SEC GROUP

Specialist Engineering Contractors' Group

Experience of Working with the Construction (Design and Management) Regulations 2007

A Report to the Health and Safety Executive from the Specialist Engineering Contractors' (SEC) Group

October 2010

www.secgroup.org.uk

ABOUT SEC GROUP

SEC Group is the representative voice for the specialist engineering sector. It brings together the construction industry's premier trade associations: These long-standing, effective and influential organisations represent a sector comprising over 60,000 companies and a workforce of more than 300,000.

Association of Plumbing and Heating Contractors (APHC)
British Constructional Steelwork Association (BCSA)
Electrical Contractors' Association (ECA)
Heating and Ventilating Contractors' Association (HVCA)
Lift and Escalator Industry Association (LEIA)
SELECT (Electrical Contractors' Association of Scotland)

SEC Group seeks to raise awareness - amongst clients, professional advisers, government and the industry at large - of the critical importance of specialist engineering expertise within the construction industry. Moreover it aims to promote productivity, profitability and best practice throughout the construction process.

The SEC Group's constituent associations represent a wide range of engineering expertise including telecommunications, power and lighting, heating and ventilation, air conditioning and refrigeration, acoustics, ductwork, plumbing, automation and control systems, security systems, data transmission, lifts and escalators, constructional steelwork and facilities management. SEC Group's constituent associations work closely to define and pursue their mutual objectives under the SEC Group umbrella. The strength of the SEC Group lies in the cooperation between the associations as well as in the engineering synergy that binds the associations and their members together.

"The SEC Group exists to promote an efficient and profitable specialist engineering sector, comprising qualified firms and a skilled workforce, able to meet the business needs of its clients with delivery of high-quality engineering systems, services, products and structures as part of integrated supply teams."

(SEC Group Mission Statement)

SEC GROUP

ACKNOWLEDGEMENTS

This Report contains the findings of the most detailed survey ever undertaken of the views of specialist engineering contractors on the operation of the Construction (Design and Management) Regulations.

The SEC Group is grateful to all the 289 firms which participated in the survey. We would also like to thank the members of the committees listed below for commenting on the initial draft of the Report.

Mechanical & Electrical Health, Safety & Environmental Committee
Lift and Escalator Industry Health & Safety Committee
SEC Group Health & Safety Task Group

We also asked some leading health and safety practitioners in the sector to consider the detailed findings and comment on the extent to which the findings reflected their experiences. We are particularly grateful to them for their views. They include:

Bill Belshaw	Chair, SEC Group Health & Safety Task Group
Paul Reeve	Head of Safety & Environment, Electrical Contractors' Association
David Forfar	Chairman, Scottish Building Services Contractors' Safety Group
Sean Black	Company Environmental, Health and Safety Manager, EMCOR Engineering Services
Tony Sidwell	Head of Safety, Health and Environment, Shepherd Engineering Services Ltd
Marc Paul Bailey	Group Health and Safety Manager, T. Clarke Building Services Group
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ANNEXES

EXPERIENCE OF WORKING WITH THE CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2007 [CDM 2007]

1. INTRODUCTION

1.1 The 1994 Construction (Design and Management) Regulations were introduced to implement the requirements of European legislation.[1] These Regulations introduced a coherent framework for managing health and safety risk from the planning and design stages of projects through to construction and post-handover. The aim of the European Directive was to achieve greater cooperation and coordination amongst all parties involved in the delivery process so that there was buy-in by the team to the key decisions on managing health and safety risk in design and construction.

1.2 Unfortunately the impact of the 1994 Regulations was undermined by a lack of clarity regarding who was responsible for what, complexity in the drafting and the perception that compliance with the Regulations necessitated endless paperwork (much of which was, in fact, generated by those believing – mistakenly - that they could pass their statutory responsibilities onto others). There were other deficiencies. For example, whilst there was a statutory requirement of competence for designers and contractors, there was a lack of criteria for determining whether or not a particular firm was competent.

1.3 CDM 2007 sought to address these and other problems by:

- defining the responsibilities of each duty holder (client, designer, CDM coordinator [replacing the planning supervisor], principal contractor and contractor);

[1] Council Directive 92/57/EEC (Temporary or Mobile Construction Sites Directive).

- accommodating the various contractual arrangements in the construction industry[2];

- helping reduce bureaucracy by placing the focus on actually planning and managing work (rather than on generating paperwork to give an impression that this is being done);

- giving greater emphasis to the need for communication between the various duty holders;

- introducing a means of assessing the competence of the various duty holders.

