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Outcome of the public consultation on proposals to revise the Construction (Design and Management) Regulations 2007 (CDM 2007)

Purpose of the paper

1. This paper:
 - a. informs the HSE Board of the outcome of the public consultation on proposals to revise CDM 2007;
 - b. outlines proposed amendments to the proposed CDM 2015 Regulations in the light of the consultation;
 - c. proposes next steps for Board consideration and agreement.

Timing

2. Urgent

Background

3. HSE presented the findings of the evaluation of CDM 2007 to the HSE Board in December 2011. It was clear from the evaluation that the model of risk management embedded within CDM 2007 had become standard practice in the more organised part of the construction industry, A clear case had emerged, however, to make changes which would embed this approach at the smaller end of the industry.
4. The HSE Board agreed, therefore, that a significant revision to CDM 2007 was needed rather than minor amendments. It directed HSE to develop revised regulations based on copy-out of the Temporary or Mobile Construction Sites Directive (TMCS D) as a starting point, but supported an approach which retained duties going beyond Directive requirements where these were objectively justifiable.
5. The Board agreed last year to publication of a Consultation Document (CD) which included draft Regulations. The key proposals described in the CD were:
 - removal of the ACOP and its replacement with a suite of sector-specific guidance aimed principally at SMEs;
 - removal of the detailed requirements on competence and their replacement with a more generic framework;
 - replacement of the CDM co-ordinator role with the Principal Designer;
 - addressing shortcomings in the transposition of TMCS D, with removal of the domestic client exemption and the alignment of the threshold for the appointment of co-ordinators and for formalised health and safety plans with that in the Directive.

6. The revised draft Regulations were much more closely aligned with TMCS D than are the CDM 2007 Regulations, simpler, with a more linear and considerably shorter structure, yet maintaining the same set of core 'hardware' requirements as CDM 2007.
7. Following further detailed Government scrutiny the consultation opened on 31 March 2014 for a period of ten weeks. This paper presents a summary of the issues raised during consultation.

Industry engagement prior to and during consultation

8. HSE recognised early in the process of the revision the need to engage closely with the numerous construction industry stakeholders through the development of the draft Regulations, in advance of, during and after the public consultation. The Construction Industry Advisory Committee (CONIAC) with its wide representation has also provided a key role in engagement at a collective level, and provided an effective mechanism to take views from a very significant number of representative industry bodies. CONIAC also committed to supporting delivery through industry guidance.
9. HSE has also engaged in a broad range of industry events in advance of the public consultation, and supported efforts by representative bodies in the construction industry to engage with their members. Feedback from such events informed the development of HSE's consultation proposals and improved HSE's understanding of how stakeholders view HSE's proposals.

Argument

Consultation themes

10. In outlining the proposed changes, the CD sought views under a number of consultation themes:
 - overall support for the proposed revision (question 1);
 - structural simplification of the Regulations (questions 2-6);
 - proposal to replace the ACOP with guidance (questions 7-8);
 - removal of the CDM co-ordinator role and the introduction of the Principal Designer (questions 9-10);
 - replacement of the detailed competence requirements with a more general framework based on information, instruction, training and supervision (questions 11-13);
 - changes to notification requirements (question 14);
 - client duties (questions 15-16);
 - impact assessment (questions 17-19).

Industry response to the public consultation

11. The consultation received 1427 responses – among the highest of any consultation undertaken by HSE. These are considered in **Annex 2** against the themes described above. The themes which emerged in the consultation were, on the whole, familiar, and in many cases were symptomatic of the industry's response to the existing regulatory framework, particularly where elements of this would carry over into the proposed revision.
12. The industry responses demonstrated the diversity of the construction industry and its interests. Many of the concerns which were expressed reflected concerns about how new legislation would be interpreted and applied, and are understandable. Some of these concerns may be addressed either through revisions to the Regulations which HSE proposes in the light of consultation responses, or the subsequent publication of HSE and industry guidance.
13. However, at least from representative industry bodies, there was on balance a good, if not unanimous, degree of support for most the proposals.

14. Among the 1427 responses received, some 65% were received from either CDM co-ordinators or from the entertainments sector (which was not the target of the consultation) whose responses are effectively campaigns.
15. The entertainment sector submitted over 400 responses to the consultation. This was prompted by ongoing discussions between HSE and this sector about the legal framework in which it manages risks from construction and dismantling of temporary demountable structures such as grandstands. HSE cannot disapply CDM to such work and is not proposing any changes to CDM which specifically bear on the entertainment sector. Nonetheless, HSE has acknowledged the difficulties which the entertainment sector faces in applying CDM to minor construction work and will continue to work with the sector to take a proportionate approach to managing risks within the sector.
16. The large volume of responses from these two campaigns means that simple quantitative analysis of the consultation responses does not paint a representative picture of opinion across the construction industry as a whole. The analysis at **Annex 2**, however, is based on all responses and should therefore be viewed in this context.
17. In the discussion in the body of this paper more weight has been given to responses from representative bodies and others covering broader elements of the industry supply chain than to individuals in accordance with established consultation practice.

