provide any person employed by that contractor or working under the contractor's control on the construction site any information and instruction so that construction work can be carried out without risk to health and safety including —

- (a) a suitable site induction, where not already provided by the principal contractor;
- (b) the procedures to be followed in the event of serious and imminent danger to health and safety;
- (c) information on risks to their health and safety—
 - (i) identified by the risk assessment under regulation 3 of the Management Regulations(a), or
 - (ii) arising out of the conduct of another contractor's undertaking and of which that contractor is or ought reasonably to be aware.

(5) Without prejudice to any other information provided to contractors under these Regulations, each contractor must provide their employees with any health and safety training which is required in respect of the construction work by regulation 13(2)(b) of the Management Regulations.

(a) S.I. 1999/3242 as amended by S.I. 2003/2457, S.I. 2005/1541 and in relation to Scotland by S.S.I 2006/484.

(6) A contractor must not begin work on a construction site unless reasonable steps have been taken to prevent access by unauthorised persons to that site.

(7) Each contractor must ensure, so far as is reasonably practicable, that the requirements of Schedule 2 are complied with so far as they affect the contractor themselves or any person carrying out construction work under the contractor's control.

(8) Each contractor must comply with—

- (a) any directions given by the principal designer or the principal contractor; and
- (b) any site rules.

PART 4

General Requirements for all Construction Sites

Application of Regulations 16 - 34

15.—(1) Each contractor carrying out construction work must comply with the requirements of regulations 16 to 34, so far as they affect the contractor or any person carrying out construction work under the contractor's control, or relate to matters within the contractor's control.

(2) Each person (other than a contractor carrying out construction work) who controls the way in which any construction work is carried out by a person at work must comply with the requirements of regulations 16 to 34 so far as they relate to matters within that person's control.

(3) Each person at work on construction work under the control of another person must report to that person any defect which the person at work is aware may endanger their own health and safety or the health and safety of another.

(4) Paragraphs (1) and (2) do not apply to regulation 23.

Safe places of construction work

16.—(1) There must, so far as is reasonably practicable, be suitable and sufficient safe access and egress from every place of construction work and to and from every other place provided for the use of any person while at work, and which must be properly maintained.

(2) Each place of construction work must, so far as is reasonably practicable, be made and kept safe for and without risks to the health of any person at work there.

(3) Steps must be taken to ensure, so far as is reasonably practicable, that no person uses access or egress or gains access to any place of construction work which does not comply with the requirements of paragraph (1) or (2).

(4) Each place of construction work must, so far as is reasonably practicable, have sufficient working space and be arranged so that it is suitable for any person who is working or who is likely to work there, taking account of any necessary work equipment likely to be used there.

Good order and site security

17.—(1) Each part of a construction site must, so far as is reasonably practicable, be kept in good order and those parts which are used as a place of construction work must be kept in a reasonable state of cleanliness.

(2) Where necessary in the interests of health and safety, a construction site must so far as is reasonably practicable, and in accordance with the level of risk posed—

- (a) have its perimeter identified by suitable signs and be arranged so that its extent is readily identifiable; or
- (b) be fenced off,
- (c) or both.

(3) No timber or other material with projecting nails (or similar sharp object) must—

- (a) be used in any construction work; or
- (b) be allowed to remain in any place,

if the nails (or similar sharp object) may be a source of danger to any person.

Stability of structures

18.—(1) All practicable steps must be taken, where necessary to prevent danger to any person, to ensure that any new or existing structure or any part of a structure which may become unstable or in a temporary state of weakness or instability due to the carrying out of construction work does not collapse.

(2) Any buttress, temporary support or temporary structure must—

- (a) be of such design and installed and maintained so as to withstand any foreseeable loads which may be imposed on it; and
- (b) only be used for the purposes for which it was designed, and installed and is maintained.

(3) No part of a structure must be so loaded as to render it unsafe to any person.

Demolition or dismantling

19.—(1) The demolition or dismantling of a structure, or part of a structure, must be planned and carried out in such a manner as to prevent danger or, where it is not practicable to prevent it, to reduce danger to as low a level as is reasonably practicable.

(2) The arrangements for carrying out such demolition or dismantling must be recorded in writing before the demolition or dismantling work begins.

Explosives

20.—(1) So far as is reasonably practicable, explosives must be stored, transported and used safely and securely.

(2) An explosive charge may be used or fired only if suitable and sufficient steps have been taken to ensure that no person is exposed to risk of injury from the explosion or from projected or flying material caused by it.

Excavations

21.—(1) All practicable steps must be taken to prevent danger to any person, including, where necessary, the provision of supports or battering, to ensure that—

- (a) no excavation or part of an excavation collapses;
- (b) no material from a side or roof of, or adjacent to, any excavation is dislodged or falls; and
- (c) no person is buried or trapped in an excavation by material which is dislodged or falls.

(2) Suitable and sufficient steps must be taken to prevent any person, work equipment, or any accumulation of material from falling into any excavation.

(3) Suitable and sufficient steps must be taken, where necessary, to prevent any part of an excavation or ground adjacent to it from being overloaded by work equipment or material.

(4) Construction work must not be carried out in an excavation where any supports or battering have been provided pursuant to paragraph (1) unless—

- (a) the excavation and any work equipment and materials which affect its safety have been inspected by a competent person—
 - (i) at the start of the shift in which the work is to be carried out;
 - (ii) after any event likely to have affected the strength or stability of the excavation; and
 - (iii) after any material unintentionally falls or is dislodged; and

- (b) the person who carried out the inspection is satisfied that construction work can be carried out there safely.

(5) Where the person who carried out the inspection has under regulation 23(1)(a) informed the person on whose behalf the inspection was carried out of any matter about which they are not satisfied, construction work must not be carried out in the excavation until the matter has been satisfactorily remedied.

Cofferdams and caissons

22.—(1) A cofferdam or caisson must be—

- (a) of suitable design and construction;
- (b) appropriately equipped so that workers can gain shelter or escape if water or materials enter it; and
- (c) properly maintained.

(2) A cofferdam or caisson may be used to carry out construction work only if—

- (a) the cofferdam or caisson and any work equipment and materials which affect its safety have been inspected by a competent person—
 - (i) at the start of the shift in which the work is to be carried out; and
 - (ii) after any event likely to have affected the strength or stability of the cofferdam or caisson; and
- (b) the person who carried out the inspection is satisfied that construction work can be safely carried out there.

(3) Where the person who carried out the inspection has under regulation 23(1)(a) informed the person on whose behalf the inspection was carried out of any matter about which they are not satisfied, construction work must not be carried out in the cofferdam or caisson until the matter has been satisfactorily remedied.

Reports of inspections

23.—(1) Where a person who carries out an inspection under regulation 21 or 22 is not satisfied that construction work can be carried out safely at the place inspected that person must—

- (a) inform the person for whom the inspection was carried out of the matters that could give rise to a risk to the safety of any person before the end of the shift within which the inspection is completed; and
- (b) prepare a report which must include—
 - (i) the name and address of the person on whose behalf the inspection was carried out;
 - (ii) the location of the place of construction work inspected;
 - (iii) a description of the place of construction work or part of that place inspected (including any work equipment and materials);
 - (iv) the date and time of the inspection;
 - (v) the details of any matter identified that could give rise to a risk to the safety of any person;
 - (vi) details of any action taken as a result of any matter identified in paragraph (v);
 - (vii) the details of any further action considered necessary; and
 - (viii) the name and position of the person making the report.

(2) A person who prepares a report under paragraph (1) must, within 24 hours of completing the inspection to which the report relates, provide the report or a copy of it to the person on whose behalf the inspection was carried out.

(3) Where a person subject to the requirements in paragraphs (1) and (2) is an employee or works under the control of another, the employer, or as the case may be, the person under whose control that person works must ensure that person complies with the requirements.

(4) The person on whose behalf the inspection was carried out must—

(a) keep the report or a copy of it available for inspection by an inspector appointed under section 19 of the 1974 Act—

(i) at the site where the inspection was carried out until the construction work is completed; and

(ii) after that for 3 months; and

send to the inspector such extracts from or copies of it as the inspector may from time to time require.

(5) This regulation does not require the preparation of more than one report where more than one inspection is carried out under regulation 21(4)(a)(i) or 22(2)(a)(i) within a 7 day period.

Energy distribution installations

24.—(1) Where necessary to prevent danger, energy distribution installations must be suitably located, periodically checked and clearly indicated.

(2) Where there is a risk to construction work from overhead electric power cables—

(a) they must be directed away from the area of risk; or

(b) the power must be isolated and, where necessary, earthed; or

(c) if it is not reasonably practicable to comply with paragraph (a) or (b), suitable warning notices and—

(i) barriers suitable for excluding work equipment which is not needed; or

(ii) where vehicles need to pass beneath the cables, suspended protections; and

(iii) in either case, measures providing an equivalent level of safety,

must be provided or taken.

(3) No construction work which is liable to create a risk to health or safety from an underground service, or from damage to or disturbance of it, is to be carried out unless suitable and sufficient steps (including any steps required by this regulation) have been taken to prevent the risk, so far as is reasonably practicable.

Prevention of drowning

25.—(1) Where in the course of construction work a person is at risk of falling into water or other liquid with a risk of drowning, suitable and sufficient steps must be taken to—

(a) prevent, so far as is reasonably practicable, such person from a fall;

(b) minimise the risk of drowning in the event of a fall; and

(c) ensure that suitable rescue equipment is provided, maintained and, when necessary, used so that a person may be promptly rescued in the event of a fall.

(2) Suitable and sufficient steps must be taken to ensure the safe transport of any person conveyed by water to or from any place of construction work.

(3) Any vessel used to convey any person by water to or from a place of construction work must not be overcrowded or overloaded.

Traffic routes

26.—(1) Each construction site must be organised in such a way that, so far as is reasonably practicable, pedestrians and vehicles can move without risks to health and safety.

(2) Traffic routes must be suitable for the persons or vehicles using them, sufficient in number, in suitable positions and of sufficient size.

(3) A traffic route does not satisfy paragraph (2) unless suitable and sufficient steps are taken to ensure that—

- (a) pedestrians or vehicles may use it without causing danger to the health and safety of persons near it;
- (b) any door or gate for pedestrians which leads onto a traffic route is sufficiently separated from that traffic route to enable pedestrians to see any approaching vehicle or plant from a place of safety;
- (c) there is sufficient separation between vehicles and pedestrians to ensure safety or, where this is not reasonably practicable—
 - (i) other means for the protection of pedestrians are provided, and
 - (ii) effective arrangements are used for warning any person liable to be crushed or trapped by any vehicle of its approach;
- (d) any loading bay has at least one exit for the exclusive use of pedestrians; and
- (e) where it is unsafe for pedestrians to use a gate intended primarily for vehicles, one or more doors for pedestrians is provided in the immediate vicinity of the gate, is clearly marked and is kept free from obstruction.

(4) Each traffic route must be—

- (a) indicated by suitable signs where necessary for reasons of health and safety;
- (b) regularly checked; and
- (c) properly maintained.

(5) No vehicle is to be driven on a traffic route unless, so far as is reasonably practicable, that traffic route is free from obstruction and permits sufficient clearance.

Vehicles

27.—(1) Suitable and sufficient steps must be taken to prevent or control the unintended movement of any vehicle.

(2) Where a person may be endangered by the movement of a vehicle, the person with effective control of the vehicle must take suitable and sufficient steps to give warning to any person who is liable to be at risk from the movement of the vehicle.

(3) A vehicle being used for the purposes of construction work must when being driven, operated or towed be—

- (a) driven, operated or towed in such a manner as is safe in the circumstances; and
- (b) loaded in such a way that it can be driven, operated or towed safely.

(4) No person may ride or be required or permitted to ride on any vehicle being used for the purposes of construction work otherwise than in a safe place in that vehicle provided for that purpose.

(5) No person may remain or be required or permitted to remain on any vehicle during the loading or unloading of any loose material unless a safe place of work is provided and maintained for that person.

(6) Suitable and sufficient measures must be taken so as to prevent a vehicle from falling into any excavation or pit, or into water, or overrunning the edge of any embankment or earthwork.

Prevention of risk from fire etc

28. Suitable and sufficient steps must be taken to prevent, so far as is reasonably practicable, the risk of injury to a person during the carrying out of construction work arising from—

- (a) fire or explosion;

- (b) flooding; or
- (c) any substance liable to cause asphyxiation.

Emergency procedures

29.—(1) Where necessary in the interests of the health and safety of a person on a construction site, suitable and sufficient arrangements for dealing with any foreseeable emergency must be prepared and, where necessary, implemented, and those arrangements must include procedures for any necessary evacuation of the site or any part of it.

(2) In making arrangements under paragraph (1), account must be taken of—

- (a) the type of work for which the construction site is being used;
- (b) the characteristics and size of the construction site and the number and location of places of work on that site;
- (c) the work equipment being used;
- (d) the number of persons likely to be present on the site at any one time; and
- (e) the physical and chemical properties of any substances or materials on or likely to be on the site.

(3) Where arrangements are prepared under paragraph (1), suitable and sufficient steps must be taken to ensure that—

- (a) each person to whom the arrangements extend is familiar with those arrangements; and
- (b) the arrangements are tested by being put into effect at suitable intervals.

Emergency routes and exits

30.—(1) Where necessary in the interests of the health and safety of a person on a construction site, a sufficient number of suitable emergency routes and exits must be provided to enable any person to reach a place of safety quickly in the event of danger.

(2) An emergency route or exit provided under paragraph (1) must lead as directly as possible to an identified safe area.

(3) An emergency route or exit provided under paragraph (1), and any traffic route giving access to it, must be kept clear and free from obstruction and, where necessary, provided with emergency lighting so that it may be used at any time.

(4) The matters in paragraph 29(2) must be taken into account when making provision under paragraph (1).

(5) Each emergency route or exit must be indicated by suitable signs.

Fire detection and fire-fighting

31.—(1) Where necessary in the interests of the health and safety of a person at work on a construction site, suitable and sufficient fire-fighting equipment and fire detection and alarm systems must be provided and located in a suitable place.

(2) The matters in paragraph 29(2) must be taken into account when making provision under paragraph (1).

(3) Fire-fighting equipment or fire detection and alarm systems provided under paragraph (1) must be examined and tested at suitable intervals and properly maintained.

(4) Fire-fighting equipment which is not designed to come into use automatically must be easily accessible.

(5) Each person at work on a construction site must, so far as is reasonably practicable, be instructed in the correct use of fire-fighting equipment which may be necessary for the person to use.

(6) Where work activity may give rise to a particular risk of fire, a person must not carry out work unless suitably instructed.

(7) Fire-fighting equipment must be indicated by suitable signs.

Fresh air

32.—(1) Suitable and sufficient steps must be taken to ensure, so far as is reasonably practicable, that every place of construction work or approach to that place of construction work has sufficient fresh or purified air to ensure that the place or approach is safe and without risks to health and safety.

(2) Any plant used for the purpose of complying with paragraph (1) must, where necessary for reasons of health and safety, include an effective device to give visible or audible warning of any failure of the plant.

Temperature and weather protection

33.—(1) Suitable and sufficient steps must be taken to ensure, so far as reasonably practicable, that during working hours the temperature at any place of construction work that is indoors is reasonable having regard to the purpose for which that place is used.

(2) Where necessary to ensure the health and safety of persons at work any place of construction work that is outdoors must be arranged, so far as is reasonably practicable, having regard to the purpose for which that place is used and protective clothing or work equipment provided for the use of any person at work there, to provide protection from adverse weather.