1.4 Currently the Health and Safety Executive (HSE) is carrying out an evaluation of the experience of CDM 2007 to date. A Working Group of the Construction Industry Advisory Council (CONIAC) was set up at the end of 2009 to help the HSE carry out the evaluation exercise. SEC Group, alongside other industry bodies, is represented on this Working Group. In summary the remit of the Working Group is as follows:

- to provide a collective view to the HSE of the UK construction industry's views on how CDM 2007 has been working;

- to comment on methodologies adopted for the evaluation exercise and on HSE – commissioned research.

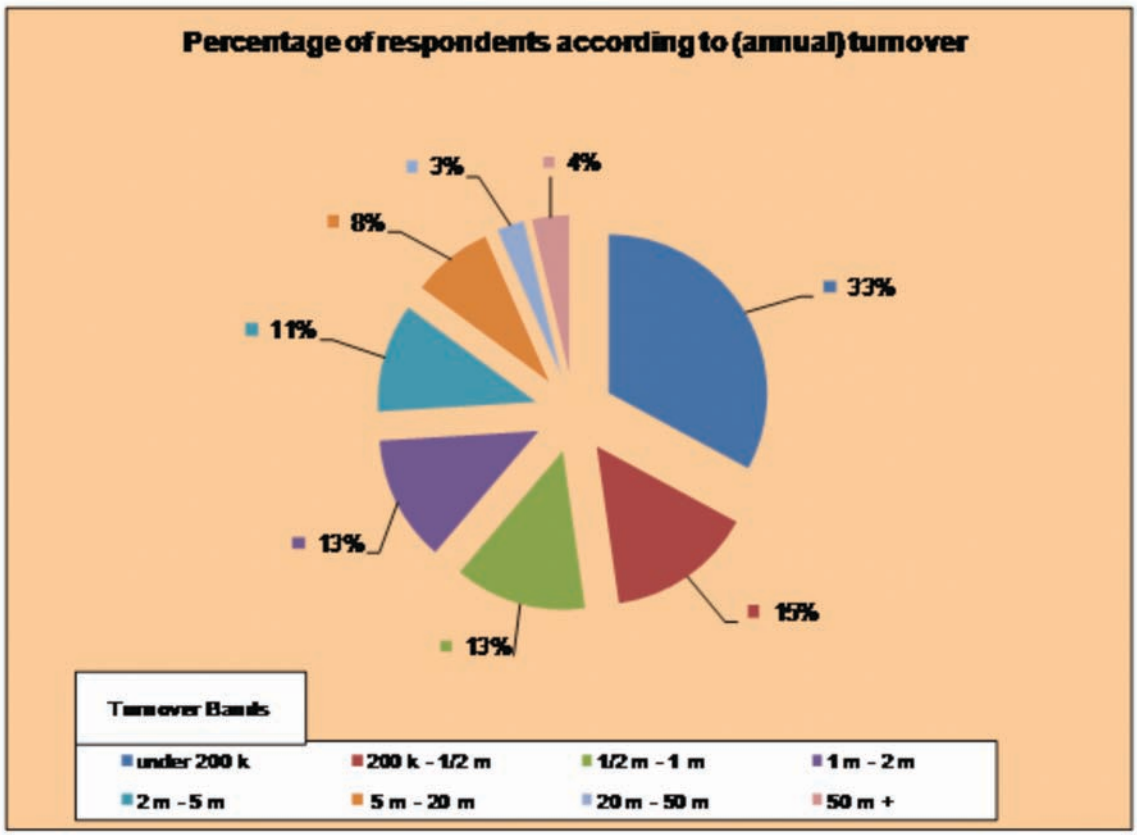
1.5 As part of this evaluation exercise SEC Group decided to survey firms in its member associations which are as follows:

Association of Plumbing and Heating Contractors;
British Constructional Steelwork Association;
Electrical Contractors' Association;
Heating and Ventilating Contractors' Association;
Lift and Escalator Industry Association;
SELECT.

[2] Whilst the Health and Safety Executive (HSE) makes reference to *contractual arrangements* the better reference would be to *procurement arrangements*. It would have been unrealistic for CDM 2007 to accommodate *contractual arrangements* since they are far too diverse and, furthermore, many contracts in use in the industry inhibit effective management of health and safety risks.

289 firms responded to the survey. The questionnaire is attached at Annex A. The questions reflected issues raised by representatives of the above Associations on the SEC Group Health and Safety Task Group and directly by individual firms. The initial draft of this Report was sent to leading health and safety practitioners in the sector to enable them to give detailed consideration to the results and comment on the summary of the findings.