Overall support for the proposed revision: question 1

18. There is a strong degree of support from industry stakeholders across the piece for the aims of the revision, with the clearest support from organisations representing contractors and construction clients, Trades Unions cautiously support the proposals, generally supporting their aims, but qualifying this with concerns over worker protection and whether real improvements can be delivered with SMEs. Support was more heavily qualified by those representing design professionals and health and safety professionals.
19. This support is not echoed in comments received, in particular, from individual CDM co-ordinators (only 25% of those CDM co-ordinators who responded to the question supported the overall approach), although the aims of the revision are cautiously supported by their main professional association.
20. Overall the picture is one of a broad degree of support for the aims of the proposed revision by industry stakeholders but concerns in some cases about how effectively the Regulations and associated guidance will deliver real change, particularly with SMEs. However those making these points do not generally propose alternatives in the context of this consultation.

Structural simplification of the Regulations (questions 2-6)

21. This section of the CD sought views on the overall structure of the revision, its definitions, the retention of the physical standards for construction sites, the way in which designer duties are presented and the requirements for construction phase health and safety plans.
22. The comments of a majority of respondents acknowledged the simpler and more linear structure of the draft Regulations. However, smaller contractors and several industry stakeholders expressed concerns that the lowering of the threshold for the formal appointments in the pre-construction and construction phases (principal designer and principal contractor respectively) would be problematic. In particular, it was suggested that there could be poor 'fit' between these roles which arise from TMCS and established ways of working on smaller construction sites, particularly in the case of the principal designer role.
23. There is a broad degree of support for the definitions in the revised Regulations, and many respondents welcomed the degree of continuity this represents with existing legislation.
24. There is strong support for retaining the physical standards in Part 4 of CDM 2015, which closely mirror those in CDM 2007, and the continuity this would bring.
25. The revised Regulations would retain explicit duties on designers although such duties do not appear explicitly in the Directive. HSE continues to believe that designers have a key role in

influencing health and safety outcomes during the construction phase of a project and beyond, through the lifetime of a structure to its decommissioning. The concerns which were raised about designer duties reflect, in most cases, existing concerns in some quarters about the role of design professionals in influencing health and safety outcomes.

26. The revision would align regulations with Directive requirements and would require a written construction phase health and safety plan for all construction projects. Under CDM 2007 such a document is only required for notifiable projects. Most respondents acknowledged that this would have an impact for small projects, and were generally supportive of the principle of requiring all contractors to demonstrate that they had planned work appropriately. However, many also expressed concerns that for the smallest of projects which are generally managed informally, attempts to comply could be disproportionate to the risks involved, and could be burdensome.
27. A substantial number of respondents to the consultation raised concerns about the perceived lack of flexibility in the transitional provisions of the revised Regulations. HSE acknowledges these concerns, and following more detailed discussions of the perceived shortcomings with industry stakeholders, proposes to redraft this provision to provide for more flexibility. The overall approach to simplifying the Regulations, however, is supported by the consultation.

Proposal to replace the ACOP with guidance (questions 7-8)

28. Many respondents recognised the shortcomings of the existing ACOP, and reflected that it is probably too long, and suggested that what would be most useful would be to retain a core ACOP backed by tailored guidance.
29. However, only 33% of all those respondents who answered this question supported the proposal to replace the ACOP with guidance (and only 23% of CDM co-ordinators who responded). The main argument presented in favour of retention was that the legal status of the ACOP makes it more authoritative than guidance. A secondary argument was that, as the guidance intended to replace the ACOP is still in preparation, respondents reserved judgement on how effectively it could replace the ACOP.
30. The arguments for removal of the ACOP are similar to those presented to the HSE Board in December 2012 (paper HSE/12/94) in the context of the proposal to withdraw the Management of Health and Safety at Work ACOP. The consultation on the withdrawal of that ACOP elicited detailed arguments from respondents. Whilst little by way of new argument has emerged from the CDM consultation, criticism of HSE's proposal to replace the CDM ACOP with guidance came from representative bodies and individual respondents alike.
31. The existing ACOP will fall by default when CDM 2015 revokes CDM 2007. This would, in any case, lead to an interim period when the revised Regulations are supported by HSE and industry guidance alone. HSE believes, however, that a case has been made to develop a new, shorter signposting ACOP, complemented by the HSE and joint HSE-industry guidance and therefore seeks the agreement of the Board for this work to proceed in 2015.