Lighting

34.—(1) Each place of construction work and approach and traffic route to that place of work must be provided with suitable and sufficient lighting, which must be, so far as is reasonably practicable, by natural light.

(2) The colour of any artificial lighting provided must not adversely affect or change the perception of any sign or signal provided for the purposes of health and safety.

(3) Suitable and sufficient secondary lighting must be provided in any place where there would be a risk to the health and safety of a person in the event of the failure of primary artificial lighting.

PART 5

General

Enforcement in respect of fire

35.—(1) As regards regulations 29 and 30 the enforcing authority in respect of a construction site which is contained within, or forms part of, premises which are occupied by persons other than those carrying out construction work or any activity related to this work, in so far as those regulations relate to fire are—

- (a) in England and Wales the enforcing authority within the meaning of article 25 of the Regulatory Reform (Fire Safety) Order 2005(a) in respect of premises to which that Order applies; or
- (b) in Scotland the enforcing authority within the meaning of section 61 of the Fire (Scotland) Act 2005(b) in respect of premises to which Part 3 of that Act applies.

(a) S.I. 2005/1541, as amended by S.I. 2007/320 and by regulation 37 of these Regulations.

(b) S.I. 2005 asp 5, as amended by S.I. 2005/2060, S.I. 2007/320, S.I. 2008/960, the Police and Fire Reform (Scotland) Act 2012 asp 8, sections 103(1)(a)(i), (ii) and (b), 128(2) and Schedule 8, Part 2 and by regulation 37 of these Regulations.

(2) As regards regulation 31, the enforcing authority is that set out in paragraphs (1)(a) or (b).

Transitional provisions

36.—(1) These Regulations apply in relation to a project which began before their coming into force, with the following modifications.

(2) Where a project began before the coming into force of these Regulations, the client must appoint the principal designer and, subject to paragraph (3), the principal contractor, as soon as is practicable.

(3) Where a principal contractor has already been appointed under regulation 14(2) of the 2007 Regulations, they will be treated as having been appointed under regulation 6(1)(b) of these Regulations and the person who engaged them must comply with regulation 8(1) of these Regulations.

(4) A health and safety file prepared under regulation 20(2)(e) of the 2007 Regulations is deemed to be a health and safety file prepared under regulation 9(f) of these Regulations.

(5) The construction phase plan prepared under regulation 23 of the 2007 Regulations is deemed to be a construction phase plan prepared under regulation 12(b) of these Regulations.

(6) The pre-construction information provided under regulation 10(2) of the 2007 Regulations is deemed to be pre-construction information under regulation 5(2) of these Regulations.

(7) Where notice has been given under regulation 21 of the 2007 Regulations it is deemed to be notice under regulation 7 of these Regulations.

Revocations, amendments and savings

37.—(1) The Construction (Design and Management) Regulations 2007 are revoked.

(2) The amendments in Schedule 3 have effect.

Review

38.—(1) The Secretary of State must from time to time—

- (a) carry out a review of regulations 1 to 37;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Council Directive 92/57/EEC^(a) on the implementation of minimum safety and health requirements at temporary or mobile construction sites (which is implemented by means of regulations 1 to 34), is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by those regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which regulations 1 to 37 come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

(a) OJ No L 245, 26.8.1992, P 0006 - 0022

Signatory text

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department for Work and Pensions

SCHEDULE 1

Regulation 7

Particulars to be notified to the Executive (or Office of Rail Regulation)

1. Date of forwarding the notice.
2. The address of the construction site or precise description of its location.
3. The name of the local authority where the construction site is located.
4. A brief description of the project and the construction work that it entails.
5. The following contact details of the client: name, address, telephone number and if available an email address.
6. The following contact details of the principal designer: name, address, telephone number and if available an email address.
7. The following contact details of the principal contractor: name, address, telephone number and if available an email address.
8. The date planned for the start of the construction phase.
9. The time allowed by the client to the principal contractor referred to in regulation 5(1) for planning and preparation for construction work.
10. The planned duration of the construction phase.
11. The estimated maximum number of people at work on the construction site.
12. The planned number of contractors on the construction site.
13. The name and address of any contractor already appointed.
14. The name and address of any designer already engaged.
15. A declaration signed by or on behalf of the client that the client is aware of the client duties under these Regulations.

SCHEDULE 2

Regulation 5(1)(b),
12(h) and 14(7)

Minimum health and safety requirements for construction sites

Welfare facilities

Sanitary conveniences

1. Suitable and sufficient sanitary conveniences must be provided or made available at readily accessible places. So far as is reasonably practicable, rooms containing sanitary conveniences must be adequately ventilated and lit.

2. So far as is reasonably practicable, sanitary conveniences and the rooms containing them must be kept in a clean and orderly condition.

3. Separate rooms containing sanitary conveniences must be provided for men and women, except where and so far as each convenience is in a separate room, the door of which is capable of being secured from the inside.

Washing facilities

4. Suitable and sufficient washing facilities, including showers if required by the nature of the work or for health reasons, must so far as is reasonably practicable be provided or made available at readily accessible places.

5. Washing facilities must be provided—

- (a) in the immediate vicinity of every sanitary convenience, whether or not also provided elsewhere; and
- (b) in the vicinity of any changing rooms required by paragraph 14 whether or not provided elsewhere.

6. Washing facilities must include—

- (a) a supply of clean hot and cold, or warm, water (which must be running water so far as is reasonably practicable);
- (b) soap or other suitable means of cleaning; and
- (c) towels or other suitable means of drying.

7. Rooms containing washing facilities must be sufficiently ventilated and lit.

8. Washing facilities and the rooms containing them must be kept in a clean and orderly condition.

9. Subject to paragraph 10, separate washing facilities must be provided for men and women, except where they are provided in a room the door of which is capable of being secured from inside and the facilities in each such room are intended to be used by only one person at a time.

10. Paragraph 9 does not apply to facilities which are provided for washing hands, forearms and face only.

Drinking water

11. An adequate supply of wholesome drinking water must be provided or made available at readily accessible and suitable places.

12. Where necessary for reasons of health and safety every supply of drinking water must be conspicuously marked by an appropriate sign.

13. Where a supply of drinking water is provided, there shall also be provided a sufficient number of suitable cups or other drinking vessels unless the supply of drinking water is in a jet from which persons can drink easily.

Changing rooms and lockers

14.—(1) Suitable and sufficient changing rooms must be provided or made available at readily accessible places if a worker—

- (a) has to wear special clothing for the purposes of construction work; and
- (b) cannot, for reasons of health or propriety, be expected to change elsewhere,
- (c) being separate rooms for, or separate use of rooms by, men and women where necessary for reasons of propriety.

(2) Changing rooms must—

- (a) be provided with seating; and
- (b) include, where necessary, facilities to enable a person to dry any special clothing and any personal clothing or effects.

(3) Suitable and sufficient facilities must, where necessary, be provided or made available at readily accessible places to enable persons to lock away—

- (a) any special clothing which is not taken home;
- (b) their own clothing which is not worn during working hours; and
- (c) their personal effects.

Facilities for rest

15.—(1) Suitable and sufficient rest rooms or rest areas must be provided or made available at readily accessible places.

(2) Rest rooms and rest areas must—

- (a) be equipped with an adequate number of tables and adequate seating with backs for the number of persons at work likely to use them at any one time;
- (b) where necessary, include suitable facilities for any woman at work who is pregnant or who is a nursing mother to rest lying down;
- (c) include suitable arrangements to ensure that meals can be prepared and eaten;
- (d) include the means for boiling water; and
- (e) be maintained at an appropriate temperature.

SCHEDULE 3

Regulation 37

Amendments

<i>Description of instrument</i>	<i>Reference</i>	<i>Extent of amendment</i>
The Factories Act 1961	1961 c 34 ^(a) ,	In section 176(1) in the definitions “building operation” and “work of engineering construction” for “Construction (Design and

		Management) Regulations 2007” substitute “Construction (Design and Management) Regulations 2014”
The Workplace (Health Safety and Welfare) Regulations 1992	SI 1992/3004 ^(b)	For “Construction (Design and Management) Regulations 2007” in regulation 3(1)(b) substitute “Construction (Design and Management) Regulations 2014”
The Work in Compressed Air Regulations 1996	SI 1996/1656 ^(c)	In regulation 2(1) for the words “the 2007 Regulations means the “Construction (Design and Management) Regulations 2007” substitute “the 2014 Regulations means the Construction (Design and Management) Regulations 2014”
		In regulation 3(1) for “Construction (Design and Management) Regulations 2007” substitute “Construction (Design and Management) Regulations 2014” and for “regulation 2(3)” substitute “regulation 7(1)”
		In regulation 5(3) for “Construction (Design and Management) Regulations 2007” substitute “Construction (Design and Management) Regulations 2014”.
		In regulation 13(2)(a) for the words “39, 40 and 44(3) of the 2007 Regulations” substitute the words “29,30 and 34(3) of the 2014 Regulations”
		In regulation 13(2)(d) for the words “regulation 39(1) of the 2007 Regulations” substitute “regulation 29(1) of the 2014 Regulations”
		In regulation 14(1) for the words “41 of the 2007 Regulations” substitute “regulation 31 of the 2014 Regulations”

Railway Safety (Miscellaneous Provisions) Regulations 1997	SI 1997/553 ^(d)	In regulation 2(1) for the words “the Construction (Design and Management) Regulations 2007” substitute “the Construction (Design and Management) Regulations 2014”
Health and Safety (Enforcing) Authority Regulations 1998	SI 1998/494 ^(e)	In regulation 2(1) for the words “the Construction (Design and Management) Regulations 2007” substitute “the Construction (Design and Management) Regulations 2014”
Provision and Use of Work Equipment Regulations 1998	SI 1998/2306 ^(f)	In regulation 6(5)(e) for the words “regulation 31(4) or 32(2) of the Construction (Design and Management) Regulations 2007” substitute “regulation 21(4) and 22(2) of the Construction (Design and Management) Regulations 2014”
Gas Safety (Installation and Use) Regulations 1998	SI 1998/2451 ^(g)	In regulation 2(4)(d) for the words “regulation 2(1) of the Construction (Design and Management) Regulations 2007” substitute “regulation 2(1) of the Construction (Design and Management) Regulations 2014”
The Fire (Scotland) Act 2005	2005 asp 5 ^(h)	For “2007” in section 61(9)(za)(iv) for the words “Construction (Design and Management) Regulations 2007 and to which those Regulations apply (other than a construction site to which regulation 46(1) of those Regulations applies” substitute “Construction (Design and Management) Regulations 2014 and to which those Regulations apply (other than a construction site to which regulation 35(1) of those Regulations applies”
Work at Height Regulations 2005	SI 2005/735 ⁽ⁱ⁾	In regulation 2(1) for the words “Construction (Design and Management) Regulations 2007” substitute “Construction

		(Design and Management) Regulations 2014
Regulatory Reform (Fire Scotland) Order 2005	SI 2005/1541 ⁽ⁱ⁾	In regulation 25(b)(iv) for the words “Construction (Design and Management) Regulations 2007” substitute “Construction (Design and Management) Regulations 2014”
Health and Safety (Enforcing Authority for Railways and other Guided Transport Systems) Regulations 2006	SI 2006/557 ^(k)	In regulation 2(1) for the words “Construction (Design and Management) Regulations 2007” substitute “Construction (Design and Management) Regulations 2014”
Health and Safety Enforcing Authority for Railways and other Guided Transport Systems) (Amendment) Regulations 2008	SI 2008/2323 ^(l)	In regulation 3(b) for the words “Construction (Design and Management) Regulations 2007” substitute “Construction (Design and Management) Regulations 2014”
REACH Enforcement Regulations 2008	SI 2008/2852	In paragraph 1(d)(i) of Part 3 of Schedule 3 to the Regulations, for the words “Construction (Design and Management) Regulations 2007” substitute “Construction (Design and Management) Regulations 2014
Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013	SI 2013/1471	In regulation 2(1) for the words “Construction (Design and Management) Regulations 2007” substitute the words “Construction (Design and Management) Regulations 2014”

^(a) As amended by S.I. 1996/1592 and S.I. 2007/320.

^(b) As amended by S.I. 1996/1592 and S.I. 2007/320.

^(c) As amended by S.I. 2007/320.

^(d) As amended by S.I. 2007/320.

^(e) As amended by S.I. 2007/320.

^(f) As amended by S.I. 2007/320.

^(g) As amended by S.I. 2007/320.

^(h) As amended by S.I. 2005/2060 and S.I. 2007/320.

⁽ⁱ⁾ As amended by S.I. 2007/320.

^(j) As amended by S.I. 2007/320.

^(k) As amended by S.I. 2007/320.

^(l) As amended by S.I. 2007/320.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations revoke and re-enact, with modifications, the Construction (Design and Management) Regulations 2007 (SI 2007/320) (CDM Regulations 2007). They implement in Great Britain the requirements of Directive 92/57/EEC (OJ No L245, 26.8.92, p6) (“the Directive”) on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), except certain requirements which are implemented by the Work at Height Regulations 2005 (SI 2005/735).

2. Part 2 sets out the client duties under the Regulations. Part 3 provides for various health and duties and roles; general duties, the duties of the principal designer, principal contractor, designers and contractors. Part 4 provides the general requirements for all construction sites, which remain largely unchanged from the CDM Regulations 2007. Part 5 sets out the general provisions, enforcement in respect of fire, transitional provisions and the requirement for a review.

3. The main changes in comparison with the CDM Regulations 2007 include the following—

- (a) These Regulations apply to all clients, whether or not a person is acting in the course or furtherance of a business (regulation 2(1)).
- (b) If a client is a domestic client, the duties in regulations 5, 7 and 8 will be carried out by the contractor, or principal contractor depending on the number of contractors. If there is more than one contractor, the client can agree in writing for the principal designer to carry out the duties.
- (c) Pre-construction archaeological investigations are not included within the scope of the definition of construction work (regulation 2(1)).
- (d) Pre-construction information has now been defined in regulation 2(1) rather than in a Schedule.
- (e) The role of a CDM co-ordinator has been omitted and instead a new role of a principal designer has been created (regulation 2(1) and 9).
- (f) The client’s duty to appoint a principal designer or principal contractor is triggered where there is more than one contractor (regulation 6), rather than the previous threshold for notification under the CDM Regulations 2007.
- (g) The duties of the principal designer are provided for in regulation 9.
- (h) The duties of designers are retained in regulation 10.
- (i) The principal contractor’s duties are set out in regulation 12 and 13.
- (j) The duties of contractors remain largely the same as the CDM Regulations 2007 and are set out in regulation 14.
- (k) The notification requirement has been amended and is now provided for in regulation 7.
- (l) The requirement for the contents of inspection reports are now provided for in regulation 23 rather than a separate Schedule, (previously Schedule 3 of the CDM Regulations 2007 set out the requirements).
- (m) The Secretary of State will carry out a review of the Regulations in accordance with the provisions of regulation 38.

4. A full impact assessment of the effect that these Regulations will have on the costs of business is available from the Health and Safety Executive, Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS. A copy of the transposition note in relation to the implementation of the Directives set out in paragraph (1) can be obtained from the Health and Safety Executive, International Branch, also at the Redgrave Court address. Copies of both these documents have been placed in the Library of each House of Parliament and are annexed to the Explanatory Memorandum which is available alongside these Regulations at www.legislation.gov.uk.