1.6 Over 60% of firms responding to the survey had an annual turnover of less than £1m. The breakdown of responses according to annual turnover is shown in the pie chart below. The questionnaire was confined to experience of notifiable projects. [3]



1.7 Section 2 summarises our findings. We also include a list of our suggested actions which we have prioritised according to their urgency. The following sections detail the findings in relation to each question in the survey together with a commentary.

[3] These are projects which have to be notified to HSE where construction work is expected to last more than 30 working days or involve more than 500 person days. Such notification does not apply where the project is for a domestic client.

2. SUMMARY OF THE FINDINGS AND SUGGESTED ACTIONS

No.	Suggested Actions [The numbering indicates the priority we have given to our suggested actions.]	Which aim of CDM 2007 is being addressed?
1	Every public sector client should – as a matter of course – require evidence from Tier 1 contractors that compliance with the core criteria has been demonstrated along the contractual chain. One way of achieving this would be for every public sector client, in relation to Stage 1 assessments, to: (a) require all firms to demonstrate that they meet the CDM core criteria, and (b) to make clear to the supply chain that a successful assessment by a SIPP member scheme is acceptable evidence of meeting the core criteria.	Assessing competence of duty holders.
2	Traditional contractual arrangements tend to inhibit early involvement of the supply chain in working together at the design stage with other members of the team to manage risk. Consideration should, be given to bringing paragraph 44 in the ACOP into the Regulations. Furthermore the Regulations should be amended to require that a project health and safety plan is developed prior to construction. The plan should include a certification process by which the "delivery team" certifies to the client that the project is safe to construct. This certification should be made available to HSE. The delivery team should comprise those parties listed at paragraph 4.5.	Flexibility to accommodate procurement/contractual arrangements. Reduction in paperwork.
3	Consideration should be given to an amendment to the Regulations that requires CDM co-ordinators: (a) to involve contractors in design reviews where they are engaged in design work, particularly where their design has to be co-ordinated with elements of the design of the structure, and (b) to organise and participate in design reviews throughout the life of the project.	Defining responsibilities of duty holders. Reduction in paperwork.
4	Consideration should be given to amending the Regulations so that designers (including contractor designers) provide the information required under Regulations 11(6) and 18(2) to the CDM co-ordinator. The CDM co-ordinator should then be obliged to forward this information to the relevant parties.	Improving communication between duty holders.
5	As a matter of priority the HSE inspectorate should check that principal contractors have provided pre-construction information to contractors prior to their bidding for work. Consideration should also be given to whether there should be an HSE template for pre-construction information, the use of which would aid enforcement. The Safe Site Access Certificate (see section 10) could – with the necessary amendments – be adopted as the template and included in the ACOP. The Regulations could be amended to require that the principal contractor issues the template at least 10 days prior to the contractor starting on site and that it must be signed-off by the parties before start of work on site. This would, then, provide an audit trail to help enforcement. A similar obligation should be placed upon the client for the benefit of the designers and contractors engaged by the client.	Defining responsibilities of duty holders. Reduction in paperwork.
6	HSE should give greater prominence to the requirement in CDM for a mobilisation period in its own communications and the HSE Inspectorate should, as a matter of course, question clients and principal contractors on their compliance with this requirement.	Improving communication between duty holders.
7	Consideration to be given to whether the Regulations should state that the principal contractor must notify the contractor of the name of the CDM co-ordinator.	Defining responsibilities of duty holders.
8	Consideration should be given to an amendment to the Regulations that places an obligation upon the principal contractor to provide a copy of the HSE notification* to each contractor on the latter's appointment. **i.e. where the project is a notifiable project.*	Defining responsibilities of duty holders.
9	The HSE Inspectorate should regularly check with contractors on site that the *construction phase plan* has been given in good time before the start of work.	Defining responsibilities of duty holders.
10	This action follows on from the last suggested action. The HSE Inspectorate should regularly inquire of principal contractors the reasons for not involving contractors in the development of the *construction phase plan*.	Defining responsibilities of duty holders

2.1 The overall synopsis from the responses to the survey is that there is still a long way to go to achieve the requirements of CDM 2007. The fundamental obligations of all parties under the Regulations involve the duties of co-operation and co-ordination with other participants in the project. Transparency, communication and teamworking between all parties are essential in the discharge of these duties. With the possible exception of some of the largest projects, there is little evidence that these elements are being adhered to within the arrangements for managing health and safety risks on the majority of projects.