Replacement of the CDM co-ordinator role with that of the Principal Designer (questions 9-10)

32. A small majority (52%) of all respondents supported the proposal to embed the pre-construction co-ordination function within the existing project team. This proposal would replace the CDM co-ordinator role with the principal designer role. Of those CDM co-ordinators who responded, 61% opposed this approach. Of those who were not CDM co-ordinators, 81% supported the approach.
33. Industry stakeholders were generally supportive of the principle – most notably the Royal Institute of British Architects (RIBA) and the Association for Project Safety (APS) (both with some qualifications). There was a feeling that pre-construction co-ordination should be seen as an embedded skill set within the project team rather than an 'extra'.
34. Some concerns were raised by stakeholder groups and individual respondents alike. Firstly, that HSE may have overestimated the appetite for designers to engage with the new role – a position that is echoed in comments received from RIBA, who expressed some concerns about the ability of designers to discharge the co-ordination function effectively without recourse to third-party advice. The concern is therefore that the default position will not change in that the pre-construction co-ordination function will be delegated to a third party, with an associated loss of

benefits. HSE has discussed the basis for this concern with a number of stakeholders and has amended the IA in the light of these concerns to reflect the suggestion that some will continue to delegate the co-ordination role, particularly in the first two years following the revision.

35. Secondly, it was felt that imposing a formalised system for co-ordination, and the appointments which would accompany it, might be confusing for contractors working in the SME sector, particularly those who generally undertake domestic construction and maintenance.
36. On balance, the proposed replacement of the CDM co-ordinator role with that of the principal designer remains appropriate.

Replacement of the detailed competence requirements with a more general framework based on information, instruction, training and supervision (questions 11-13)

37. The construction industry finds the very concept of competence, in the context of either individuals or organisations, difficult. There are many competing definitions of what competent means. Many hold the view that competence is primarily an output of training and equates to the achievement of qualifications. Individual skill card schemes (and their users) sometimes equate certification to competence.
38. HSE's proposals in the CD are aimed at creating a more general and less prescriptive legal framework for competence, backed by comprehensive guidance. HSE believes that there is an urgent need for the industry to show leadership and to develop approaches to ensuring that both the individuals and organisations it engages are capable of, and motivated to, deliver work safely.
39. A majority of those who responded to this question (69%) did not feel that the general requirements on clients (as distinct from the specific and prescriptive duty under CDM 2007) to check the competence of organisations they appoint were sufficiently clear. Some clear themes emerged in the comments made in support of this position. There was acknowledgement of the limitations of the existing third-party pre-qualification schemes, and clear support for a more consistent approach to selecting contractors across the industry. There was support for the aim of streamlining processes and reducing bureaucracy, but a concern that the regulations as drafted are too subtle in their approach, and that standards may be weakened.
40. Industry views were split on whether the approach to individual competence would maintain standards of health and safety, with 50% of respondents feeling that the removal of the explicit individual competence requirements in CDM 2007 would not have any adverse affect on health and safety. Of those representative bodies who responded to this question, a majority (60%) agreed, including the Construction Industry Training Board. Organisations representing contractors were strongly supportive of HSE's proposals, with Trade Unions strongly opposed.
41. Overall, the messages emerging from the consultation on the future of competence suggest that there are significant concerns from many quarters about the current approach to competence – whether or not it is driven by the existing Regulations or by wider factors. There also appears to be a significant level of support for reform, but with concern over how the revised drafting would deliver reform in practice. HSE therefore proposes to revisit the drafting of this provision to improve clarity, but believes that the replacement of the existing competence requirements remains appropriate.

Changes to notification requirements (question 14)

42. The current requirement is for notification to HSE whenever a project is expected to last (a) more than 30 days, or (b) will involve more than 500 person-days of labour. The proposal is to change (a) to 'more than 30 working days **and** more than 20 workers simultaneously' to align with Directive requirements. The effect of this will be to reduce the number of projects notifiable to HSE by just under half, or an estimated 60,000 fewer projects per year. However, at the same time, projects undertaken for domestic clients which meet the notification threshold will no longer be exempt from notification requirements.
43. There will be little or no impact for larger contractors. Those representing smaller contractors recognise that there will be a significant reduction in bureaucracy and costs. However, others note that on a per-project basis the requirement to submit a notification is not particularly burdensome.

The principal concern was of loss of intelligence to HSE. However, the consultation has not elicited strong arguments against HSE's proposal, which remains appropriate.

