

**Health and Safety Executive
Consultation on replacement of the Construction (Design and
Management) Regulations 2007**



A response by the Association of Personal Injury Lawyers

June 2014

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain access to justice they need and deserve. We have around 4,000 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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Introduction

APIL welcomes the opportunity to respond to the Health and Safety Executive's consultation on the revised Construction (Design and Management) Regulations and removal of the accompanying Approved Code of Practice. As evident from the consultation document, whilst larger construction sites are improving safety, smaller construction sites are falling behind¹. We understand the need to make the CDM regulations accessible to all, and to ensure that the working conditions on construction sites run by SMEs and smaller clients are as safe as those run by larger businesses. Simpler regulations will reduce the burden on smaller businesses, and ensure greater compliance with the law. Similarly, the introduction of the role of principal designer will ensure increased safety, as there will be adequate planning before any construction work takes place. We are concerned, however, with the unintended consequences of the proposed removal of the CDM ACOP in favour of targeted guidance, and also the shift away from competence in the regulations. These proposals are in danger of reducing protection for workers even further.

Structural simplification of the regulations

We welcome the structural simplification of the CDM regulations. It is important that those responsible for health and safety are not daunted by overly complex regulations. The original CDM regulations are difficult to navigate, and the more user-friendly layout is welcomed. The simpler structure means greater clarity, and should lead to greater compliance with the regulations. This means that, in particular, smaller construction businesses with fewer resources will be better able to understand their duties under the regulations and therefore to comply with them.

Replacing the ACoP with targeted guidance

We appreciate concerns that duty holders on smaller construction sites do not take account of the CDM ACOP at present. Work must be done to increase awareness that the ACOP is an aid rather than a hindrance, and to encourage duty holders that following the ACOP will usually be sufficient to comply with the requirements of the law.

We agree that the guidance accompanying the CDM regulations should be more accessible, but do not agree that this should come at the expense of downgrading the ACOP to simply guidance. ACOPs, although not legally binding, have a special status in that if an employer can show that they have complied with the code of practice, the impression given is that they have done enough to satisfy the regulation. This special status does not extend to guidance. The ACOP could be made more accessible, instead of being revoked altogether, by the inclusion of case studies and practical examples to demonstrate to duty holders how to comply with the regulations.

Further, simpler guidance is at risk of not accurately reflecting the regulations. If duty holders only follow basic guidance, they may not fully comply with the regulations, and this will create dangerous working environments and unsafe practices. The Construction (Design and Management) Regulations 2007 are extremely important, as they provide for the safe operation of construction sites. Construction sites are some of the most dangerous

¹ Paragraph 26 of the consultation document states that two thirds or more of fatalities now occur on small sites- sites where fewer than 15 people work.

workplaces, with 26 per cent of all work related fatalities taking place in the construction sector in 2012/2013². It is important that the regulations are accurately reflected in an Approved Code of Practice, so that duty holders are fully aware of their obligations.

In any case, it is extremely difficult to pass comment on the suitability of the proposed targeted guidance without actually seeing a draft of the guidance. If the HSE intends to introduce guidance and remove the ACOP, despite our concerns, there must be consultation on the guidance and its contents before it is adopted.

Replacing the CDM Co-ordinator role with the principal designer

The role of principal designer is welcomed. Because the principal designer will be a part of the existing project team – an architect or engineer, and not an external contractor, they will be aware of the risks and challenges of that particular project when managing the pre-construction phase. This will ensure that health and safety is properly managed, and a safe working environment is created before construction begins.

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

We are concerned that the explicit requirements for competence have been removed. We appreciate that there must be a culture shift, and that the competence requirements may currently seem over-bearing – especially to smaller clients. However, we do not believe that removing the explicit requirements in the regulations will help duty holders and protect workers. A minimum standard must be maintained to ensure that workplaces are safe. If the requirement for competence is no longer enshrined within the regulations, there is a danger that people will no longer see it as important to become or remain competent- as there will be no explicit requirement in the regulations to do so. All that is required by the new draft regulations is that the contractor has received the necessary information, instruction and training and has appropriate supervision. This is a much lower threshold than showing that they are competent to do the job, and could lead to dangerous working practices.

A culture shift must take place, but it must take place before the requirement of competence is removed from the regulations.

Clients' duties including domestic clients

We have concerns that domestic clients will not be able to cope with new duties imposed by the revised CDM regulations. Most people who would like work carried out in their home intend to hire people to do it, safe in the knowledge that they will carry out the work without any risk to their health or safety. It is unfair to burden the domestic client with making sure that a site is safe if that domestic client has no other involvement with the work – they may even leave their property whilst the building work is being undertaken.

We welcome, therefore, the default position in the revised regulations that the client's duties in domestic situations will automatically fall to the contractor (or principal contractor if there is more than one). As domestic clients will no longer be exempt, this will ensure that there is

² <http://www.hse.gov.uk/statistics/overall/hssh1213.pdf>

effective co-ordination of health and safety on all construction sites, regardless of the size or whether it is carried out for a domestic or corporate client.

It is important however that the default position in the case of a domestic client must be made absolutely clear in the ACOP (or targeted guidance). There should not be confusion as to who is responsible for carrying out the duties, as this may result in no-one fulfilling the responsibilities at all, leading to dangerous work environments.

Domestic clients will need to be aware of the need to consider whether and when public liability insurance is required. Existing cover may not suffice and domestic clients will not be used to considering such issues.

Threshold for appointment of co-ordinators

We welcome this change, as it will mean that construction work is properly planned and co-ordinated on all sites – regardless of their size.

Notification

We welcome bringing the notification requirements in line with the directive.

- Ends -

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