> *"Quite a one-way system in my opinion."*
>
> M&E contractor (£5m-£20m turnover)

> *"Our perception when working for a main contractor is that they use health and safety to beat you over the head and also to create an excuse for any delays to the programme (always blaming the sub-contractor). When on a construction site it seems that health and safety sometimes goes out of the window when the job is running late and the main contractor is trying to reduce the delay."*
>
> Lift contractor

2.2 The results of the survey and accompanying comments (highlighted in the text boxes) indicate that the prevalent mindset would appear to be that health and safety is simply another risk that, if at all possible, should be "off-loaded". This ignores the advice in paragraph 44 of the Approved Code of Practice (ACOP) which states that collaborative working and early involvement of the supply chain in managing health and safety risk will help ensure compliance with the Regulations.

2.3 In commenting on the findings of the survey a health and safety practitioner from a major M&E contractor in Scotland remarked:

"I believe the survey results reflect our industry's feelings about CDM in that there has been little or no improvement in the main target areas, mainly client and designer responsibilities. My experience is that the issues we had under CDM '94 are still being repeated under CDM 2007 in that they are passing a lot of their responsibilities to contractors. The lack of early involvement by contractors at the design stage is a big issue and there is still a feeling that contractors are getting a building as a 'Done Deal' and are expected to make services fit. I know from my own organisation that design review meetings involving the CDM-C are few and far between even on design and build contracts".

2.4. These concerns were raised in Rita Donaghy's report last year to the Secretary of State for Work and Pensions[4]. A key recommendation within the report is that the public sector should take a lead in improving practices. The ***Common Minimum Standards*** – which comprise mandatory procurement standards for the public sector – require, amongst other things, the use of integrated project teams, performance measurement indicators and value and risk management tools.

2.5 The ***Common Minimum Standards*** also include standards on health and safety against which delivery teams should be measured. Donaghy's report adds that, in some cases, government departments and agencies are not providing sufficient evidence of adherence to the ***Common Minimum Standards*** or that they have failed to insist upon adherence to the requirements along the supply chain.

"In general we have found that the CDM Regulations 2007 have had a beneficial effect on most sites particularly with regard to the improvement of welfare facilities now that the Construction Welfare Regulations have been incorporated into the CDM Regulations 2007. This was always an area that was overlooked where site management were concerned."

Lift contractor

2.6 Donaghy also recommends that:

"[The] Office of Government Commerce guidance and the mandatory Common Minimum Standards should apply throughout publicly funded construction projects, including local authorities, and systems for accountability should be more effectively monitored and enforced with appropriate sanctions. Public procurement is important because of its size and potential for insisting on driving up standards including health and safety".

In tandem with this recommendation consideration should now be given to bringing paragraph 44 in the ACOP into the Regulations.

"Require more co-ordination between the various parties involved at an earlier stage in the project."

M&E contractor (£5m-£20m turnover)

[4] **One Death is too Many**, Inquiry into the Underlying Causes of Construction Fatal Accidents, July 2009 (downloadable from www.dwp.gov.uk). According to HSE statistics 322 people died between 2004 and 2009 from construction related accidents.

2.7 In the Introduction we set out the list of the aims of CDM 2007; it would, therefore, be productive to consider the findings of the survey in light of these aims. The **first aim** was to define the responsibilities of each duty holder. The survey findings suggest that:

> *"Client responsibility and acknowledgement still remains the main concern."*
>
> Steelwork contractor

(a) some duty holders have not, as yet, understood the implications of their responsibilities and may even be unaware of their responsibilities[5], and;

(b) seek to divest themselves of their duties.

We suggest that the obligations of some duty holders should be expanded.

> *"Some main contractors and CDM co-ordinators still do not understand their obligations relating to the CDM regulations."*
>
> Electrical contractor in Scotland

2.8 There is also some evidence that some duty holders are simply ignoring their responsibilities in favour of saving money. One lift contractor gave an example:

> *"When working as the principal contractor all health and safety responsibility is directed at us. The client/consultant will not bend if it costs the client money. A good example is where trap door access hatches into the motor room are covered up by a false ceiling on the top floor, or if other trades have used this space for fitting their equipment. The client will generally not pay for the hatches to be made accessible to enable us to safely hoist our equipment into the motor rooms. He leaves it up to the consultant to bully the lift company into either doing the work free of charge or directs us to use the stairs which could be a hazard."*
>
> Lift contractor

2.9 There appears to be concern (expressed particularly in comments from respondents) over the lack of visibility of the CDM co-ordinator particularly in the design and change processes. This was apparent in the widespread failure of CDM co-ordinators to engage contractors in design reviews. Worse still, a large majority of respondents were not even given the name of the CDM co-ordinator on most of their projects.