Client duties (questions 15-16)

44. Responses showed significant support (65%) for HSE's approach of increasing the focus of CDM 2015 on commercial client responsibilities, particularly from contractors and principal contractors. Concerns were expressed, however in two areas. Firstly, that client duties would be too onerous on small and occasional clients, and that in such situations clients would pay for professional advice which might not be forthcoming from the principal designer. Secondly, that strengthening duties on clients might provoke a defensive response, which would have the unintended effect of increasing bureaucracy.
45. The CD sought views on HSE's proposed approach to the removal of the exemption from client responsibilities for 'domestic clients'. Through this approach, the limited duties which would otherwise fall to domestic clients would be discharged by the contractor or principal contractor, or if the client agrees, the designer.
46. Of all respondents, opinion was split equally on whether or not this was a proportionate approach to removing the domestic client. Among industry stakeholders there was however clear support (70%) for this approach. The principal concern was that small contractors would not understand the client duties which would be transferred to them.
47. Other commentators noted that HSE's proposal represents a compromise between achieving satisfactory transposition of TMCS D whilst still affording some practical protection for householders from criminal duties they are poorly-equipped to discharge.
48. HSE proposes to revisit the drafting of the Statutory Instrument to improve the clarity of the provisions relating to domestic clients, but suggests that the broad approach to this issue in the consultation document remains appropriate.

Impact assessment (questions 17-19)

49. More than half of those replying to the consultation commented on the impact assessment, many criticising the assumptions made in it. In general, respondents' concerns focused on three areas:
 - the assumed wage rates for design professionals fulfilling the principal designer role were too low;
 - transitional costs had not been adequately addressed;
 - the assumed savings from the replacement of the CDM co-ordinator role with that of the principal designer were overestimated.
50. HSE has subsequently met with a number of industry organisations in order to gather evidence with which to refine its estimates in these areas, and has amended the IA accordingly. This is presented at **Annex 1**.

Communications issues

51. HSE is evaluating the effectiveness of communications activities prior to and during the consultation. The findings of this evaluation will inform future communications activities to ensure that all target audiences understand the changes which will affect them prior to their introduction.
52. HSE Construction Division staff are working with HSE's corporate communications team to develop communications plans which will support short and medium-term communications needs following the Board meeting. This plan will cover engagement proposals and generic messages for wider audiences as well as targeted messages for specific groups such as CDM co-ordinators and the entertainment sector.
53. This plan will also need to cover the proposal to develop a shorter ACOP in support of the revised Regulations, given that, if supported by the Board, this would represent a significant departure from HSE's consultation proposal.

Financial implications

54. For the purposes of One In Two Out methodology the proposed revision would represent an 'out' of £19.6m. The IA has been amended in light of the comments received during the consultation. HSE plans to submit the final stage IA to the Regulatory Policy Committee in late August.

Next Steps

55. The construction industry is one of the largest sectors in the UK economy and is exceptionally diverse in its makeup. What has emerged from the consultation is a strong degree of agreement on the broad proposals tempered by a diverse range of often opposing views on the detail of the proposals.

56. HSE considers that there is a strong case to proceed with the revision to CDM broadly as proposed in the CD. HSE proposes, however, subject to Board agreement, to develop an ACOP in a reduced form as described in paragraph 31.

57. The Board is therefore invited to agree that the proposed amendments to the Regulations proceed to the relevant Government clearances to allow the draft CDM 2015 Regulations to be included in the Statement of New Regulation 9, with a view to CDM 2015 coming into force in April 2015.

Action

58. The Board is invited to:

- note the results of the consultation;
- agree that the next steps proposed in paragraphs 55 - 57 be taken.

List of Annexes

Annex 1: final stage IA
Annex 2: summary analysis of consultation responses

To be published following Board consideration on 13 August 2014

Summary of responses

Analysis and summary of responses to the consultation on CD261: Proposals for the replacement of the Construction (Design and Management) Regulations 2007

Introduction

1. This annex presents a summary report of the outcome of HSE's public consultation on proposals to replace the Construction (Design and Management) Regulations 2007 (CDM2007). It is designed to be read in conjunction with the consultation document (CD261) at <http://www.hse.gov.uk/consult/condocs/cd261.htm>
2. The consultation started on 31 March 2014 and closed on 6 June 2014. Respondents were asked to complete an online questionnaire or download a Word document and return this by email or post. HSE also received a number of responses that did not use the reply form. We refer to these in this summary as 'narrative responses'.
3. The consultation document was downloaded a total of 29,968 times. 1,066 people became members of the e-consult facility and of these 653 submitted finalised online responses to HSE. Adding in some 774 offline responses received by email or post, HSE received a total of 1,427 responses. These responses were analysed to draw out common themes and any supporting evidence. Not all respondents answered all the questions.