Title: Construction (Design and Management) Regulations 2015 (CDM 2015) IA No: HSE0079 Lead department or agency: Health and Safety Executive Other departments or agencies: None	Impact Assessment (IA)		
	Date: 29/11/2013		
	Stage: Consultation		
	Source of intervention: EU		
Type of measure: Secondary legislation			
Contact for enquiries: Anthony Lees – Anthony.Lees@hse.gsi.gov.uk / Maria Ottati – Maria.Ottati@hse.gsi.gov.uk			
Summary: Intervention and Options		RPC Opinion: GREEN	

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£-233 m	£-285 m	£-28	Yes Out

What is the problem under consideration? Why is government intervention necessary?

CDM 2015 will replace an existing set of Regulations (CDM 2007) while maintaining or improving implementation of a European Directive. An evaluation of the existing Regulations revealed a number of shortcomings, including some which disproportionately affect smaller businesses. Small sites are currently responsible for an increasingly large proportion of serious and fatal incidents, and the regulatory framework needs to be made substantially simpler and more accessible to be effective in addressing this. Additionally, HSE has become aware that transposition of the Directive in Great Britain is insufficient in certain respects.

What are the policy objectives and the intended effects?

The majority of the proposals in this package (sections A to D) are intended to:

- address the shortcomings of the current Regulations identified in the evaluation;
- provide a regulatory framework that is better suited to the needs of small businesses in the sector, thus increasing compliance and improving health and safety outcomes;
- align the Regulations more closely with the Directive, in the most appropriate way, removing measures which go beyond Directive requirements, thus reflecting better regulation principles

Proposals in sections E and F aim to address areas where current transposition is insufficient.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- **Option 1** – Shorten and simplify the Regulations; withdraw the Approved Code of Practice and replace with guidance; remove the CDM co-ordinator role and replace it with a new role; alter the conditions used to trigger several duties; remove explicit competence requirements; remove the exemption from client duties for domestic clients, by using a copy-out approach.
 - **Option 2** – As Option 1, but with a slight elaboration of copy-out for removing the exemption from client duties for domestic clients, by providing that the contractor(s) for the project carry out these duties by default.
 - **Option 3** – Do nothing
- Option 2 is preferred over option 1 because it results in significantly lower costs to society as a whole and avoids imposing duties with an inherent criminal liability on homeowners. Both are preferred to option 3, as the package as a whole is deregulatory and expected to lead to better health and safety outcomes.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: TBD

Does implementation go beyond minimum EU requirements?			Yes		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence Policy Option 1

Description: Variety of changes including removing the exemption for domestic clients by using a copy-out approach.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012 ¹	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -1,176

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	1 st year		
High			
Best Estimate		5.6	170

Description and scale of key monetised costs by 'main affected groups'

Costs to homeowners of £170 million per year (recurring familiarisation and annual compliance) from removing the exemption from client duties for domestic clients. One-off familiarisation cost of £5.6 million to existing businesses. Annual costs to business of £0.2 million for changing the threshold for formal appointments.

Other key non-monetised costs by 'main affected groups'

Potential costs to business for domestic projects not going ahead if domestic clients are discouraged by the difficulty of their new duties and decide not to proceed.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-		
High			
Best Estimate		0	34

Description and scale of key monetised benefits by 'main affected groups'

Savings to businesses (undertaking projects of over £200k value) of £30 million per year, from the efficiencies generated by the removal of the CDM co-ordinator role. Savings to businesses of £3 million per year from not having to notify projects to HSE due to a change in the trigger for notification. Savings to new businesses entering the market of £0.5 million per year from having to familiarise themselves with simpler, more accessible regulations.

Other key non-monetised benefits by 'main affected groups'

The simplification of the structure and language of the Regulations will lead them to be more easily accessible to smaller businesses. This is expected to lead to increased compliance, and therefore to improvements in health and safety outcomes. The removal of the explicit requirements for competence from the Regulations could potentially lead to substantial savings over time, especially to small businesses, as HSE continues to work with industry to rationalise the situation.

Key assumptions/sensitivities/risks

Discount rate (%) **3.5%**

The assumptions underpinning the savings to businesses from the removal of the CDM co-ordinator role are key to the size of the substantial 'Out' claimed. The number of projects is well-substantiated from ONS data, and the median cost of the different relevant duties by a formal evaluation. Assumptions about how those costs will change under the proposal, however, will be subjected to a sense-check by businesses in the sector (in addition to formal consultation) before the final-stage IA.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.6	Benefits: 28.6	Net: 28	Yes	OUT

¹ For all options, EANCBS presented in 2009 prices, with PV Base Year 2010, calculated using BRE's Impact Assessment calculator

Summary: Analysis & Evidence Policy Option 2

Description: Variety of changes including removing the exemption for domestic clients by using a 'deeming' approach.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012 ²	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 233

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1 st year		
High				
Best Estimate	5.6		6	58

Description and scale of key monetised costs by 'main affected groups'

Costs to homeowners of £1.2 million per year (recurring familiarisation) from removing the exemption from client duties for domestic clients. Annual costs of £4.6 million to business from additional duties due to the same. One-off familiarisation cost of £5.6 million to existing businesses. Annual costs to business of £0.2 million for changing the threshold for formal appointments.

Other key non-monetised costs by 'main affected groups'

Potential costs to business for domestic projects not going ahead if domestic clients are intimidated by the new duties and decide not to proceed (the potential for this is smaller than in Option 1).

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		-		
High				
Best Estimate	0		34	291

Description and scale of key monetised benefits by 'main affected groups'

Savings to businesses (undertaking projects of over £200k value) of £30 million per year, from the efficiencies generated by the removal of the CDM co-ordinator role. Savings to businesses of £3 million per year from not having to notify projects to HSE due to a change in the trigger for notification. Savings to new businesses entering the market of £0.5 million per year from having to familiarise themselves with simpler, more accessible regulations.

Other key non-monetised benefits by 'main affected groups'

The simplification of the structure and language of the Regulations will lead them to be more easily accessible to smaller businesses. This is expected to lead to increased compliance, and therefore to improvements in health and safety outcomes. The removal of the explicit requirements for competence from the Regulations could potentially lead to substantial savings over time, especially to small businesses, as HSE continues to work with industry to rationalise the situation.

Key assumptions/sensitivities/risks

Discount rate (%) **3.5%**

The assumptions underpinning the savings to businesses from the removal of the CDM co-ordinator role are key to the size of the substantial 'Out' claimed. The number of projects is well-substantiated from ONS data, and the median cost of the different relevant duties by a formal evaluation. Assumptions about how those costs will change under the proposal, however, will be subjected to a sense-check by businesses in the sector (in addition to formal consultation) before the final-stage IA.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.6	Benefits: 28.6	Net: 28	Yes	OUT

² For all options, EANCBS presented in 2009 prices, with PV Base Year 2010, calculated using BRE's Impact Assessment calculator

Summary: Analysis & Evidence Policy Option 3

Description: Do nothing

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate			0	0

Description and scale of key monetised costs by 'main affected groups'

This option maintains the status quo, and has no additional costs.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate			0	0

Description and scale of key monetised benefits by 'main affected groups'

This option maintains the status quo, and has no additional benefits.

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks	Discount rate (%)	
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BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

Introduction

1. This document sets out an assessment of the impact of the proposed Construction (Design and Management) Regulations 2015 (CDM 2015). CDM 2015 will replace an existing set of Regulations while maintaining or improving implementation of a European Directive.
2. The construction industry employs approximately 2 million people in Great Britain¹. Despite considerable improvements in culture, processes and risk controls in some parts of the industry leading to reductions in the numbers and rates of fatal and other incidents, it remains one of the most dangerous industries to work in, with almost 60 fatal injuries to workers on average every year². The resulting deaths (60-70% of which occur on smaller projects), major accidents and cases of occupationally-caused or exacerbated ill health are largely preventable.

Existing Regulations

3. Several sets of health and safety regulations apply to construction work. However, the key set is the Construction (Design and Management) Regulations 2007 (CDM 2007) which is based on and is the principal mechanism for transposing European Council Directive 92/57/EEC on minimum safety and health requirements at temporary or mobile construction sites in Great Britain.
4. In line with the Directive, CDM 2007 defines a system of management roles and processes and prescribes a large number of practical health and safety precautions and welfare requirements for construction projects. The roles are:
 - the client (the person for whom the project is carried out);
 - the CDM co-ordinator and principal contractor (persons who co-ordinate health and safety during the pre-construction and construction stages of the project respectively);
 - contractors (persons who carry out the construction work);
 - designers (persons who design or contribute to the design of structures to be constructed by the contractors).

The client, contractor and designer roles exist in nearly all projects but the co-ordinators are only required to be appointed for projects that exceed a specified threshold. Additionally, CDM 2007 imposes duties on the self-employed, in recognition of the high degree of self-employment in the construction industry and the Directive requirement to extend duties to the self-employed.

¹ Source: Annual Population Survey (ONS), 2012

² Source: HSE. The average for the period 2006-2007 to 2011-2012 is 57 fatal injuries a year.

5. CDM 2007 is enforced by the Health and Safety Executive (HSE), the Office of Rail Regulation and in very limited circumstances by local authorities. The duties imposed impact directly or indirectly on all those who procure, plan, design, manage or carry out construction work. The Regulations are supported by an Approved Code of Practice (ACoP) that gives practical advice on compliance with the law.

Evaluation of the existing Regulations

6. CDM 2007 came into force in April 2007. A post-implementation evaluation of the Regulations³ was conducted earlier than would normally have been the case, following a commitment given by the Government during a Parliamentary prayer debate in May 2007.
7. The evaluation was completed in early 2011. It comprised a large-scale survey of dutyholders supplemented by data and insights obtained from HSE inspectors and an HSE/industry working group established by the HSE-chaired Construction Industry Advisory Committee (CONIAC). The evidence gathered suggested that while CDM 2007 was regarded as generally better than what had gone before, there was still scope to improve its effectiveness especially in the context of smaller construction sites and businesses.
8. The evaluation also revealed a number of shortcomings in the existing Regulations. The most significant of these was a failure to curb the tendency of dutyholders to adopt bureaucratic responses in their attempts to achieve compliance. In particular, the detailed requirements for competence assessment contained within the Regulations has led to a system of competence assurance that is costly and delivered through a multitude of commercial pre-qualification schemes. This disproportionately affects smaller contractors who see it as a barrier to business. As a mechanism to demonstrate that it meets individual worker competence requirements the industry has similarly developed a complex system of individual competence card schemes which arguably add significant costs to construction projects with, often, little benefit.
9. Other issues identified include: lateness in appointment of coordinators and in provision of information, designers producing or being asked to produce unnecessary paperwork, and limited effectiveness of the CDM co-ordinator role. Furthermore, the ACoP is now seen as too long and not well suited to the characteristics and needs of smaller businesses. These findings are consistent with comments received in the Red Tape Challenge⁴.
10. The larger, more structured part of the industry has made significant progress in improving management of health and safety risks since the Deputy Prime Minister's Construction Summit in 2001. It is arguably less motivated by regulation than by best practice and continuous improvement, and has

³ Evaluation of the Construction (Design and Management) Regulations 2007 - <http://www.hse.gov.uk/research/rrhtm/rr920.htm>

⁴ See: <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>

accepted the need for demonstrable leadership in delivering improvements in worker protection. A two-tier industry has subsequently emerged, however, with small sites responsible for an increasingly large proportion of serious and fatal incidents. HSE has adapted its inspection programme accordingly but the challenge of providing an effective regulatory framework for small sites remains. Such a framework needs to be substantially simpler and more accessible and CDM 2007 is not seen as delivering in this regard.

Policy objectives and intended effects

11. This package contains a number of proposals which can be separated into two groups regarding their policy objectives and intended effects.
12. The proposals in the first group are presented in sections A to D and respond to the following policy considerations:
 - the findings of the Evaluation;
 - the policy of “copy out” of Directives;
 - HSE’s focus on effective regulation of smaller sites, which supports the case for radical simplification of CDM 2007 and supporting guidance
13. Those proposals are therefore intended to:
 - address the shortcomings of the current Regulations identified in the evaluation;
 - provide a regulatory framework that is better suited to the needs of small businesses in the sector, thus increasing compliance and improving health and safety;
 - align the Regulations more closely with the Directive in the most appropriate way, reflecting better regulation principles.
14. Following completion of the Löfstedt Review⁵ and the Star Chamber process arising from the Red Tape Challenge, the HSE Board considered the arguments for and against a revision of CDM 2007. The Board directed that a revision be undertaken using copy out of the parent Directive as the starting point but directed that HSE should argue for the retention of measures which go beyond the Directive but demonstrably add value. In the context of the proposed revision, the only significant area in this proposal is the retention of explicit duties on designers, whereas the Directive provides for only implicit duties. Stakeholder consultation suggests that there is strong industry support for the retention of these duties. The Board further directed that the revision should take into account the need to improve compliance at smaller sites, whilst being mindful of requirements of the Government policy on better regulation.

⁵ The Löfstedt Review was an independent review of health and safety legislation, carried out by Professor Ragnar Löfstedt and published in November 2011. See: <https://www.gov.uk/government/publications/reclaiming-health-and-safety-for-all-lofstedt-report>

15. The proposals in the second group are presented in sections E and F. They arise from the fact that HSE has become aware that transposition of the Directive in Great Britain is insufficient in certain respects, and revision of the Regulations presents an opportunity to align the Regulations with the Directive.
16. Those proposals are therefore intended to address areas where current transposition is insufficient.

Options considered

17. In developing this proposal, HSE has already engaged in extensive discussions with stakeholders on how best to simplify the Regulations and where measures that could be considered going beyond the Directive should be retained (see paragraph 14). Therefore, for most of the proposed changes this Impact Assessment will be presenting a single option in addition to “Do nothing”.
18. The exception is the removal of the exemption from client duties for domestic clients. This is one of the areas where the current transposition is now considered insufficient, and the change is proposed to bring national legislation in line with the Directive. Section F presents detailed analysis for two options for implementing this: one which copies out the Directive (option 1) and one which seeks to provide a level of relief to domestic clients (option 2, which we describe as a ‘deeming’ approach). Both of these options are based on continuing to apply our current risk-based enforcement policy, but section F also considers options where more HSE resources are devoted to the enforcement of the new client duties. These options are discussed but will not be formally consulted upon, although comments from consultees are still welcome.

Proposed Regulations – key changes

19. The key proposed changes in CDM 2015 are:
 - shortening and structural simplification of the Regulations (Section A);
 - removal of the Approved Code of Practice (ACoP) and its replacement with straightforward guidance aimed at specific industry sub-sectors (Section A);
 - removal of CDM co-ordinator role and its replacement with a new role (Section B);
 - removal of the detailed framework for the assessment of individual and corporate competence (Section C);
 - tightening of the condition used to trigger notification of a construction project to the competent authority (Section D);
 - alteration of the condition used to trigger a raft of additional duties (Section E);
 - removal of the exemption from client duties for domestic clients. Two options for implementing this are presented (Section F).

Alternatives to regulation

20. The proposed revision of CDM 2007 would replace the detailed competence assurance requirements with a non-regulatory approach led by industry and focused on adding value and not bureaucracy. Section C (starting at paragraph 62) analyses this proposal.

Costs and benefits of the changes in CDM 2015

Options 1 and 2:

21. The following sections analyse the impacts of each of the changes proposed for options 1 and 2. These two options differ only in how one proposed change is implemented, and this change is analysed in Section F for each option.