> *"Large projects are usually managed well in terms of CDM compliance."*
>
> Steelwork contractor

[5] A report published on 9 July 2010 by Pye Tait on behalf of the British Property Federation and the Construction Clients' Group stated that two-thirds of infrequent clients had not even heard of CDM 2007.

2.10 We suggest that the Regulations could be simply amended to require CDM co-ordinators to involve contractors in design reviews where they are engaged in design work, particularly where their design has to be co-ordinated with elements of the design of the structure. **More fundamentally, we suggest that consideration should be given to amending the Regulations so that it is made clear that the CDM co-ordinator is responsible for managing the information from designers (including contractor designers) about the design of the structure or its construction or maintenance and ensuring that it is made available to relevant members of the project team.**

2.11 We are keen, however, to retain the role of the CDM co-ordinator. Unfortunately some CDM co-ordinators have a restricted view of their role; they often regard their duties as complete once the construction phase begins. **In our view the role is key in facilitating co-operation and co-ordination between all parties throughout the life of the project.** One health and safety practitioner from the steelwork sector expressed concern that clients did not attach sufficient importance to the role:

"Communication and co-operation require 'time'. I do not believe that the fees available, in particular for the CDM-C, enable this aspect of CDM to be undertaken properly. I have been informed that a good client will pay 0.075% to a CDM-C (with some paying much less). This is insufficient. Competitive tendering does not help!"

"Once site works commence, there has been very few improvements over 1994 version of CDM. The CDM co-ordinator role is proving in real terms to be of very little more benefit than the Planning Supervisor role in CDM 1994."

Large UK M&E contractor

2.12 The **second aim** was that CDM 2007 should be as flexible as possible to accommodate the various contractual arrangements in the industry. **The findings suggest that the traditional contractual arrangements – which apply on most projects - inhibit compliance with the Regulations particularly in relation to the duties of co-ordination and co-operation.** If anything, contractual

arrangements should accommodate the Regulations which, after all, are about having processes in place that will effectively manage health and safety risk. To deal with this we have already suggested that paragraph 44 in the ACOP should be brought into the Regulations.

2.13 The **third aim** was to reduce paperwork. This issue was directly addressed in a question. Firms were asked to indicate the extent to which health and safety paperwork was wholly relevant to their work. The majority of respondents reported that on most of their projects the paperwork was not relevant to their activities. However this question did not address whether the paperwork had been reduced since the introduction of CDM 2007. However, one of the health and safety practitioners who commented on the initial draft of this Report stated:

> *"Paperwork has not reduced at all, there is still too much and often it is of little or no value to what we do".*

The longer-term solution to this problem of paperwork is, again, to promote greater teamworking in identifying and managing health and safety risks especially at the early planning and design stages.

> *"We are generally a specialist firm alarm sub-contractor to the general electrical contractor and the CDM specifics do not appear to percolate down the supply chain in any robust way."*
>
> (£1m-£2m turnover)

2.14 The **fourth aim** of CDM 2007 was to improve communication between the various duty holders. The findings indicate that this aim has not been achieved. This is, of course, a major barrier to co-operation and co-ordination amongst those involved in delivering projects. Contractors do not regularly receive design information about the structure etc. There is a lack of sufficient or adequate communication between the principal contractor and the supply chain. The majority of firms are not receiving pre-construction information on most

> *"Lack of understanding on many counts and by many companies."*
>
> M&E contractor

of their projects or are not given the construction phase plan before commencing work on site. The fact that, on most of their projects, over 44% of respondents had not had a dialogue on health and safety issues with the principal contractor – before commencing work – is a very worrying factor. Whilst this cannot be easily "cured" by amendments to the Regulations, it does raise a number of issues in relation to enforcement.

"There are too many compliance schemes which demand an ever increasing amount of time and cost to achieve and maintain, more importantly very few if any actually bother to monitor implementation at the site where it really matters".

Large M&E contractor

2.15 The **fifth** (and final) **aim** of CDM 2007 was to have a means of assessing the competence of the various duty holders. Firms were asked to indicate the percentage of projects on which they were asked to demonstrate compliance with the core criteria for health and safety competence set out in Appendix 4 to the ACOP. Here the feedback was slightly more encouraging than the responses to the other questions. On the majority of their projects, almost 50% of respondents were asked to demonstrate such compliance. But on most of their projects, the other 50% weren't asked to demonstrate such compliance.