Table 1 – General Information

Table 1a: breakdown of respondents by size of organisation

Size of organisation	Number of respondents	% respondents
1 - 9 employees	219	21
10 – 49 employees	170	16
50 – 249 employees	184	18
250 – 1000 employees	112	11
1000+ employees	245	23
Self-employed	25	2
Not applicable (no organisation)	92	9

Table 1b: breakdown by type of organisation

Type of organisation	Number of respondents	% respondents
Academic	14	1
Charity	52	4
Consultancy	618	53
Industry	293	25
Local government	67	6
Member of the public	25	2
National government	13	1
Non-departmental public body	3	0
Non-governmental organisation	29	2
Pressure group	0	0
Trade Association	46	4
Trade Union	7	1

Table 1c: breakdown by capacity of respondent

Capacity of respondent	Number of respondents	% respondents
An employee	266	23
An employer	258	22
Health and Safety professional	561	48
Self-employed	74	6
Trade union official	5	0
Training provider	8	1

Table 1d: breakdown by CDM 2007 dutyholder

CDM dutyholder	Number of respondents	% respondents
Client	134	14
Designer	162	17
Contractor (including subcontractors)	62	6
CDM Co-ordinator (CDM-C)	524	54
Principal Contractor (PC)	72	7
Worker	12	1

Summary of responses to each question

Table 2: structural simplification

Responses to 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 or disagree?		
Response	Number	%
Agree	409	34
Disagree	800	66
Total	1,209	

4. Of all those who agreed with this question the main themes to emerge were:
 - the draft Regulations are simpler and more linear;
 - there are some concerns over drafting and how effective the Regulations will be in influencing behaviour in SMEs;
5. Of those who disagreed, the main themes were;
 - doubts over whether SMEs would understand or comply with the duties; and
 - there is too much responsibility placed on the lead designer.
6. The majority of key stakeholders, including CCG, CIC, CITB, EEF, GMB, HBF, IStructE, NASC, NHBC, RIBA, ROSPA and UKCG, supported HSE's approach while others including BSC, CIOB, ICE and ICS disagreed

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

7. This question was answered a total of 1167 times. A majority were content with the definitions or thought that they were reasonable. Of those who did raise issues the main themes to emerge were:
 - the definition of 'principal designer' is misleading or confusing;
 - 'principal contractor' and principal designer' do not easily map onto existing roles in the events/entertainment industry;
 - a need for clearer definitions of 'construction work', 'structure' and 'project'; and
 - ambiguity over the meaning of 'client' and domestic client'.
8. Some 400 of the responses were identifiably from the entertainment sectors. The CDM 2015 proposals do not in practice alter the definitions of 'construction work', 'structure' and 'project' from CDM 2007.
9. Many key stakeholders found the definitions clear and did not raise any concerns. However, APS, CIOB and ICS sought greater clarity over whether the role of principal designer could be carried out by anyone other than a 'traditional' designer. CIC and NHBC felt that the definition of 'pre-construction information' was too vague. CITB and ICE sought clarity that the Regulations apply to sub-contractors as well as contractors. EEF pointed out that formal written appointments are often not completed for smaller, mainly domestic clients. UCATT expressed a view that 'client' should be defined as any person or organisation.

Table 3: technical standards

Responses to 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?		
Response	Number	%
Yes	949	78
No	270	22
Total	1,219	

10. CDM co-ordinators, designers and clients had broadly split views on this question. Contractors were more likely to disagree with HSE's approach than to agree.
11. The main themes to emerge among those who agreed:to HSE's approach
 - the proposals are acceptable/reasonable;
 - industry is already aware of and conversant with the technical standards.
12. Of those who disagreed, the main themes were:
 - the standards are designed for construction sites and are not relevant to the events/entertainment industry;
 - there is an opportunity to include more in relation to temporary works.
13. The majority of key stakeholders including CIC, FMB, GMB and UKCG agreed with HSE's proposals while BSC and UCATT disagreed, the latter seeking a specific minimum and maximum working temperature. There is a substantial majority in favour of leaving the technical standards unchanged in Part 4 of the proposed Regulations.

Table 4: clarification of designer duties

Responses to 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?		
Response	Number	%
Yes	592	51
No	576	49
Total	1,168	

14. Themes to emerge among those who responded 'yes' were:

- the wording of Regulation 4 was clearer, simpler and more direct than its equivalent in CDM 2007;
- the changes are minimal; and
- a concern that some designers do not adequately consider health and safety risks but instead can be driven by costs or awards.