A) Shortening and simplification of the text of the Regulations, and removal of the ACoP

22. The evaluation confirmed that, while the clarity of CDM 2007 had improved on its predecessor Regulations, it remains a difficult text, with a structure that is complex when compared with the Directive. A substantial body of evidence from the evaluation of CDM 2007, including from HSE inspectors, small construction contractors and the bodies which represent them suggests that the Regulations are poorly understood by those who most need to apply its principles and precautions in order to improve health and safety conditions (that is, those operating on small construction sites). It is clear that, five years after the introduction of CDM 2007, numerous misunderstandings persist. These shortcomings contribute to reduced compliance and result in unnecessary bureaucracy.
23. CDM 2015 takes the text of the Directive as a starting point and is substantially shorter than CDM 2007. This has been achieved by a more concise expression of duties together with the removal of detailed provisions which in some cases went beyond the Directive or in other cases only signposted more general requirements. The structure of the revised Regulations has been significantly simplified in that frequent cross-referencing between individual Regulations has been reduced. Instead, the revision is based on a linear structure which corresponds to the timeline of involvement of duty holders in a typical construction project.
24. It is proposed that the revised regulatory package does not contain an Approved Code of Practice (ACoP). The existing ACoP attempts to define management arrangements and standards for the entire spectrum of construction projects, and as such it has not been fully effective. In particular, the ACoP is long and is often over-interpreted. The CDM evaluation showed that it has had very limited impact in the SME sector, to whom it appears inaccessible and irrelevant.

25. The textual improvements aim to make the Regulations and guidance significantly easier to understand and this in turn will reduce time needed for familiarisation for new businesses and contribute to the amelioration of many of the issues identified in paragraphs 8 - 9. It is planned that the Regulations will be supplemented by a suite of concise, accessible guidance tailored to the needs of dutyholders in specific industry sub-sectors, especially those operating on smaller sites.

Number of businesses affected⁶:

26. The changes in the text of the regulations will impact both on existing businesses in the sector and on those entering the sector each year. The types of businesses affected would be mainly contractors and designers.
27. For the number of contractors, we consulted several recent sources. The Office for National Statistics (ONS) Construction Statistics Annual Report 2012⁷ and a pamphlet released by the UK Contractors Group⁸ presented numbers that varied between 230,000 and 260,000. We will use an estimate somewhere in the middle, of 240,000 contractors.
28. For the number of design professionals, we used estimates from the Construction Skills Network, based on data from ONS and Experian. Their document "Blueprint for UK Construction Skills 2012-2016"⁹, presents estimates for 2012 of total employment by occupation. They estimate a total of approximately 150,000 architects, surveyors and civil engineers.
29. Based on the data for 2012-2016 presented by Construction Skills, we will assume that the number of contractors entering the market every year will be approximately 7,000 and the number of new designers approximately 3,000.

Cost implications of the changes in the text of the regulations and removal of the ACoP:

30. There would be costs to existing businesses from understanding the changes to the regulations, and savings to new businesses entering the sector, as we expect it would take them less time to understand requirements.
31. The CDM 2015 Regulations have been made much shorter (the number of pages has been reduced by a quarter) and they have been written in a way that should make them much easier to understand. Replacement of the long, complex ACoP with concise and accessible guidance tailored for specific industry sectors should facilitate this. We expect that those existing businesses familiarising themselves with the new Regulations and guidance

⁶ This section will not include familiarisation costs for domestic clients. Those costs will be analysed in section C, together with all costs on domestic clients.

⁷ See <http://www.ons.gov.uk/ons/rel/construction/construction-statistics/no--13--2012-edition/art-construction-statistics-annual--2012.html>

⁸ See: http://www.ukcg.org.uk/fileadmin/documents/UKCG/futures/Construction_in_the_UK_economy.pdf

⁹ See: http://www.cskills.org/uploads/CSN-Report-National-Overview_tcm17-28589.pdf

would already be familiar with the current Regulations, and therefore familiar with most of the concepts in the new ones. However, as the new Regulations contain changes in regulatory requirements, those businesses will have to spend some time understanding them.

32. The CDM 2007 IA¹⁰ estimated that it would take 8 hours per contractor and 6 hours per designer to familiarise themselves with the 2007 Regulations (this would include the ACoP). We would mainly expect businesses that are already aware of the content of the current regulations to seek to understand the changes, so the majority of those will already have a grounding in how the regulatory framework works. Additionally, we would expect that most smaller contractors would make use of the new, more concise guidance, specifically tailored to their needs, rather than the actual Regulations. We would therefore expect that for existing businesses, it would take approximately 1 hour to understand the changes.
33. Not all existing businesses would spend time on familiarisation. A recent consultation for the revocation of a construction-specific regulation¹¹ sought views from stakeholders (both through formal consultation and qualitative research) on issues relating to familiarisation and compliance. Those views are summarised in the final impact assessment (IA) for that proposal¹². There was a consensus that familiarisation in the industry, especially for contractors, operates through trickle-down. Respondents agreed that only the largest contractors actively seek to keep up-to-date with regulatory changes. Smaller contractors would generally become aware with requirements through working as subcontractors in sites operated by those larger contractors. Based on this, we used low rates of compliance in that IA (5% for self-employed contractors and 25% for employers).
34. However, that regulatory change was a much more minor one than the amendment of CDM 2007, which would be expected to attract much more attention. We expect that even some of the smaller contractors would spend some time understanding what has changed, even if that is through interactions with principal contractors, rather than through reading the new Regulations. We will therefore provisionally use a compliance rate of 50% for contractors.
35. We would expect a very high proportion of design professionals to spend time in understanding what has changed, due to the nature of their work and training, the existence of professional organisations, and the nature of the changes (which have a direct impact on their role). We will therefore assume a compliance rate of 100% for them.

¹⁰ See: <http://www.hse.gov.uk/ria/construction/cdm07.pdf>

¹¹ Consultation on the revocation of the Construction (Head Protection) Regulations. See: <http://www.hse.gov.uk/consult/condocs/cd239.htm>

¹² See: <http://www.legislation.gov.uk/ukxi/2013/448/impacts>

36. Assuming an average full economic cost per hour of approximately £15¹³ per contractor¹⁴, and of £25¹⁵ per design professional, these assumptions result in a **one-off familiarisation cost of £5.6 million**.
37. New businesses entering the construction industry, which previously would have had to familiarise themselves with CDM 2007 Regulations and ACoP would now familiarise themselves with their health and safety obligations through much shorter and simpler Regulations, designed to be more easily understandable by small businesses, as well as targeted guidance, rather than a long and complex ACoP. We would therefore expect them to spend less time on this activity than they would have without the proposed amendments. This would generate savings to these businesses.
38. As mentioned above, we would not expect all new businesses to spend time on familiarisation. New businesses tend to be smaller than the average for existing ones, and for contractors, one of the insights gained from the consultation mentioned in paragraph 33 above is that those that enter the market tend to work as subcontractors at first, and gain an understanding of their obligations that way. We will therefore use a lower compliance rate for contractors in this area, an estimated 33% of contractors. For designers, we will assume the same compliance rate as above, 100%, due to the nature of their work and their necessary training.
39. The CDM 2007 IA assumed that it would take 8 hours per contractor and 6 hours per designer to familiarise themselves with the regulations and ACoP. Based on the evaluation, where it was highlighted that the ACoP, especially, was confusing and difficult to understand, these estimates sound reasonable. We estimate that it would take contractors and designers approximately a third of the time to read and understand the new Regulations and guidance: 2.5 hours per contractor and 2 hours per designer.
40. Based on the same assumptions as above on full economic cost of contractors' and designers' time, this results in **annual savings of £500, 000 with a 10-year present value of £4.3 million**.
41. Both the familiarisation costs to existing businesses and familiarisation savings to new businesses are in scope for One-In, Two-Out (OITO)¹⁶.

¹³ Source: Annual Survey of Hours and Earnings (ASHE) 2012, Office for National Statistics. Salary for SOC category 814 (Construction operatives), uprated by 30% to account for non-wage costs.

¹⁴ We assume one manager in each of those businesses would undertake familiarisation. We recognise that for larger companies, more than one manager would engage in this activity. However, the vast majority of businesses in this sector are very small. According to the Inter-Departmental Business Register, for instance, 81% of businesses in the construction sector have fewer than 5 employees, and the IDBR estimates do not even include the majority of the self-employed in the sector.

¹⁵ Source: Annual Survey of Hours and Earnings (ASHE) 2012, Office for National Statistics. Weighted average of the salary for SOC categories 2121 (Civil engineers), 2431 (Architects), 2433 (Quantity surveyors) and 2434 (Chartered surveyors, not quantity surveyors), uprated by 30% to account for non-wage costs.

¹⁶ Savings to new businesses, such as those considered here, have previously caused issues regarding whether they are 'direct' or 'indirect'. The latest OITO guidance is explicit about how they should be considered: "1.9.36 - Categorisation of direct and indirect impacts should be the same for existing business and new entrants. Direct and indirect impacts should be determined with reference to the existing business. Subsequently, the same categories of impacts (e.g. familiarisation costs) should be applied to new entrants"

B) Removal of CDM co-ordinator role and its replacement with a new role

42. The role of the CDM co-ordinator under CDM 2007 is to provide the client with a key project advisor in respect of the management of construction health and safety risks. The role was intended to assist the client in advising on the selection of competent contractors and the adequacy of management arrangements, to ensure proper co-ordination of the design process, facilitate good communication and co-operation between project team members and to prepare the health and safety file. The focus of the CDM co-ordinator should be on the 'project preparation' phase (as described by the Directive) or, in more common construction language, the 'pre-construction phase'. Their existence is a recognition that the experience of clients in procuring construction work varies enormously. Some clients - for example a national supermarket chain - will have a wealth of experience in procurement of construction work, but at the same time may fail to appreciate how their design choices may affect the safety of those carrying out the construction work. Most though will be inexperienced in procuring construction work, and in a majority of cases will be a first-time client. The CDM co-ordinator role would emphasise advising the client on the operation of their relationship with the designer and contractor.
43. In addition to advising on legal duties and the appointment of competent contractors, a key part of the CDM co-ordinator role is to facilitate the effective flow of information between the client, designer and principal contractor. This information should include so-called 'pre-construction information' which the client is obliged to provide where it relates to matters which may have a bearing on the control of health and safety risks later in the project. For example, this might include details known only to the client about the location of buried services. Administratively, the CDM co-ordinator is responsible, where necessary, for notifying the project to HSE, and for collating information into a health and safety file for presentation to the end user of the project.
44. In short, the CDM co-ordinator should be a pivotal role in the preconstruction phase of a construction project. However, the experience of CDM 2007 has been that in many cases the CDM co-ordinator has been claimed to add significant cost but no value. This was one of the conclusions of the CDM 2007 evaluation. Often co-ordinators are appointed so late in the project that there is little role for them. They have often not become integrated well into the project team of designer, client and principal contractor and are perceived as creating paperwork and bureaucracy. Often their role has been more focused on influencing the ultimate design of the building (to improve its 'buildability') at the expense of the valuable role of co-ordinating activities and information. Their role has tended to become more technical and less managerial in nature.
45. The proposed revision removes the pre-construction co-ordination role of the CDM co-ordinator and passes the responsibility to a 'principal designer'. This is expected to deliver a number of positive effects. Firstly, it will mean that the co-ordination will be delivered through a pre-existing part of a project team, for

example, the lead designer, the project management company acting on behalf of the client or the client themselves - rather than it being seen as an 'add-on' who is often only appointed to satisfy legal requirements. Secondly, co-ordination of information and liaison between the different parties to a construction contract is a natural part of a designer's role. It is intended that co-ordination will become accepted as a core business function of the pre-existing project team rather than an externalised role, where the default position is to appoint an outside co-ordinator to deliver this.

46. In addition to this, having one party delivering both functions is expected to generate significant savings, as co-ordination and information exchange is simplified. This is explored in the following paragraphs.

Number of projects affected

47. According to the Directive, where a construction site has more than one contractor present, this triggers a number of additional duties. These duties include formal appointments and documents, and are described in more detail in Section E, which analyses the impact of changing the current trigger in CDM 2007 to align it with that in the Directive (in summary, this has the effect of imposing these duties on projects which would have been out of scope under CDM 2007).
48. The projects affected by the removal of the CDM co-ordinator role and its replacement with a new role would be those which are above the threshold for formal appointments and documents (as described in Section E), as that is when the requirement to formally appoint someone to perform a co-ordination role would apply. Both non-domestic and (after the changes analysed in Section F, removing the exemption for domestic clients) domestic projects would be affected.
49. As Section E sets out in more detail, a third of the approximately 180,000 projects under £200,000 and all the 70,000 projects over £200,000 would be above this threshold. Section F shows that approximately 1 million domestic projects would also be above the threshold. All of these would be, in theory, affected by the removal of the CDM co-ordinator role.
50. In practice, however, for all domestic projects and the 60,000 non-domestic projects under £200,000 any savings arising from this change would be notional, and would not actually be felt as real savings by business. This is because they would relate to duties that are new to them, and that would be more costly if the EU-related amendments proposed in CDM 2015 were to be made without the current deregulatory proposals also included (such as this one, the removal of the CDM co-ordinator role).
51. Because of this, in sections E and F of this IA, we have calculated the costs of the EU-related amendments with the underlying assumption that the co-ordination function has *already* been amended as proposed in this section. Therefore, in the next paragraphs, we will only calculate costs savings to the approximately 70,000 non-domestic projects over £200,000.

Cost implications of the removal of CDM co-ordinator role and its replacement with a new role

52. In most cases, it is expected that the co-ordination function would be taken over by those who currently have a design function. In general, the function would remain as it is at the moment, albeit with less prescriptiveness. The costs of performing the duties required would be transferred from the co-ordinator to the designer. However, we expect having those two functions performed by the same agent would generate efficiencies which would lead to significant savings, as described in the following paragraphs.
53. The CDM 2007 evaluation presents data on the additional costs to CDM co-ordinators and designers resulting from complying with CDM 2007 (tables 28 and 29). As the report explains: “Respondents were asked for information on the additional costs incurred in implementing CDM 2007 on a specific project. Respondents were asked to identify the additional costs incurred due to CDM 2007, either in terms of hours, days, or Pounds Sterling for each of the key duties that each group of duty holders had to undertake.” There were some 140 responses regarding the costs associated with the CDM co-ordinator role, and just over 50 regarding those associated with the designer role.
54. We have analysed these different types of costs and identified a number that would be either reduced or eliminated if both functions were performed together, by the same party.
55. Costs to CDM co-ordinators: Total median¹⁷ costs: £3,150. Of these:
- **#1 – Demonstrating competency and the adequacy of resources as part of the pre-qualification and bidding process: £205.** Designers are already incurring a cost to do this (one of the categories of costs identified for designers relates to demonstrating competency, as well), and we would not expect they would have to do this twice. This cost would be eliminated.
 - **#5 – Cost of identifying, collecting and passing on pre-construction information - £610.** A large proportion of these costs is related to *interactions* of the co-ordinator with the designer. We would expect them to be reduced by about a third, to £410.
 - **#8 – Co-ordinating the health and safety aspects of the design work - £350.** This aspect of the role would be radically easier for lead designers to perform, as it would involve information they hold themselves. We would expect these costs to be reduced by half, to £175.

¹⁷ We also considered using the mean cost. Since we were taking into account all projects over £200k and tables 28 and 29 include information for all projects (including those under £200k), the mean cost might have been seen as an underestimate of the actual cost. However, the mean seemed to be highly affected by outliers who'd reported particularly high costs. Our analysis would have resulted in savings of £2,700 per project, which did not feel reasonable to experts in the sector. We therefore opted for the median as a better and more conservative representation of reality.