"I would say that there still is lack of knowledge in the industry and poor attitude to the implementation of what is after all the law in this area."

M&E contractor

2.16 **Again this is an issue where the public sector must take a lead. We suggest that the Government make clear that firms will not be engaged on a public sector project unless they comply with the core criteria. Such action would not be dissimilar to that already taken in respect of CSCS cards (or affiliated cards) where failure to possess a card means that access to the site is denied. But the key difference is that the core criteria are part of the regulatory framework whereas CSCS is not.**

2.17 In feedback from respondents an oft-repeated complaint concerned the proliferation of competence schemes. The Donaghy report acknowledged this problem and recommended that:

"There should be standard agreed bench-marks to test against the myriad of pre-qualification schemes so that sub-contractors do not have to acquire a host of pre-qualifications before participating in tenders for public and private work including local schools, hospitals or housing associations. The Government should take the lead on this as a major client in public procurement".

2.18 **The development of PAS 91, which incorporates the health and safety core criteria for competence, is very welcome. However, it is vital that the Government mandates the use of the standard on all public sector construction work up and down the supply chain.**

" CDM 2007 has made no real difference."

M&E contractor

3 COMPLIANCE WITH CORE CRITERIA FOR HEALTH AND SAFETY COMPETENCE

3.1 The majority of respondents will be engaged in both design (or design development), construction or installation activity and facilities management/ maintenance. The Regulations state that the relevant duty holder should not appoint or engage a designer or contractor unless reasonable steps have been taken to ensure that the designer/contractor is competent. Competency should be assessed in two stages:

"Although hardly ever asked for on many sites, we believe it essential to carry out CDM training for our small workforce, regardless of whether the customer asks for or implements."

Electrical contractor (£200k-£500k turnover)

- the first stage is an assessment of an organisation's arrangements for health and safety to establish whether they are sufficient to enable it to carry out work safely without risk to health;

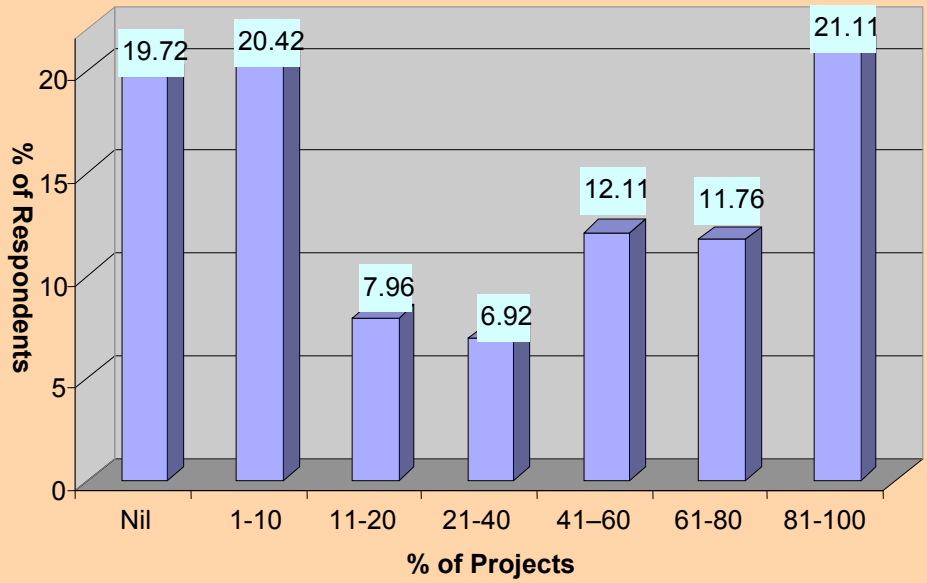
- the second stage is an assessment of an organisation's experience and track record to establish whether it has the capability to address health and safety risks in the activities it will be engaged in.

3.2 The assessments under both these stages should now be made against the *core criteria* set out at Appendix 4 to the ACOP accompanying CDM 2007. Failure to comply with these *core criteria* potentially puts the organisation at risk of prosecution. **Firms should not be engaged on a construction project in the UK unless they comply, at a minimum, with the *core criteria*.**

"Many companies fail to ask or recognise 3rd party H&S accreditated schemes and as a result too much time is spent completing these forms."