15. Of those who responded 'no', the main themes were:

- the duties are already clear;
- designers tend not to be familiar with health and safety regulations;
- a need for explicit guidance;
- some concern over potential confusion between designer and principal designer; and
- the duties only relate to the construction industry – the role of artistic directors is fundamentally different.

16. The majority of key stakeholders including APS, BSC, FMB, GMB, HBF and NFB felt that the designer duties are clearer, while others including CIC, ICE and IOSH did not although they accepted that the duties were generally clearer. ICE commented that reference to the principles of prevention could perhaps be under general requirements whereas IOSH preferred direct reference to Schedule 1 of the Management of Health and Safety at Work Regulations 1999 in this regard.

Table 5: general duties on designers

Responses to 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?		
Response	Number	%
Yes	375	31
No	838	69
Total	1,213	

17. This question was intended to elicit views on how effective the proposed designer duties would address design considerations arising from subsequent construction work. HSE notes that a number of respondents simply repeated comments from question 4 without taking account of the wording in the question relating to subsequent construction work.

18. The main themes to emerge among those who responded 'yes' were:

- general duties should be sufficient to ensure that relevant construction phase risks are considered;
- there is little change from existing duties under CDM 2007;
- comments indicating the need for guidance on interpretation of 'designer' and 'subsequent construction' and on designer competence

19. Of those who responded 'no', the main themes were:

- lack of familiarity of designers with duties under CDM generally;
- lack of competence of designers to consider health and safety risks for 'subsequent works'.

Table 6: construction phase health and safety plans

Responses to 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?		
Response	Number	%
Yes	1,063	88
No	141	12
Total	1,204	

20. The main themes to emerge among those who responded 'yes' were:

- this proposal would lead to more paperwork and bureaucracy (partly influenced by fears in the events/entertainment industry in relation to temporary demountable structures);
- this would deliver proportionate construction phase plans for all projects;
- there would be a loss of checks that construction phase plans are suitable and sufficient; and
- there would be a need for communication, training and education.

21. Of those who responded 'no', the main themes were:

- There would be little or no impact (larger firms already have existing planning procedures in place);
- other laws such as the Management of Health and Safety at Work Regulations 1999 apply; and
- there are some concerns that the proposed templates will lead to a generic 'tick box' approach.

22. The majority of key stakeholders including APS, CCG, CIC, FMB, GMB, ICE, and NFB felt that there would be impacts for projects that do not currently require a construction phase plan. Those answering no include BCSA, ECA, HBF and NHBC. While not selecting an answer, UCATT and Unite commented that they support the introduction of construction phase health and safety plans for all projects regardless of their size.

Table 7: Replacing the ACOP with targeted guidance

Responses to 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?		
Response	Number	%
Yes	393	32
No	820	68
Total	1,213	

23. The main themes to emerge among those who responded 'yes' were:

- that there was a need for simplified guidance which covers all sectors of the construction industry; and
- there was a need for this to be tailored to all needs and levels of knowledge. In particular, increasing the likelihood that SMEs would engage with the requirements of the regulations.

24. Of those who responded 'no', the main themes were:

- that the ACOP provides all the necessary information in one place which helps avoid confusion;
- that the ACOP sets standards and provides sound enforceable advice;
- a belief that the guidance would not carry the same weight and may be ignored by small and medium-sized enterprises;
- that there is a need for a revised, more easily-understood ACOP supplemented with sector specific guidance;
- some respondents questioned the adequacy of only having specific sector guidance to deal with the different complexities in construction and believed it could prove inadequate for specialist sectors; and
- many respondents felt unable to support the proposal until they have seen the proposed guidance.

25. CCG, CITB, RIBA and UKCG agreed with HSE's proposals while UCATT and Unite disagreed strongly, the latter believing that an ACOP has different legal status and employers are more likely to comply with the requirements.

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

26. This question was answered a total of 1,099 times. The response to the question was mixed. Of those who did comment, including key stakeholders, the main themes to emerge were:

- A need for one piece of generic guidance designed for all sectors and duty-holders covering the full range of organisation size and competence levels;
- a need for domestic client guidance targeting householders, small building contractors and workers who commonly influence domestic clients;
- a need for sector-specific guidance in addition to the dutyholder guidance
- a need for guidance on how the regulations are to be applied under the various procurement processes in construction.

- a need for clarity as to what is expected of dutyholders in providing information, instruction, training and supervision for contractors, with examples.
27. Many stakeholders, including UKCG, offered useful suggestions for additional guidance, including guidance on the above themes. However, some felt they were not able to comment without sight of the proposed guidance. Other key stakeholders including GMB, HBF, TUC and Unite suggested that the existing ACOP is sufficient and only requires revision.