- We **would therefore** expect £585 in savings per average project for performing the co-ordination function, a saving of 20%.
 - **Additional costs** to designers: We identified the following types of cost-generating activities that would not have to be undertaken any longer.
 - #2 – Checking **that a CDM co-ordinator has been appointed**. As CDM **co-ordinators** would not be appointed any longer, this activity would be eliminated.
 - #9 - Cooperating **with the co-ordinator about the design**. As the **designers** would be taking on the co-ordination role, they would already hold the information necessary in order to co-ordinate. This activity would be eliminated.
 - #11 – **Making health and safety information about the design available to the co-ordinator for inclusion in the Health and Safety File**. As the designers would be taking on the co-ordination role, they would already hold the information to include in the Health & Safety File. This activity would be eliminated.
56. However, the median reported cost for these activities was £0, so it appears that for the majority of designers, the cost of undertaking them is negligible. We will therefore not assume any cost savings for the designer function.
57. In total, the efficiencies described above would lead to average savings of £585 per project. We are currently making arrangements to discuss the assumptions leading to this estimate with groups of dutyholders with real-world experience of the most common types of projects affected, in order to provide an additional sense-check. These discussions will take place during the consultation period and, if necessary, our assumptions will be adjusted to reflect their feedback (and any from public consultation) in the final-stage IA.
58. These savings would be felt in those projects which are compliant with the regulations. We have assumed 75% compliance. Projects of this size (over £200k) tend to be undertaken by relatively large companies, which tend to be broadly compliant with the regulations. 75% does not necessarily mean that the remaining 25% do not comply with requirements at all. Rather, it describes a situation where almost all companies broadly comply, but possibly not with all requirements. This assumption results in approximately 52 thousand projects experiencing savings.
59. We will assume that these projects would experience savings of £585 each. As mentioned in footnote 31, this is an average value for all sizes of projects, so for the largest projects (such as those in this segment), it could be even higher. However, to keep our estimates conservative, and because we have no basis for how much to increase the per-project value, we will use the £585 estimate. This results in **savings of £30 million a year**, with a 10-year present value of £260 million for non-domestic projects of over £200,000.
60. The savings calculated above would fall on the principal designer, the client, or a combination of the two, depending on what proportion of them the principal designer chooses to pass through as lower fees. These being non-

domestic projects, all these parties would be considered business. Therefore, these savings are in scope of OITO. The EANCB (expressed in 2009 prices) would be minus £25.6 million.

61. In addition to its direct impacts, the removal of the CDM co-ordinator role would result in a loss of business to those individuals who specialise in that role, and potentially increased business for designers. These would be indirect impacts, however, and therefore not in scope of OITO.

C) Removal of the explicit competence requirements

62. Promoting competence within the construction industry remains a key priority and developing individual competence is crucial to reducing accidents and ill health. However, the requirements of Regulation 4 of CDM 2007 and the detailed framework of competence assessment supporting it at Appendix 4 of the ACoP has elicited an industry response which, in general, is costly and bureaucratic. This is supported by the conclusions of the CDM 2007 evaluation. The proliferation of commercial corporate health and safety assessment schemes and individual card schemes has diverted attention from the delivery of competent businesses and workers to the processes involved, rather than the outcomes. These schemes often provide a real barrier to small contractors and individuals competing for work, as large contractors often require their potential subcontractors to be assessed through a particular scheme of their liking, and the administrative requirements and costs imposed for accreditation can be both confusing and prohibitive.
63. HSE now believes that regulation 4 should be removed because competence is most effectively promoted by industry on a non regulatory basis and focused on adding value and not bureaucracy. The Regulation introduced the concepts of 'individual' and 'corporate' competence, the latter being a misleading term. Experience has shown that extending the language of competence to organisations has caused widespread confusion, and that competence as a concept has no legal minimum of compliance.
64. Regulation 4 has also allowed the proliferation of commercially-driven third party assessment schemes. Although these assessment schemes aim to comply with the core criteria in Appendix 4 of the ACoP, differences between the assessment requirements and the frequency of re-assessments between different schemes have resulted in the process becoming both bureaucratic and costly to construction organisations - particularly the smaller organisations - and thus partially discredited.
65. Furthermore, regulation 4 has not encouraged the correct balance of responsibilities between the employer, the employee, the self-employed, and third party competency card schemes, such as the Construction Skills Certification Scheme (CSCS) and others. An effective framework of card schemes and common standards needs to be industry-led in conjunction with various Sector Skills Councils, Awarding Bodies, colleges and nationally-recognised training providers. The removal of regulation 4 will facilitate these

parties taking greater responsibility for working together, agreeing standards of assessment and co-ordinating training and achievement of competence in health and safety

66. The removal of regulation 4 would be significantly deregulatory because it removes the requirement for establishing competence at both organisational and individual level and shifts the balance of thought back to training and supervision, a requirement commensurate with similar health and safety legislation. In doing this, the implicit requirement for organisations to follow a protracted, costly and bureaucratic competence assessment process is removed.
67. In terms of cost implications, the removal of the explicit requirements for competence is unlikely to result in immediate changes of behaviour. Rather, we would expect it to be the initiator for change over the coming years. Initial contacts with industry indicate that the larger clients and contractors will maintain their requirements for their supply chains and workforce to undergo health and safety competence assessment. However, we expect that the health and safety competence assessment industry will rationalise and reduce over time as the clients and contractors increasingly rely on PAS 91 accreditation (a publicly available standard published by British Standards which sets standards for procurement of construction work) and the training and experience of their supply chain as demonstration of their ability and capability to undertake work for which they compete. A significant cost saving to the industry (especially small contractors) would be realised as suppliers will no longer need to submit to a multitude of competence assessment schemes at both the individual and corporate level.
68. We intend to work with industry to achieve this objective, and we would expect at least a portion of such savings would materialise in the period over which this IA is appraising impacts (the first 10 years). However, the level of uncertainty inherent in predicting how and when behaviour would change in this area prevents us from being able to quantify these savings.
69. It may be seen by some sections of the industry that HSE is stepping away from its support for a competent industry workforce after several years of explicit support. CDM 2015 will, however, retain a general requirement that those appointed have appropriate training and knowledge to carry out their work safely. The material which is developed to support CDM 2015 following the removal of the detailed ACoP requirements will be explicit about what it sees as an appropriate and proportionate industry response to the challenge of ensuring a competent workforce. Based on this, we would not expect this change would result in adverse health and safety impacts.

D) Tightening of the condition used to trigger notification of the construction project to the competent authority

70. The Directive provides that for any construction site on which (1) work is scheduled to last for more than 30 working days with more than 20 workers occupied simultaneously, or (2) on which the volume of work is scheduled to

exceed 500 person-days, specified particulars of the site must be notified to the national competent authority.

71. CDM 2007 transposed the specified particulars but it adopted a slightly different criterion for notification in that it omitted the requirement for more than 20 workers. The effect of weakening the condition in this way is that CDM 2007 requires notification of more projects than the Directive does, going somewhat beyond the strict requirement of the Directive. The notifications are usually made to HSE using an online form and provide a source of intelligence for HSE on construction activity and where larger construction sites are to be found. The value of this intelligence is lessened, however, by HSE increasing its regulatory effort on smaller sites many of which do not meet the criterion for notification, and by virtue of the fact that no projects for domestic clients are currently notifiable.
72. CDM 2015 will adopt the tighter criterion for notification given in the Directive.

Number of projects affected

73. Approximately 115,000 notifications are made to HSE every year. We have analysed a sample of those notifications to determine what proportion of them would still require formal notification under the proposed changes. The conclusion of that analysis is that notifications would approximately halve, and that we would expect 60,000 fewer notifications every year.

Cost implications of the tightening of the condition used to trigger notification of the construction project to the competent authority

74. The nature of the current notification requirements is that the projects involved are large ones, i.e. those in which we would expect clients to keep up-to-date with the requirements. We will therefore assume that annual notifications would, indeed, be reduced by 60,000 a year.
75. Table 28 of the CDM 2007 evaluation, which provides estimates of different costs experienced by CDM co-ordinators, has a specific estimate of the cost of "Notifying this project to HSE as required in CDM 2007". The median of the costs reported is £51.
76. Applying that cost and assuming 60,000 fewer notifications a year, savings due to not having to notify projects to HSE would be of **£3 million a year**, with a 10-year present value of £26 million. These savings are in scope for OITO.
77. The following two proposed changes arise from different policy considerations than those presented earlier. HSE has become aware that the current transposition of the Directive is insufficient in two areas; the changes analysed below address these two areas and align the Regulations with the Directive, ensuring the latter is transposed correctly.

E) Change in threshold for formal appointments to more than one contractor

78. The Directive imposes a number of additional duties where a construction site has more than one contractor present. The main additional duties are for the client (or a person acting on their behalf) to appoint safety and health co-ordinators for the pre-construction and construction stages of the project, and for the co-ordinators to co-ordinate health and safety, draw up a health and safety plan to manage the construction phase and collate a health and safety file of information likely to be useful to those carrying out subsequent works after the completion of the project, such as cleaning, decommissioning or demolition.
79. CDM 2007 transposed the additional duties but it adopted a different trigger. Instead of plurality of contractors it used a measure of the duration of the project expressed as more than 30 days or more than 500 person-days of construction work. This was done to simplify the Regulations by using the same condition for triggering the additional duties as for triggering notification of the project to the competent authority. However, the approach under CDM 2007 differs from the Directive and CDM 2015 seeks to align them.
80. CDM 2015 will change the additional duties trigger from project duration to contractor plurality in line with the Directive. The impact of the change will be to increase the number of projects that attract the additional duties, but with the benefit of significantly simplifying the structure of the Regulations. The great majority of such projects brought within scope of this requirement will be small projects, and the planned supporting guidance to the Regulations will demonstrate how the additional duties arising on such projects can be discharged in a practical and proportionate way, with minimal extra cost.
81. The change in threshold will affect both non-domestic projects and, due to the proposed removal of the exemption from client duties for domestic clients, domestic projects as well. The impact on non-domestic projects is analysed in this section, while the impact on domestic projects will be analysed and the new duties arising will be considered in the subsequent one.

Number of non-domestic projects affected:

82. Projects over 30 days or 500 person days are likely to already involve more than one contractor and so would not be affected by the change in threshold. However, there will be a number of shorter-duration projects which would also require more than one contractor and so would become subject to formal appointments and documents if the threshold is amended.
83. It is not straightforward to obtain an estimate for the total number of non-domestic construction projects undertaken each year. In its latest Construction Statistics¹⁸ the Office for National Statistics (ONS) publishes an estimate of approximately 37 thousand projects of value greater than

¹⁸ See: ONS, Construction Statistics No. 13 – 2012 - <http://www.ons.gov.uk/ons/rel/construction/construction-statistics/no--13--2012-edition/art-construction-statistics-annual--2012.html>

£100,000, based on their quarterly survey. The ONS has also provided us with their estimate (based on the same source) for projects of value below £100,000, and that is approximately 120,000 projects. In total, therefore, the ONS estimate some 160,000 non-domestic construction projects a year.

84. However, this number does not sit well with information held by HSE, or with HSE sector experts' knowledge of the construction industry. As mentioned in paragraph 43, CDM 2007 contains a duty to notify HSE of any non-domestic projects with a duration of more than 30 days or more than 500 person-days of construction work. Currently, some 115 thousand notifications are made to HSE every year. If we subtracted this from the ONS estimate, it would mean that there would be only 45 thousand projects of under 30 days or 500 person-days of construction work (or even fewer if we assumed that HSE is not receiving 100% of the notifications that should be made).
85. It seems doubtful to HSE sector experts that the number of projects below that threshold would be only about a third of the number of projects above it. It seemed more likely that there would be at least as many. **For now, we will use an estimate of a total of 250,000 non-domestic projects a year.** During consultation, we will seek feedback on this estimate from stakeholders, as well as exploring alternative sources of data.
86. ONS data for proportions of new orders by value range¹⁹ do not include the smallest projects, and group data differently in different years. Using data from the last 3 available years, as well as using our own assumptions about the distribution at the lowest end of the market, we have arrived at the following distribution:

Table 1. Distribution of non-domestic construction projects, by value

Value of project	Number	Proportion
£0 - £50k	81,000	32%
£50k - £100k	54,000	22%
£100k - £200k	46,000	18%
£200k - £500k	34,500	14%
£500k - £750k	11,500	5%
£750k - £1,000k	6,000	2%
Over £1,000k	17,000	7%

87. Based on HSE's knowledge of the sector, we estimate that the great majority of those projects under £200,000 would not meet the notification criteria for CDM 2007, as they would most likely not be of sufficient length. However, some of these approximately 180,000 under £200,000 would require more than one contractor on site, even if they require fewer than 30 days or 500 person days. Therefore, following amendment of the Regulations, they would

¹⁹ For the latest, see: ONS, Construction Statistics No 12 – 2011 - <http://www.ons.gov.uk/ons/rel/construction/construction-statistics/no--12--2011-edition/chapter-1---new-orders.xls>

become subject to formal appointments and documents, which they would not have been before.

88. Based on the experience of HSE's Construction Division it has been estimated that, for non-domestic projects, there are two single contractor jobs for every multi-contractor job. So, we estimate that of the 180,000 potential additional non-domestic projects, one-third or approximately 60,000 projects will require more than one contractor and so require formal appointments and documents when they would not have before the change in threshold.
89. HSE considers it unlikely that many projects of over 30 days or 500 person days would have fewer than two contractors on site, so we will assume that no projects currently subject to formal appointments and documents would become free of those requirements due to the change in threshold.

Additional costs for non-domestic projects²⁰ due to the change in threshold:

90. The estimated 60,000 that were under the threshold for formal appointments and documents in CDM 2007, but would be over the threshold in CDM 2015, would now have new duties placed on them by the Regulations. The client should then appoint the principal contractor and ensure they draw up the health and safety plan.
91. HSE guidance will make it very clear that all these duties should be discharged in a proportionate, common sense way, especially for small projects (which we will define, for the purposes of this IA, as those under £50 thousand). Such projects might include, for example, minor shopfitting, a small extension or minor commercial repairs or refurbishment.
92. HSE plans to provide template health and safety plans for the most common types of small projects likely to involve more than one contractor, and make clear what exactly they need to do. In effect, for these small projects of value under £50,000, complying with the new duties would mean having a discussion about appointments (regarding who will be considered the principal contractor, etc), and downloading the relevant sample plan from the HSE website. We originally estimated this would take 1 hour at most, counting the time of everyone involved (which will, most times, be 2 contractors).
93. However, before finalising this consultation-stage IA, we discussed a number of assumptions with the Federation of Master Builders (FMB)²¹, a trade association which has a high representation of members amongst the smallest building firms (which would be those who would undertake the type of work under discussion here). A number of FMB members were consulted and asked to provide a "sense-check" for relevant assumptions. We asked them specifically about how long it might take to carry out the activities described in the previous paragraph, and there was general agreement that

²⁰ As mentioned, the change in threshold affects all projects, but costs to domestic projects will be calculated in the next section.

²¹ See: <http://www.fmb.org.uk/about/>

our original assumption was on the low side. We will therefore assume it will take twice as long: 2 hours, which is consistent with the feedback received.