Electrical contractor in Scotland

Q.1. Indicate the % of projects on which your firm was asked to demonstrate compliance with the core criteria for health and safety competence set out in the Approved Code of Practice to the 2007 Regulations.



3.3 Since these *core criteria* were introduced alongside CDM 2007 it was appropriate to survey firms on whether they had been asked to demonstrate compliance with the *core criteria*. It is of some concern that almost 20% of respondents reported that they had not been asked to demonstrate compliance with the *core criteria* on any

project. Just over 20% of respondents indicated that compliance with the *core criteria* was required on less than 10% of projects. Most respondents would be acting as sub-contractors on the majority of their projects. Therefore, it seems that there are many main contractors which are either unaware of the need for their supply chains to comply with the *core criteria* or simply choose to ignore their responsibilities in this regard.

"Starting to get the message over but many clients are unaware of their responsibilities and we have to remind them of what they are. An overview of clients' roles and responsibilities and the effects of not conforming would be of assistance."

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Electrical contractor (£2m-£5m turnover)

3.4 Not surprisingly this question generated many comments. These were directed at the cost to firms of having to comply with the requirements of numerous pre-qualification schemes and the lack of mutual recognition of schemes. **Such cost actually inhibits investment by firms in training and upskilling staff to better manage health and safety risks.**

"Too many quango-like organisations running pre-qualification schemes. They add to expense but are not fit for purpose."

Electrical contractor (£1m-£2m turnover)

"As we work within the rail industry CDM is at the forefront of all our projects. To qualify for rail work we need to employ a full time qualified Health, Safety, Environmental & Quality Manager. Also we need to obtain ISO 9001 and be Link-up approved to the rail industry."

M&E contractor (£1m-£2m turnover)

One steelwork contractor remarked:

"Too many people are not willing to adopt the criteria in Appendix 4 as a Stage 1 assessment! Why? There are still too many 'home-made' questionnaires (even amongst major PCs)".

This was reinforced in comments from a lift contractor:

"There are a myriad of certification schemes that are supposed to simplify and speed up the process of completing PQQs. The majority of main contractors do not recognise these certificates as being sufficient evidence to show a contractor's H&S compliance, competence or that they have the ability to safely manage a phase of the overall project. Effectively they are not worth the paper they are printed on. We have as an organisation developed our own standard response document to issue to the customer to help speed up the process of PQQ response, but more and more we are forced to complete original customer supplied PQQs. This is also increasingly being used as a method of withholding payment of invoices."

"....the cost and time consuming nature of pre-qualifying for the same people time after time, answering the same questions is beginning to wear a bit thin. Hopefully the SSIP acceptance will help to alleviate this. I believe there is far too much emphasis on the Stage 1 compliance than there is on Stage 2 and there perhaps needs to be a change of focus instead of repeated Stage 1 questionnaires."

Large M&E contractor in Scotland

SUGGESTION ACTION

Every public sector client should – as a matter of course – require evidence from Tier 1 contractors that compliance with the core criteria has been demonstrated along the contractual chain. One way of achieving this would be for every public sector client, in relation to Stage 1 assessments, to:

1. require all firms to demonstrate that they meet the CDM core criteria, and
2. to make clear to the supply chain that a successful assessment by a SIPP member scheme is acceptable evidence of meeting the core criteria. [6]

This would also help reduce the need for firms to belong to numerous pre-qualification schemes since SIPP schemes mutually recognise each other's accreditation processes.[7] Also evidence of compliance should be regularly required by the HSE inspectorate.

[6]SIPP is the Safety Schemes in Procurement Forum. PAS 91 will be a new pre-qualification standard which will incorporate the core criteria for health and safety competence. It is to be hoped that adherence to it will become mandatory in the public sector. This would, then, address the recommendations in the Donaghy report (see paragraph 2.17 in this Report).