Table 8: replacing the CDM co-ordinator with the principal designer

Responses to 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?		
Response	Number	%
Yes	637	52
No	582	48
Total	1,219	

28. The main themes to emerge among those who responded 'yes' were:

- the external nature of the CDM co-ordinator role does not lead to an integrated approach to risk management;
- pre-construction co-ordination should be embedded within the project team.
- the changes will provide for more effective and efficient management of the co-ordination function and creates more clarity of responsibility.

29. Of those who responded 'no', the main themes were:

- designers may not be competent for the role of Principal Designer; or sufficiently motivated about health and safety;
- designers may not discharge the co-ordination function effectively without third-party advice.
- losing the CDM co-ordinator role will remove the source of impartial and balanced health and safety advice
- the changes may be confusing for contractors working in the SME and micro sector, leading to increased costs.
- the change should be to increase the importance of appointing a CDM-C at the outset, before design work begins.

30. The majority of key stakeholders (including APS, FMB, GMB, RIBA, RoSPA and Unite) agreed with the proposals, although sometimes with qualifications. However, concerns were expressed by some key stakeholders around issues such as designer competence and the lack of appetite for designers to take up the role, with the likelihood that the co-ordination function would be delegated.

Responses to 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?

31. This question was answered a total of 1,269 times. The main themes to emerge are:

- the proposal would cause confusion for contractors working in the SME sector, particularly those who undertake domestic construction work;
- there may be increased costs which may impact unfairly on small projects;
- worker protection will be improved if the principal designer is sufficiently competent in design, construction and health and safety

b) at the construction phase?

32. This question was answered a total of 1,141 times. The main themes to emerge are very similar to those for question 10a, with the following addition::

- uncertainty as to how the construction and pre-construction phases are delineated;

Table 9: competence requirements

Responses to 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:		
Response	Number	%
Agree	377	31%
Disagree	850	69%
Total	1,227	

33. The main themes to emerge among those who responded 'yes' were:

- that this is a positive step;
- that it will lead to less bureaucracy;
- that it will remove the 'profession' of the CDM co-ordinator; and
- a questioning of clients' knowledge and experience in checking the competence of organisations.

34. Of those who responded 'no', the main themes were:

- that the duty should be more explicit;
- a concern as to whether clients have the necessary competence to assess competence;
- a need for clearer guidance; and
- concerns over how small practices will cope.

35. Some stakeholders, including BSC, CITB, HBF, RIBA, ROSPA and UKCG agreed with HSE's proposals. However, the majority, including APS, CCG, CIC, FMB, ICE, ICS, IOSH and UCATT disagreed.

Responses to 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?

36. This question was answered a total of 1,288 times. The main themes to emerge were:

- the need for guidance for clients on what is expected of dutyholders to undertake their roles, in particular on interpretation of ‘sufficient’;
- concerns over client competence, and in its absence, the need for access to an independent advisor;
- the need for checks that dutyholders have the relevant qualifications, training, experience and knowledge for the project or task in hand;
- compliance with SSIP and PAS91; and
- calls to retain the current arrangements for competence under CDM 2007

37. Consultees offered many other thoughts on how competence could be demonstrated, including consideration of pre-vetting, reviewing CVs, references and track records, auditing of health and safety systems and performance, and the use of industry-specific benchmarks.

Table 10: move towards a more general framework for competence

Responses to 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:		
Response	Number	%
Agree	599	50
Disagree	603	50
Total	1,202	

38. The main themes to emerge among those who responded ‘yes’ were:

- that this area is covered by existing duties including HSWA;
- the proposals are sensible and positive;
- the proposals are in effect little different from the present situation; and
- an acknowledgement that experience is as important as qualifications and cards.

39. Of those who responded ‘no’ the themes were:

- concerns that regulation 8 refers to contractors but does not appear to apply to designers, PDs and PCs;
- there needs to be explicit guidance to support the proposals
- that the drafting of this provision is open to interpretation and therefore unclear;
- a concern that this would reduce worker protection.

40. Stakeholder views were broadly split between those who agreed with the proposals, including CCG, CIC, CITB, CSCS, FMB and UKCG, and those who disagree, including APS, GMB, ICE, IOSH, UCATT and Unite.

Notification

Responses to 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?

41. This question was answered a total of 1,179 times. The main themes to emerge are:

- a concern that a reduction in the number of notifications to HSE would mean less intelligence for HSE which could adversely affect compliance and health and safety performance;
- that an increase in the notification threshold is at odds with HSE's small sites strategy
- that the proposal would cause confusion, particularly for domestic clients.

42. Some 400 of the responses were from the events/entertainment industry. Many of these lobbied to argue that there would be additional costs and administration from notifying projects for this industry. HSE is considering the application of CDM to construction work in these sectors separately.