94. Out of the 60,000 projects attracting new duties, we estimate that just under half (27,000) would be of value below £50,000. These types of projects will generally be small and be undertaken by very small contractors including the self employed, and will not involve separate designers, all factors which would lead us to expect lower compliance with the new duties, approximately half of what we estimated for contractors as a whole in section A: 25%. We consulted FMB members about this estimate, and reaction was split. However, those who disagreed with our estimate and provided comments thought it might be even lower. We will be conservative and continue to use the 25% estimate.
95. Assuming, as earlier, a full economic cost of £15 per hour for a contractor's time, this would result in **annual costs of approximately £200,000**. Over 10 years, this would represent a present value of £1.7 million.
96. Larger projects (value over £50,000) will tend to be projects with more complexity. We have considered that, if contractors undertaking such projects are seeking to comply with the changed regulations, this implies that theirs are responsibly-run projects. Responsibly-run projects of that size would, inevitably, already be doing all the additional things required by the regulations. To comply with already existing health and safety duties, they would already require someone being, in effect, in charge, and a plan of some sort to ensure workers on site are safe. We therefore do not expect the new requirements to place any costs on business for these types of projects. We sought opinions on this assumption from FMB members, and most of those who answered the question agreed that it was a reasonable assumption.
97. The costs to business from the change in threshold are not in scope for OITO, as the change arises directly from an EU measure, and the implementation does not go beyond what is strictly required and there are no available derogations that would reduce costs to business²².

F) Removal of the exemption for domestic clients

98. CDM 2007 places duties on construction clients. A client is person or body corporate who procures construction work. These duties are largely administrative and, in summary, are to ensure that management arrangements for the project are sufficient, to provide relevant information to other duty holders, appoint co-ordinators for health and safety (in those projects where the trigger condition for such appointments is met), and ensure that the principal contractor has drawn up a health and safety plan before work commences on site.

²² See: OIOO guidance (OITO guidance is still not published, but this element is not expected to change): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31616/11-671-one-in-one-out-methodology.pdf

99. Both CDM 2007 and its predecessor 1994 Regulations ensured that “domestic clients” (persons having construction work done on their own homes) were protected from the client duties described above. This was on the basis that, in view of the nature of domestic construction projects, it was reasonable to shelter such clients from the criminal liability inherent in these duties. In practical terms, in the vast majority of small projects for domestic clients, the householder is not in a position to exercise control over how the work is managed or sequenced in the way that a more informed commercial client would be. Furthermore, the informal arrangements in place in such projects do not lend themselves easily to the structured approach to client duties which the Directive would indicate.
100. It is important to note, however, that regardless of whether a project is carried out for a domestic or commercial client, the same legal responsibilities fall on the contractor to ensure that appropriate precautions are in place to ensure the safety of workers. This approach is consistent with HSE’s primary legal locus being those engaged in work activities, not private individuals. The Regulations similarly did not exempt other dutyholders such as designers from their duties in domestic projects.
101. The Directive’s definition of client is very broad and cannot be regarded as excluding domestic clients. It imposes client duties on all clients as defined with no derogations.
102. CDM 2015 therefore seeks to align the Regulations with the requirements in the Directive, and this IA explores two options to do this. The first is to simply copy out the Directive and the second seeks to address the difference while providing a level of relief to domestic clients. It does this by amending the definition of client to include all clients but then, in the case of domestic clients only, providing that the contractor(s) for the project shall by default carry out the client’s duties without further client intervention (the Directive allows for the principle that the client’s duties can be carried out by another person). We will refer to this second option as the ‘deeming’ approach.
103. For both options, the effect of the change will be to greatly increase the number of clients who come within the scope of the Regulations, but in the second option, to simultaneously ensure that, in most cases, these clients are not significantly affected by the change. Where small domestic clients come within scope of CDM 2015, HSE will stress the need for a proportionate approach, and will seek to offer every assistance to such clients in discharging these limited responsibilities through the use of, for example, template health and safety plans for small domestic projects.
104. The requirements on contractors for the physical control of health and safety risks will remain essentially unchanged from the existing Regulations. The proposed changes to the client definition will have the effect of formalising the management arrangements for domestic construction projects, but through the deeming approach will do so in a pragmatic way which minimises costs and retains existing standards of worker protection.

Number of domestic projects affected

105. We considered using the ONS Construction Statistics Annual as a source of data. However, this source focuses on the overall competitiveness of the industry, tending to discount some of the small contractors and not considering any projects of less than £25,000 in value. Given that the majority of domestic clients are likely to fall into the less than £25,000 value category, significant adjustments would be required to the Construction Statistics Annual data before it could be used, which would only serve to increase the uncertainty within these estimations. Thus, an alternative method of estimating project numbers has been derived as follows:
106. According to the latest census figures²³, there are 23.4 million households in England and Wales and 2.2 million households in Scotland. Non-owner occupied property should be excluded from this total figure as any construction work will be the responsibility of the landlords, who are not classed as domestic clients and are already clients as defined. Census data indicate that 64% of households in England and Wales and 63% in Scotland are owner occupied premises, i.e. 16.3m in total for Great Britain as a whole.
107. In 2012, HSE commissioned a project to improve its knowledge of domestic construction activity. The first stage of it involved conducting a telephone survey of a nationally representative sample of 800 homeowners to gather information on the types of improvements and renovations that they had undertaken in their homes, as well as to gain information on their perceptions on what they considered as 'construction' work.
108. Approximately 20% of respondents reported having construction work²⁴ done in the previous year²⁵. Based on this, it is estimated that there will be **3.3 million domestic construction projects per annum**.
109. As explained in the previous section, different duties will apply to projects which have only one contractor on site from those which have more than one contractor on site. The survey inquired of respondents how many different businesses / contractors had worked on site during the latest project they had reported. 30% of them reported having more than one contractor on site²⁶.
110. This results in estimates of **1 million multi-contractor and 2.3 million single contractor projects a year**²⁷.

²³ Preliminary information from the 2011 census has been released for England and Wales. Data for Scotland comes from the 2001 census, and will be updated as 2011 results become available.

²⁴ According to the definition we provided, which, as explained later in this section, is wider than many respondents' own definition.

²⁵ This is in line with the results obtained through its own survey by another member state, with similar housing and construction markets as the UK.

²⁶ The survey asked respondents to report on projects undertaken in the previous 5 years. The 30% proportion was the same for those who reported construction work in the previous year, and those who had not had work done in the previous year, but had 2 to 5 years earlier, which adds to the robustness of the estimate.

²⁷ Numbers do not add up exactly due to rounding up.

Costs of the removal of the exemption for domestic clients

111. As explained in paragraph 102, two options to take forward this change have been considered in detail, and two more have been considered and ruled out as not viable. Each has very different cost implications.
112. We discussed several of the assumptions in this section with representatives from the HomeOwners Alliance (HOA)²⁸, a group set up to represent the interests of homeowners and homebuyers, as well as with FMB members. Their feedback is presented throughout the analysis.

Option 1: Copy out

113. Client duties would be imposed directly on domestic clients, who would carry out these duties themselves.

i) FAMILIARISATION COSTS

114. Familiarisation costs for domestic clients would be a multiple of (a) the number of clients (which includes both types of domestic projects: those requiring all client duties – including duties relating to formal appointments and documents – and those requiring compliance with a lesser set of duties); (b) the length of time taken for familiarisation; (c) the opportunity cost of the client's time; and (d) the expected level of compliance.
115. The number of domestic clients (a) has been estimated as 3.3 million per year. We will assume that clients will have to spend time understanding what their duties are every time they require a construction project, even if they have done so some years previously. This would make familiarisation costs annual ones, in this case. We consider this to be a plausible assumption, given that these are domestic clients, for whom construction projects are sporadic, with an average interval between projects of 5 years (see paragraph 108).
116. Regarding time taken for familiarisation (b), in section A we assumed it would take contractors 2.5 hours and designers 2 hours to familiarise themselves with the amended Regulations. Domestic clients will have no background in the area, so we would expect familiarisation to require much more time. We discussed with HOA our initial assumption that even so, it would be unlikely that most would choose to spend a significant portion of their leisure time understanding what their duties are and how to discharge them. The assumption we will conservatively use is of 3 hours, which the HOA felt might even be on the high side.
117. The opportunity cost for clients (c) of familiarisation depends on the value of the next best alternative to which they could put their time. Although this will vary between individuals, for those who are in paid employment it can be

²⁸ See: <http://hoa.org.uk/>

assumed that the next best alternative to familiarisation would be to work²⁹. The average wage rate has therefore been used to calculate the utility foregone for clients as a result of familiarisation³⁰.

118. In 2012 the mean hourly wage for full-time employees was approximately £15 for all full-time employee jobs³¹. Based on this rate, the opportunity cost of familiarisation per client is £45.
119. We expect a low level of compliance (d) for domestic clients, for a number of reasons. Not being involved in construction circles, it is likely many of them may not be aware of any changes in the law, and so would simply behave as they do now (although this might depend on how much press coverage of the change there is). Additionally, in the survey referred to earlier in this section, one of the questions was whether the respondent had sought information, at any point in the project, regarding a number of issues. These included health and safety amongst a number of others, such as building control and planning permissions. Fewer than 10% reported having considered the issue of health and safety at all, even though they had been told the survey was being carried out on behalf of a government department, which might have led them to report having considered it even if, in reality, they had not.
120. Even for those who would be aware of the changes, and who would know they are subject to new duties if they hire someone to carry out construction work on their property, many may not even realise that the work they have commissioned would be classed as construction work. In the survey, respondents were given a list of activities done in the home and asked whether they thought they qualified as “construction”. There was a large variability in the responses. Over three quarters of respondents recognised that having someone repairing their roof or do a loft conversion was construction work. 60% and 40% respectively thought installing new windows and plastering was construction. For some maintenance tasks, such as painting a front door, only 20% recognised this as construction. All of these would technically fall within the definition under the Directive and Regulations.
121. The survey found that about 30% of the projects carried out were Construction (such as construction of a home from scratch, home renovation and building a conservatory or other extension work), 15% were improvements (which include the installation of new central heating systems, plumbing or electrical systems, loft conversions, interiors or garages and replacing windows) and the majority, 55%, were repairs, maintenance and redecoration (which includes cosmetic redecoration, repairs to windows and

²⁹ The majority of domestic clients who are able to afford construction work to their properties are likely to be in paid employment. While there will be a smaller proportion of retired domestic clients, there will still be an opportunity cost of familiarisation time including worry and stress, and the average wage rate is assumed to be a reasonable proxy for this time also.

³⁰ We have also looked into using a methodology proposed by HMT’s Green Book team for valuing time spent by private citizens on state activities. This uses the average wage rate, uprated by 30% to account for non-wage costs, to estimate the value of their own time to the proportion of individuals who are in work, and the Effective Return to Labour of Household Activities, from the ONS’s Household Satellite Account to estimate the value of their own time to the proportion of individuals who are not in work. However, the results of applying both methodologies end up being very similar.

³¹ Source: Office for National Statistics’ Annual Survey of Hours and Earnings (ASHE) 2012.

central heating, plumbing or electrical systems, as well as structural repairs). Based on the responses reported in paragraphs 119 and 120, it is likely that for many of the projects in the latter (and largest) group, domestic clients would not realise they are commissioning construction work.

122. Taking into consideration the evidence presented in the previous paragraphs, we will assume that 10% of domestic clients would spend time familiarising themselves with their obligations. This assumption was discussed both with HOA and FMB, who felt that it was reasonable, and that the real figure might even be lower.
123. Based on these assumptions, our best estimate of the total cost of familiarisation for domestic clients is approximately **£15 million per year**. Over a 10-year period, the present value would be £127 million.

ii) COSTS OF NEW DUTIES

124. Under copy-out, as described earlier, the domestic client would have to ensure that management arrangements for the project are sufficient (including in regard to resource allocation, health and safety protection and welfare provision), provide relevant information to other duty holders, appoint co-ordinators for health and safety (in those projects where the trigger condition for such appointments is met) and ensure that the principal contractor has drawn up a health and safety plan before work commences on site.
125. In effect, the domestic client would take on the role of project manager for the construction work to be done. Before work commences, they would have to spend time on activities such as obtaining the relevant information from contractor(s) and understanding what could be very complex processes, plus making appointments and ensuring plans are drawn up, if necessary. We estimate this would take half a day (4 hours), on average. We discussed this assumption with HOA representatives, who felt that for those who understood their obligations, this seemed reasonable, and it might even take longer if the homeowner needed to learn how to project manage as well. We consulted the FMB on this as well, as they are often in contact with those who would be clients under this option, and there was some agreement that this estimate was reasonable, with comments that it might even take longer to do it properly.
126. Additionally, they would have to spend time ensuring that the work is carried out in accordance with their legal requirements. We estimate this would take 2 hours per day for homeowners. The FMB members all agreed that this was how long it would take to ensure that the work is carried out in accordance with legal requirements, and the HOA representatives commented that many homeowners would struggle to be able to spend that much time at home ensuring that construction work is carried out properly, which further supports us using a very low compliance rate (we are using 10% here, as above).
127. In our survey of homeowners, we asked respondents about the length of the construction work they had had done. The following table presents the results:

Table 2: Distribution of projects by number of days they lasted

Length of projects	Proportion
1 to 5 days	58%
6 to 10 days	15%
11 to 30 days	17%
31 to 90 days	5%
91+ days	5%

128. Taking an average number of days in the middle of the range for each group (and 91 days for those projects lasting more than 90 days, as we would expect few to exceed 90 days significantly), and based on the above assumptions (including an opportunity cost of £15 for each hour of the homeowner's time, as explained in paragraphs 117 and 118) would result in a **total annual cost of £155 million** to homeowners for discharging these new duties. Over the first 10 years, this results in costs with a present value of £1.3 billion.
129. It is also possible that, even with clear and proportionate guidance, homeowners who intend to comply with their new obligations would be intimidated by the requirements and lack the confidence to take on these duties. This could mean that the compliance costs for homeowners would be lower than estimated but also that non-essential jobs are not taken forward, or done by the homeowners themselves, with the ensuing negative impact on construction businesses.
130. In total, familiarisation and discharging the new requirements would result in a maximum total annual cost of £170 million to homeowners, with a present value of £1.5 billion over the first 10 years.

Option 2: 'Deeming' approach

131. The definition of client would be amended to include all clients but then, in the case of domestic clients only, the Regulations would provide that the contractor(s) for the project would by default carry out the client's duties without further client intervention.

i) FAMILIARISATION COSTS

132. As for option 1, familiarisation costs for domestic clients would be a multiple of (a) the number of clients ; (b) the length of time taken for familiarisation; (c) the opportunity cost of the client's time; and (d) the expected level of compliance.
133. The number of clients (a) would be as in option 1, namely 3.3 million a year.
134. The length of time taken for familiarisation (b) would be much lower than in option 1, as with this approach, the only information domestic clients will have to understand is that they do not need to do anything at all in response to the

amendment of the Regulations, and that they can proceed as usual. Information on the HSE website will be written in very clear language, to ensure there is no confusion. We will assume that accessing and understanding this information would take approximately 15 minutes, which was felt to be reasonable by HOA representatives when we discussed it.

135. The opportunity cost of the domestic client's time (c) would be as in option 1, £15 an hour.
136. The expected level of compliance (d) would also be as in option 1, at 10%.
137. Based on these assumptions, the **annual familiarisation cost to domestic clients would be £1.2 million**, which would result in costs with a 10-year present value of £10.5 million.

ii) COSTS OF NEW DUTIES

138. Under the 'deeming' approach, domestic clients would not have to do anything different from what they are doing at the moment, so they would incur no additional costs.
139. The new duties would fall on contractors and designers working on domestic projects. For projects with a single contractor, there would be no changes, as the contractor would already have a duty under the current Regulations to protect their own health and safety, and co-ordination, appointments and plans would not be necessary.
140. It would be only in multi-contractor projects that the new Regulations would require changes. Contractors would now have the same duties described in the previous section, in paragraph 78 (drawing up the health and safety plan, co-ordinating who will do what and in what order). The supervision element, which we assumed would take the householder 2 hours a day in option 1, would be naturally discharged in the course of the regular work.
141. We have taken a pragmatic approach to assigning which contractor assumes these responsibilities in lieu of the domestic client, in that the first contractor engaged by the householder will have to discharge the duties. This is in line with the natural position of authority which will be adopted by a contractor who wishes to sub-contract work to a second party. By way of an example, if a householder engages a plumber to re-fit a bathroom, the plumber will usually sub-contract some elements of the work – for example, electrical or joinery work – to other persons. The plumber, as the first-appointed contractor would be responsible for the 'deemed' client duties.
142. For the smallest projects, which we will define for the purpose of this IA as those under £10,000 (this would include projects such as the refitting of a typical bathroom), we would expect it would take contractors 2 hours to carry out these duties (template plans for the most common domestic projects would be provided by HSE, as explained in paragraph 92).

143. For projects of over £10,000 (projects such as the construction of a typical domestic extension), we would expect it would take 4 hours, with 3 of those hours being spent by contractors, and 1 of them by a designer.
144. This is much less time per project than we estimate it would take for homeowners to discharge the same client duties (as outlined in paragraphs 125 and 126). This is for two reasons:
- (i) Contractors would normally have significant experience, both of the type of work undertaken and of discharging client duties in general. For most homeowners, however, it would usually be the first time (or the first time in a very long period). We assumed it would take homeowners an average of 4 hours before the project started to get to grips with what the project would entail and obtain all the necessary information from contractors (including understanding exactly what information is required). This could mean, for instance, if the project is fitting a bathroom, learning how the plumbing and electrics in their bathroom work, so that they can supervise the work properly, understanding what is going on. Contractors, who will usually have fitted bathrooms a number of times before, will not need to do this.
 - (ii) The opportunity cost of ensuring that work is carried out safely. We have estimated that it will take homeowners 2 hours a day to ensure that the work is carried out in accordance with legal requirements. This is because this is time that they would currently be using for other purposes. If they are home while the work is being undertaken, they might be working or using the time for leisure pursuits. As domestic clients, they would have to instead spend some of that time checking on contractors as they work and ensuring the work is proceeding as it should. If contractors take on the client duties, the supervision role will be fulfilled as the work proceeds, as they would naturally be aware of what each other is doing.
145. There are just under 1 million domestic construction projects per year that are multi-contractor. Based on data from our homeowners' survey, we estimate that 85% of these would be under £10,000, and the majority of these would be under £5,000.
146. For these types and sizes of projects, we would expect that the majority of contractors would be very small, with many works being carried out by the self-employed. We know from evidence presented by stakeholders in previous consultations (see paragraph 33) that it is mainly large contractors who keep themselves up-to-date with regulatory requirements, with smaller contractors mainly learning about requirements through working on larger sites, by example. This would be relatively straightforward for learning what health and safety standards should be on a well-run site, but less straightforward for learning about discharging client duties, which are to do with administrative arrangements. Furthermore, many small contractors may specialise in small domestic projects, and not work on larger sites very often. Additionally, even if contractors knew about client duties, the feedback we have received is that

many would find them disproportionate and excessively bureaucratic for the smallest projects, which are the majority of those which take place.

147. It is for this reason that we would expect that compliance with these new, additional requirements would be low. Based on estimates made in previous construction-related IAs³² we have estimated a compliance rate of 10% for projects under £10,000. For larger projects, which, as mentioned, are more likely to include a designer, we would expect higher compliance, and will assume a rate of 20%. We discussed these assumptions with the FMB, and responses were mixed, leaning more towards agreement (although there was some confusion amongst some who disagreed about which obligations we were talking about here). Compliance was expected to be low, possibly even lower than our 10% and 20% assumptions, which were still felt to be reasonable.
148. Based on these estimates and the hourly rates described in paragraph 36 for contractors and designers, the new duties would generate annual costs of **£4.6 million**. Over the first 10 years, this would represent costs with a present value of £40 million.
149. These costs would fall on contractors and designers, in the first instance. What proportion of them will be passed on will depend on something called in economics the “price elasticity of demand” of the different subsectors of domestic projects. That is, how demand for a particular product or service (e.g. construction, or improvements) reacts to changes in its price.
150. We would expect that the demand for urgent, necessary jobs (such as, for instance, repair of a heating system that has failed during winter) would be relatively inelastic. That is, the domestic client would undertake the project even if the price increased. For that type of project, then, contractors and designers would probably be able to pass on most of the extra costs to clients, by increasing their prices.
151. On the other hand, demand for minor and merely aesthetic projects, would probably be quite elastic. If the price goes up, clients might just decide they do not need to undertake the project, or that they can do it themselves. In such cases, contractors and designers would probably have to absorb the majority of the extra costs if they wanted the work, and would not be able to pass them on to clients.
152. Without a significant expense to research this issue, we are not able to provide estimates of the potential rate of cost pass-through. We will, however, explore the issue with industry further during consultation.
153. In total, familiarisation and discharging the new requirements would result in a maximum total annual cost of £5.8 million to society (homeowners and contractors), with a cost of £50.1 million over the first 10 years.

³² See the IAs for the revocations of the Construction (Head Protection) 1989 and Notification of Conventional Tower Cranes 2010 Regulations - <http://www.legislation.gov.uk/ukxi/2013/448/impacts>

REGULATION AND HEALTH AND SAFETY OUTCOMES

154. The two previous options are analysed with the underlying assumption that HSE would continue to apply its current enforcement policy³³. Two principles of the enforcement policy are that regulation should be both proportionate and targeted based on risk. Legal duties already exist under other health and safety legislation for health and safety standards on domestic construction projects (e.g. for working at height) and those would continue to be enforced as they are currently.
155. Regulation on domestic construction projects will continue in line with HSE's Enforcement Policy Statement 35 and the focus of this will be where workers and members of the public are put at risk. Typically this will result in both a proactive and reactive approach to regulation of the existing legal requirements for the provision of physical safeguards and less emphasis on the new, largely administrative requirements, but the two would be considered together. It is in this context that we expect compliance with the new duties to be low.
156. In the great majority of domestic construction projects (most of which are very small in cost and scale³⁴) we would expect that discharging the new client duties, which relate only to the management of the project would not lead to improved health and safety outcomes, i.e. result in fewer deaths, injuries or cases of ill health over and above that met by achieving compliance with the extant health and safety standards. In projects that are already well-run, it would merely be a formalisation of processes that would already be taking place – the day-to-day interaction between contractors which is required to deliver a project - and therefore not bring about any additional benefits. We would expect most projects in which client duties were discharged to be in this category, as clients who seek to comply with these new regulatory requirements are probably those who comply with requirements regarding health and safety standards. In projects that are not already well-run, discharging the new client duties in isolation is not expected to lead to much improvement, as such sites would probably display other health and safety breaches.
157. We would expect any improvements to health and safety outcomes due to the discharging of the new client duties to take place in the very small minority of large, complex domestic projects where a greater degree of formalisation of roles and of co-ordination of health and safety information may have benefits. This could include, for example, major architectural remodelling involving significant structural works, or projects involving civil engineering works such as basement excavation. It is reasonable to assume that for the majority of

³³ HSE's Enforcement Policy Statement can be found here: <http://www.hse.gov.uk/pubns/hse41.pdf>

³⁴ A third of multi-contractor domestic projects (where the new client duties would apply) are under £1k. 70% are under £5k and 85% under £10k.

those projects where those responsible would familiarise themselves with the new duties and discharge them, the projects would be well-enough run that the processes underlying these duties would already be taking place in some form. However, it is conceivable that adding a degree of formality to them might lead to improvements in areas such as co-ordination and planning, and potentially to improved health and safety outcomes.

158. Additionally, a very small number of those projects would be large enough that they would have to be notified to HSE³⁵ (currently no projects for domestic clients are notifiable, regardless of their size or duration), and the potential for inspections could lead to improvements in health and safety outcomes.
159. We are not able to quantify these potential improvements, or even predict with any level of certainty that they will happen, so we are only raising this as a possibility. We do know that the number of domestic projects which fulfil the conditions described in paragraphs 157 and 158 will be very small, so any benefits from this change would be limited.

Additional options considered

160. We have also considered additional options, which took the previous two options as their starting point but focused more HSE resources on improving compliance with the new duties which arise in construction projects with more than one contractor for domestic clients. These additional options were ruled out prior to the consultation stage, for reasons explained below, but are discussed here to ensure that consultees are provided with information which is as complete as possible.
161. We have explored in earlier sections the factors which we believe would result in low compliance levels with the new duties (see paragraphs 119 - 121 and 146). Overcoming them would require actions in two areas: communications and enforcement.
162. Improving compliance as much as possible would require, in both options, ensuring that householders and contractors respectively are aware of the new duties. Each group would present slightly different challenges. Owner-residents who might have construction work done in their own homes are a large and diverse group: as mentioned in paragraphs 106 to 109, there are over 16 million owner-occupied households in the UK, all of which could potentially have construction work done in their homes. Reaching a significant proportion of them would require an extensive, expensive communications campaign. Additionally, for most households there would be an interval of years between projects, so a successful campaign would have to be an ongoing one, which would increase its cost significantly. As for contractors, as stated earlier, those who would carry out the bulk of domestic construction projects will tend to be small businesses, often self-employed individuals.

³⁵ See Section D. these are projects on which (1) work is scheduled to last for more than 30 working days with more than 20 workers occupied simultaneously, or (2) on which the volume of work is scheduled to exceed 500 person-days.

Many of them will not work in larger sites, belong to business associations, or voluntarily engage with HSE. We know from current activities that reaching them is difficult.

163. But even for householders and contractors who have been made aware of the new duties, we would not expect this to be enough to change behaviour in a large number of cases. While we consider the client duties in the Directive to be appropriate and proportionate for commercial projects and some of the largest, more complex domestic projects, they will in the main be perceived as disproportionate for the types of projects which will comprise the majority of domestic multi-contractor projects (for example the installation of a conservatory or the re-fitting of a kitchen or bathroom). As we explained in the previous section (see paragraphs 156 to 159), for the majority of projects we would not expect fulfilling the new client duties to result in improvements in health and safety outcomes, and this will probably be evident to contractors and householders.
164. Because of this, we would expect that achieving a high level of compliance with the new client duties would require substantial proactive regulatory activity on the part of HSE. At the time of preparation of this Impact Assessment, HSE employed some 130 full time-equivalent operational construction inspectors of the grades that would normally undertake inspections, who undertake some 11,000 inspections a year. Even if HSE were to divert all of their resource from their current duties to enforce the new domestic client duties, they would only be able to visit around 1% of the approximately 1 million multi-contractor domestic projects which take place every year. Additionally, while contractors working in the commercial sector will often subcontract on larger sites and be influenced through the contracting supply chain in that way, this happens to a much lesser extent in the domestic sector. Because of this, we could not expect the sort of “multiplier effect” on behaviours which can occur in the commercial sector through local inspection initiatives.
165. There would also be significant practical difficulties in identifying domestic construction projects for HSE inspectors to visit. HSE would be required to be notified of the details of some of the larger, more complex projects (see paragraph 158), but those where a notification is submitted would inherently demonstrate a degree of compliance with new and existing duties. A great majority of such projects would not require planning permission or formal intervention by Building Control officers, so there would be little scope to work through other regulatory regimes to identify projects. As stated before in this IA, the bulk of the projects we are discussing are small-scale (costing under £5,000) and of short-duration (many lasting only a day or two). It would be difficult, if not impossible, for HSE inspectors to know when and where they are taking place, and clients and contractors would know this. Acquiring information about such projects would require the development of an intelligence-gathering infrastructure that would almost certainly infringe domestic privacy in ways that would not be acceptable. It would also conceivably require further regulatory change that would go beyond what is set out in the Directive, thereby constituting gold-plating.

166. Thus if HSE were to focus all of its construction inspectors on enforcing the new domestic client duties, we could not expect compliance rates to rise to very high levels. They would rise to a certain extent, however, and this would have effects of health and safety in the Construction sector.
167. The hypothesised change of focus of HSE's Construction inspectors would mean that they would concentrate more on the domestic construction sector, and less on the commercial sector. We would therefore expect a lowering of standards in commercial projects and improvements in domestic projects. The latter, however, would mainly not be due to the new client duties being discharged (see paragraphs 156 to 158), but due to inspections leading to improved compliance with the (current) health and safety standards required.
168. We are not able to provide estimates of the exact extent of these health and safety effects, but have a good idea of what the net effect would be. As we have mentioned, HSE's current enforcement strategy is risk-based. It is informed by evidence and focused where our activities are expected to lead to the most benefit. HSE Construction resource is therefore focused on high-risk activities which typically include small to medium-sized commercial construction work, asbestos removal, refurbishment, roof work and work at height generally. Enforcing the proposed domestic client duties more vigorously on small domestic maintenance and minor construction projects would represent a significant net diversion of resource from high to low-risk activities. Any benefits arising from inspecting lower-risk projects would largely be based on improved compliance with already-existing requirements, not the new client duties. HSE could choose to target such sites but does not on the basis of targeting risk effectively and proportionately.
169. For these reasons, we would expect the net effect of focusing on domestic client duties would be a lowering of health and safety standards overall in the construction industry. Therefore, while consultees are welcome to comment on these additional options in the space provided at the end of the consultation questionnaire, we will not be formally consulting on them.

Position under OITO

170. The two options with respect to the removal of the exemption for domestic clients would be out of scope of OITO. Both options arise directly from EU requirements.
171. Option 1, which is based on copy-out of the Directive, and imposes no direct costs on business, only on members of the public (homeowners), is clearly out of scope.
172. Option 2 provides for a slight elaboration of copy-out in order to provide relief to homeowners and limit the total additional costs of the measure (total costs to society as a whole, which includes costs on business, from lifting the exemption of domestic clients are 35 times larger in option 1 than in 2). HSE

has considered whether this second option could constitute 'gold-plating' of the Directive. Having assessed the Directive requirements and guidance on gold plating it is clear to us that it does not constitute gold-plating. The Directive itself provides that either a client or another person, defined as the "project supervisor" can discharge the relevant duties. By 'deeming' the duties on another party, we are taking advantage of the flexibility in the Directive to avoid placing duties (and disproportionate costs) on inexperienced domestic clients. The scope of the duties under the Directive has not been extended and the duties will be carried out in a way which was envisaged by the Directive and recognised by the Commission's non-binding guidance. On this basis, we are content that this option does not constitute gold plating and that Option 2 is also out of scope of OITO.

173. We have consulted the Better Regulation Executive and BIS Ministers (BRE) on this issue, and they have confirmed that they agree with our interpretation. This position is also consistent with legal advice on gold plating from Treasury Solicitor's Office.
174. Option 2 is the preferred option, as, in summary, it results in significantly lower costs to society as a whole, and avoids imposing duties with an inherent criminal liability on homeowners.

G) Summary of costs and savings

175. In total, if we opted for Option 1 (copy-out) when removing the exemption for domestic clients, there would be a 1st year cost to society of £142 million, with a 10-year net present value of £1.2 billion (also a cost).