Table 11: clients including domestic clients

Responses to 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?		
Response	Number	%
Yes	769	65
No	411	35
Total	1,180	

43. The main themes to emerge among those who responded 'yes' were:

- that clients have a large influence over health and safety outcomes, and that this proposal is welcomed;
- that this represents no significant change to clients duties.

44. In addition some wanted more emphasis on the client role, while others thought the absolute duty to ensure that other parties comply with their duties should be qualified by 'so far as is reasonably practicable'.

45. Of those who responded 'no' the themes were:

- that the proposed wording makes clients unduly responsible for the activities of all contractors and sub contractors;
- that clients need support which is currently provided by the CDM co-ordinator
- a concern over the loss of an independent client advisor; and
- that the level of client understanding varies significantly.

46. In relation to key stakeholder views, a clear majority, including APS, CCG, CITB, FMB and UKCG agree that HSE's approach is the best approach for commercial clients' projects. Key stakeholders who disagree include CIC, ECA and ICE. However, CIC's reason for disagreeing is because regulation 5(4) contains absolute duties that are not qualified by so far is reasonably

practicable. To sum up, HSE will proceed on the basis of the overall majority in favour of its original proposals.

47. **Table 12: domestic client approach**

Responses to 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?		
Response	Number	%
Yes	546	50%
No	537	50%
Total	1,083	

48. The main themes to emerge among those who responded 'yes' were:

- that the proposals are fair and reasonable;
- that there might be extra costs associated with training and information.

49. Of those who responded 'no' the themes were:

- that there would be low compliance rates;
- small contractors would not understand their responsibilities;
- lack of awareness of what the law requires by householders.

50. Few key stakeholders provided comments in their responses to this question, indicating that this proposed change would not affect the markets in which they operate.

Table 13: impact assessment (IA) (Annex 2)

Responses to question 17: Do you agree with the analysis of the impacts (including costs and benefits) on commercial projects presented in the IA? Yes/No		
Response	Number	%
Yes	194	18
No	885	82
Total	1,079	

51. The main themes to emerge among those who responded 'yes' were:

- agreement that estimates in the IA are reasonable;
- a view that its methodology follows an approved process.

52. Of those responding 'no' the themes were:

- that savings from new role of principal designer are over-estimated;
- that familiarisation costs are underestimated;
- that the IA has failed to consider potential health and safety impact of the proposals.

53. Some 400 of the responses were from the events/entertainment industry. Most of these referred to the IA not having taken account of the application of CDM to the events/exhibition/entertainment industry.
54. Two key stakeholders agreed with the analysis in the IA (NASC and ROSPA) The majority, including CCG, CIC, GMB, ICE, IOSH and UCATT, disagreed. However, almost as many again did not answer the question and few of those who disagreed provided any persuasive evidence on which to amend the IA.

Table 14: impact assessment analysis

Responses to question 18: Do you agree with the analysis of the impacts (including costs and benefits) on domestic projects presented in the IA? Yes/No		
Response	Number	%
Yes	229	26
No	667	74
Total	896	

55. No clear themes emerged from those responding 'yes', as few additional comments were made. Of those responding 'no' the themes were largely the same as for question 17, with an additional concern that costs for domestic clients had been underestimated.
56. Two key stakeholders agreed with the analysis (BCSA and ROSPA) while the majority, including APS, CCG, CIC, FMB, ICS, IOSH and UCATT, disagree. However, most did not answer the question, and few of those who disagreed provided any persuasive evidence on which to amend the IA.

Table 15: costs and benefits not taken into account:

Responses to 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		
Response	Number	%
Yes	785	77
No	237	23
Total	1,022	

57. The main themes to emerge among those who responded 'yes' were:
- over-estimation of savings from new role of Principal Designer;
 - that the IA had not assessed the full economic and health and safety cost of removal of the CDM co-ordinator role
 - the IA underestimated the costs to clients
58. No clear themes emerged from those responding 'no' to this question, as few made additional comments.
59. A majority of stakeholders including APS, CCG, CIC, ICS, IOSH, RIBA and UCATT, agreed that there are costs and benefits that the IA has missed, Two (NFB and ROSPA) indicated that nothing was missing but the majority did not answer the question. Comments on this question often repeated concerns already raised under questions 17 and 18.

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

60. Many of the comments on question 20 repeated concerns elsewhere, and in many cases did not address themselves to the IA. The main themes to emerging were:

- that there is a desire to retain the independent CDM co-ordinator;
- that the principal designer role will not give sufficient attention to health and safety
- that the proposals will add cost without improving health and safety.