Summary costs and benefits for option 1

COPY-OUT APPROACH FOR DOMESTIC CLIENTS	1st-year cost	Present value over 10 years	In scope of OITO?	Figure for OITO
Familiarisation for existing businesses	6	6	Yes	0.6
Familiarisation savings for new businesses	-0.5	-4	Yes	-0.4
Change in threshold for non-domestic projects	0.2	2	No	
Removal of CDM-C role	-30	-260	Yes	-25.6
Domestic projects - familiarisation	15	127	No	
Domestic projects - new requirements	155	1,333	No	
Removal of competence requirement			Yes	
Change in notification requirements	-3	-26	Yes	-2.6
Total COSTS	142	1,176	Out' of	-28.0

176. If we opted for option 2 ('deeming' approach) when removing the exemption for domestic clients, there would be a 1st year net saving to society (including business) of £22 million, with a 10-year net present value of £233 million (also a saving).

Summary costs and benefits for Option 2

'DEEMING' APPROACH FOR DOMESTIC CLIENTS	1st-year cost	Present value over 10 years	In scope of OITO?	Figure for OITO
Familiarisation for existing businesses	6	6	Yes	0.6
Familiarisation savings for new businesses	-0.5	-4	Yes	-0.4
Change in threshold for non-domestic projects	0.2	2	No	
Removal of CDM-C role	-30	-260	Yes	-25.6
Domestic projects - familiarisation	1	11	No	
Domestic projects - new requirements	5	40	No	
Removal of competence requirement			Yes	0
Change in notification requirements	-3	-26	Yes	-2.6
Total COSTS	-22	-233	Out' of	-28.0

H) Effects on health and safety

177. A detailed assessment of the health and safety impacts of the removal of the domestic client exemption is presented in section F above. This section covers the remaining changes proposed.

178. The impacts of the proposed measures on health and safety are difficult to quantify. As explained in each of the previous sections, we do not expect any of the changes to requirements to have a negative effect on the standards of health and safety that will be required by CDM 2015. There will be no amendment to Part 4 of CDM 2007, which provides duties relating to physical health and safety precautions on construction sites (the changes proposed in CDM 2015 all relate to the management of health and safety, not the standards required). In fact, through the significant simplification proposed,

and the production of sector-specific guidance aimed at small contractors, we expect the measures would lead to improved health and safety in the sector.

179. Implications for larger projects will be limited, as behaviours on such projects are typically compliant with the existing regulations. It is among small contractors that the greatest benefits are likely to be seen. Small construction projects are disproportionately represented in serious and fatal accident statistics, with around two thirds of fatal injuries in construction arising on sites with fewer than 15 workers. HSE's experience is that non-compliance with regulatory requirements is commonplace. Whilst some businesses undoubtedly avoid complying with requirements for commercial benefit, many are simply unaware of their responsibilities. We expect that by a significant refocusing of the regulations and supporting guidance to support small contractors, a proportion of them will be able to improve compliance with the new requirements.

Option 3 – Do nothing

180. Option 3 continues with the status quo, and would therefore not lead to any additional costs or benefits.

Small and micro business assessment (SMBA)³⁶

181. Because CDM 2015 implements an EU Directive, full or partial exemptions for small and micro businesses are not a possibility, and we have very little flexibility regarding what requirements are imposed on them.
182. However, many of the changes proposed are intended to provide a regulatory framework that is substantially simpler and more accessible for the smallest businesses in the sector, and some of these changes could generate substantial savings to them.
183. The evaluation found that CDM 2007 remains a difficult text, with a complicated structure, and that for small businesses that want to comply this might lead to unnecessary bureaucracy. Additionally, the current ACoP is seen as too long and not well-suited to the characteristics and needs of small and micro businesses, who perceive it as inaccessible and irrelevant.
184. In CDM 2015, the Regulations have been restructured significantly, to make them simpler and more easily understandable, especially to small businesses. The ACoP will be withdrawn, to be substituted by a suite of guidance, which will be specifically designed to be clear to small businesses and to focus on what proportionate compliance with the regulations looks like in practice.

³⁶ As CDM 2015 is not a domestic measure, a formal SMBA is not formally required. However, since our preferred option (Option 2) technically fits under the definition of gold-plating in how it implements the removal of the exemption for domestic clients, we have decided to include the following analysis, even though the latest version of the guidance is not clear about whether it is required or not.

185. This guidance will be key in ameliorating the impacts on small and micro businesses of the two changes required to bring the regulations in line with the Directive. The change in threshold for formal appointments analysed in Section E will have costs to small and micro businesses, as many small-scale projects will require more than one contractor. We would expect smaller businesses to be involved in smaller and often less complex projects, and our guidance and informational materials will seek to help them comply with the new (and existing) requirements proportionately. HSE will, for instance, provide sample health and safety plans for the most common types of projects that will be undertaken.
186. The removal of the exemption for domestic clients analysed in Section F will bring into scope of the regulations projects which will almost exclusively be undertaken by small and micro businesses. The new guidance and information materials described in the previous paragraph will be relevant for these as well. It should be noted that, as summarised in paragraphs 171 and 172, the two options considered would have different impacts on small and micro businesses. Our preferred option, Option 2, imposes costs on businesses, while Option 1 does not. The costs imposed on businesses by Option 2, however, are a small fraction of the costs which would be imposed on homeowners by Option 1, and which are avoided in Option 2. Additionally, Option 2 shelters homeowners from the criminal liability inherent in the new duties, and makes it less likely that they will decide not to go forward with non-essential projects due to the new requirements (with consequent adverse effects on construction businesses), as outlined in paragraph 129.
187. We would expect the remaining key changes to be either beneficial or neutral to small and micro businesses.
188. The CDM 2007 evaluation showed that the explicit competence requirements in the regulation (the removal of which is analysed in Section C) disproportionately affect smaller contractors. The administrative requirements for accreditation are confusing to them and the costs proportionately higher, as small contractors will often subcontract with a number of larger contractors, and these may require them to be assessed through particular schemes of their liking. As mentioned in Section C, we have been unable to quantify the potential benefits, but this change will enable HSE to work with the industry to simplify the situation.
189. The removal of the CDM co-ordinator role and its replacement with a new role (Section B) will generate significant savings to business. However, we have estimated that this will affect projects of over £200,000. Therefore, these savings will mainly accrue to larger businesses.
190. Finally, the tightening of the condition used to trigger notification of construction projects to the competent authority (Section D) is expected to affect mainly large projects, so we would not expect many small and micro businesses to benefit from the ensuing savings.

Glossary of terms and abbreviations

ACoP	Approved Code of Practice
BIM	building information modelling
CD	consultation document
CDM	Construction (Design and Management) Regulations
CDM-c	CDM co-ordinator
CONIAC	Construction Industry Advisory Committee
CSCS	Construction Skills Certification Scheme
Domestic client	owner-occupier who procures construction work at their own home
EANCB	equivalent annual net cost to business
EU	European Union
GB	Great Britain
HSE	Health and Safety Executive
HSWA	Health and Safety at Work etc. Act 1974
IA	impact assessment
LFS	Labour Force Survey
OIOO	one in one out
OITO	one in two out
ONS	Office for National Statistics
PAS91	Publicly Available Standard 91
PC	principal contractor
PD	principal designer
RPC	Regulatory Policy Committee
RRC	Reducing Regulation Committee
SME	small or medium-sized employer
SSIP	Safety Schemes in Procurement
TMCSA	Temporary or Mobile Construction Sites Directive

List of the organisations and individuals to whom this Consultation Document has been sent.

We have tried to make this list comprehensive and relevant, while focusing on the organisations that we believe will have an active interest in the issues explored in this Consultation Document. If there is an organisation that you think we have overlooked and would like us to consult directly please let us know by contacting Keith Pritchard at HSE, 1SW Rose Court, 2 Southwark Bridge, London SE1 9HS. keith.pritchard@hse.gsi.gov.uk.

Access Industry Forum
Asbestos Removal Contractors Association
Association for Consultancy & Engineering
Association for Project Safety
Association of British Insurers
Association of Interior Specialists
Association of Lorry Loader Manufacturers
Association of Northern Scaffold Contractors
Association of Plumbing and Heating Contractors
Association of Specialist Underpinning Contractors
Association of Technical Lightning and Access Specialists
Association of Train Operating Companies
British Constructional Steelwork Association
British Occupational Hygiene Society
Better Regulation Executive
British Drilling Association
British Industrial Truck Association
British Safety Council
British Tunnelling Society
Cabinet Office
Cavity Insulation Guarantee Agency
Chartered Institute of Building
Chartered Institute of Environmental Health
Chartered Institute of Plumbing and Heating Engineering
Civil Engineering Contractors Association
Confederation of British Industry
Constructing Better Health
Constructing Excellence
Construction Alliance
Construction Equipment Association
Construction Clients Group
Construction Industry Advisory Committee
Construction Industry Council
Construction Industry Research and Information Association
Construction Industry Trade Alliance
Construction Industry Training Board

Construction Leadership Council
Construction Plant-hire Association
Construction Products Association
Construction Safety Campaign
Construction Scotland
Construction Skills Certification Scheme
Convention of Scottish Local Authorities
Council for British Archaeology
Department for Business, Innovation and Skills
Department for Communities and Local Government
Department for Education
Department for Work & Pensions
Department of Energy & Climate Change
Department of Health
Designers' Initiative on Health and Safety
EEF - The Manufacturers Organisation
Electrical Contractors Association
Engineering Construction Industry Association
Engineering Equipment and Material Users' Association
European Power Tool Association
Fall Arrest Safety Equipment Training
Federation of Building Specialist Contractors
Federation of Master Builders
Federation of Piling Specialists
Federation of Small Businesses
Glass and Glazing Federation
GMB
HAZARDS Campaign
Highways Agency
Highways Term Maintenance Association
Hire Association Europe
Hire Trade Alliance
Home Builders Federation
Home Office
Homeowners' Alliance
Homes for Scotland
HSE Northern Ireland
Independent National Inspection and Testing Association
Industrial Rope and Access Trade Association
Infrastructure Safety Liaison Group
Institute of Directors
Institute of Highways and Transportation
Institute of Quarrying
Institute for Archaeologists

Institution of Construction Safety
Institution of Civil Engineers
Institution of Demolition Engineers
Institution of Occupational Safety and Health
Institution of Structural Engineers
International Institute of Risk and Safety Management
Lift and Escalator Industry Association
Lifting Equipment Engineers Association
Local Government Employers/Local Government Association
Local Government Regulation
Ministry of Justice
National Association of Shopfitters and Interior Contractors
National Association of Steel Service Centres
National Access and Scaffolding Confederation
National Federation of Builders
National Federation of Demolition Contractors
National Federation of Roofing Contractors
National House Building Council
National Specialist Contractors Council
Network Rail
Office for Nuclear Regulation
Office of Rail Regulation
Painting and Decorating Association
Portable Sanitation Europe
Prefabricated Access Systems Manufacturers Association
RenewableUK
Royal Incorporation of Architects in Scotland
Royal Institute of British Architects
Royal Institution of Chartered Surveyors
Royal Society for the Prevention of Accidents
Safety Assessment Federation
Scottish Building Federation
Scottish Centre for Healthy Working Lives
Scottish Electrical Charitable Training Trust
Scottish Government
Scottish Home Builders Federation
Scottish Master Wrights & Builders Association
Site Safe Scotland
Small Business Trade Association Forum
Society of Operational Engineers
Society of Local Authority Chief Executives
Specialist Engineering Contractors Group
Stone Federation
Strategic Forum for Construction

Structural Timber Association
The Builders' Conference
Trades Union Congress
Transport for London
Transport Scotland
UK Contractors Group
Union of Construction and Allied Technical Trades
Unite the Union
Wales Office
Welsh Assembly
Welsh Local Government Association

CD261 - Questionnaire for responses to CDM proposals

General

We would like you to tell us what you think about the proposals set out in this consultation document.

Confidentiality: please tick Yes if you do not wish details of your comments to be made available to the public. (NB: if you do not tick Yes they will be made public. This takes precedence over any automatic notes on emails that indicate that the contents are confidential.)

Yes

Name:

Organisation:

Email address:

What sector are you from?:

Please select one option

Academic	<input type="checkbox"/>
Charity	<input type="checkbox"/>
Consultancy	<input type="checkbox"/>
Industry	<input type="checkbox"/>
Local Government	<input type="checkbox"/>
Member of the public	<input type="checkbox"/>
National Government	<input type="checkbox"/>
Non-departmental public body	<input type="checkbox"/>
Non-governmental organisation	<input type="checkbox"/>
Pressure Group	<input type="checkbox"/>
Trade Association	<input type="checkbox"/>
Trade union	<input type="checkbox"/>

If you have answered 'Industry' please specify.

What capacity are you answering in?:

Please select one option

An employee	
An employer	
Health and safety professional	
Self-employed person	
Trade union official	
Training provider	
Other	

If you have answered 'Other' please specify.

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

Please select one option

Client	
CDM co-ordinator	
Designer	
Principal contractor	
Contractor (including sub-contractor)	
Worker	

Structural simplification

Question 1: 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?
Disagree?

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

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

Question 3: The technical standards have remained effectively unchanged. These are contained in Part 4 of the proposed Regulations. Is this approach acceptable to you?

Yes
No

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

Question 4: CDM 2015 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
No

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

Question 5: Do you think that these general duties on designers would be effective in considering relevant health and safety risks during subsequent construction work?

Yes
No

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

Question 6: 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 any impacts for projects that currently do not require a plan?

Yes

No

What will these be?

Replacing the ACoP with targeted guidance

Question 7: 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

No

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

Question 8: Please comment on whether there is any additional guidance that would be helpful.

Replacing the CDM co-ordinator with the principal designer

Question 9: 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

No

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

Question 10: 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.

b) at the construction phase?

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

Replacing the explicit requirement for individual competence with new regulation 7 and removing CDM's explicit requirement for corporate competence

Question 11: 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 clear to those reading the Regulations. Do you:

Agree?
Disagree?

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

Question 12: 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?

Question 13: The draft Regulations replace the specific requirements for individual worker competence in CDM 2007 with a more general requirement. Under CDM 2015 those arranging for or instructing workers to carry out construction work should ensure that 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?
Disagree?

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

Notification

Question 14: 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?

Clients including domestic clients

Question 15: 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

No

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

Question 16: 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

No

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

Impact assessment (Annex 2)

Question 17: Do you agree with the analysis of the impacts (including costs and benefits) on commercial projects presented in the IA? Yes/No

Yes - Please provide comments if you wish.

No – What steps would you take to improve it? Please include numerical data to aid appraisal if relevant.

Question 18: Do you agree with the analysis of the impacts (including costs and benefits) on domestic projects presented in the IA? Yes/No

Yes - Please provide comments if you wish.

No – What steps would you take to improve it? Please include numerical data to aid appraisal if relevant.

Question 19: Are there any costs or benefits (positive or negative) that we have missed that you believe should be taken into account? Yes/No

Yes – Please provide details, including numerical data where possible.

No – Please provide comments if you wish.

Other

Question 20: Do you have any other comments on the proposals covered by this questionnaire? Please provide comments if you wish.

Please send your response by **06 June 2014** to:

**Essien Ekpenyong
Health and Safety Executive
1SW
Rose Court
2 Southwark Bridge
London
SE1 9HS
Email: cdm2015@hse.gsi.gov.uk**

Thank you for taking the time to complete this questionnaire.

Consultation on replacement of the Construction (Design and Management) Regulations 2007

The full text of this and other
Consultative Documents can be viewed
and downloaded from the
Health and Safety Executive web site on the
internet: www.hse.gov.uk/consult/index.htm

Printed and published by
the Health and Safety Executive

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