[7]In 2009 SEC Group commissioned Metra Martech, independent consultants, to assess the cost to firms in SEC Groups' member associations of having to pre-qualify under a plethora of schemes. The annual cost totalled almost £40million. The Metra Martech report is downloadable from www.secgroup.org.uk

4 SPECIALIST ENGINEERING CONTRACTORS ENGAGEMENT WITH CONSULTANTS IN RISK ASSESSING DESIGN OUTCOMES

4.1 Given the level of involvement of specialist engineering contractors in design or design development it is vital that they work with consultant designers to risk assess design outcomes.[8]

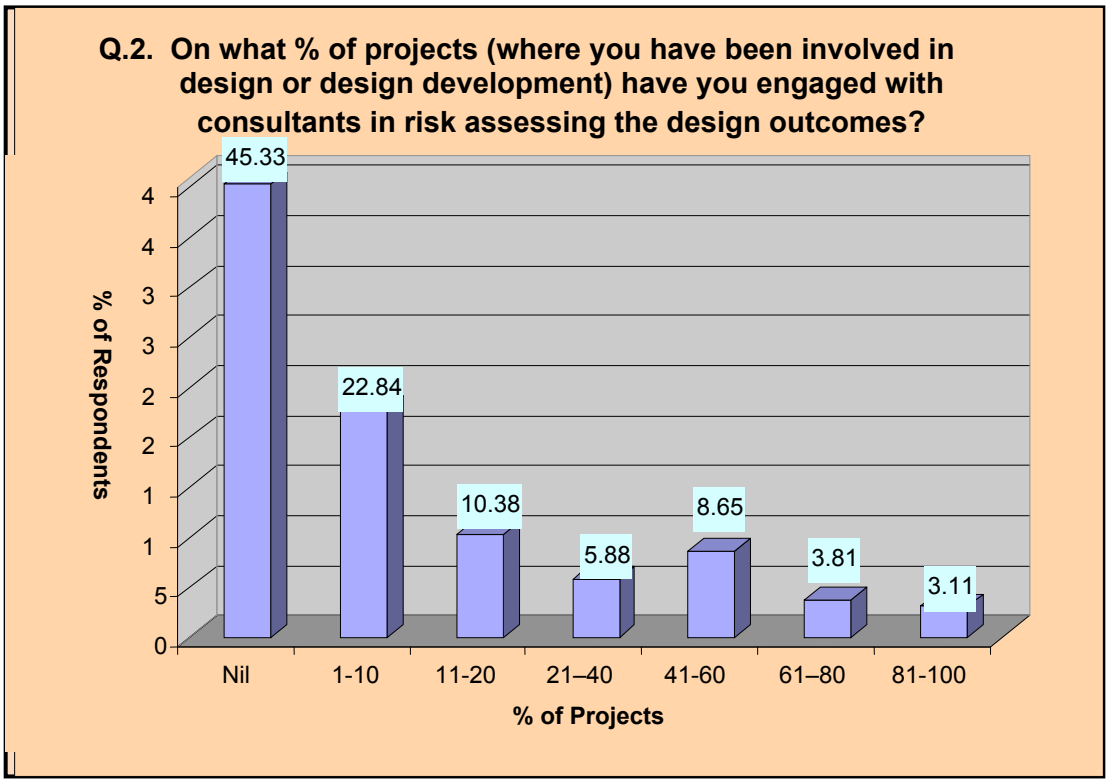
"Co-operation and co-ordination can only be meaningful if the relevant members of the project team have been appointed early enough to allow them to contribute to risk reduction. This is particularly important during the design stage when both clients and contractors should contribute to discussions on buildability, usability and maintainability of the finished structure. ***Clients should seek to appoint those who can assist with design considerations at the earliest opportunity so they can make a full contribution to risk reduction during the planning stages****".* [emphasis added] *(ACOP, para.44)*

4.2 In this context the relevant Regulations are 5, 6 and 9. Under Regulations 5 and 6 all duty holders are required to seek the co-operation of and co-ordinate their activities with other project participants to enable them and the other parties to carry out their duties and to ensure the health and safety of persons carrying out the construction work. Regulation 9 imposes a duty upon the client to take reasonable steps to ensure that arrangements are made for managing the project by those responsible for delivery so that construction work can be carried out – as far as reasonably practical – without risk to health and safety or any person.

"There needs to be a greater uptake amongst designers of the ERIC approach to risk management in the CITB Designer Guidance – in particular, the provisions relating to the quality of information."

Steelwork contractor

[8] **"Designer"** is defined in Regulation 2 as "any person (including a client, contractor....) who in the course or furtherance of a business -
(a) Prepares or modifies a design.....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 his control".
"Design" is defined as including "drawings, design details, specification and bill of quantities (including specification of articles and substances) relating to a structure, and calculations prepared for the purpose of a design".



4.3 The responses indicate that the majority of specialist engineering contractors have had little or no engagement with consulting engineers and/or architects in risk assessing design outcomes. This probably reflects the fact that, for the most part, respondents have not been appointed early enough in order to participate in the planning and design stages. Moreover, traditional contractual arrangements are usually aimed at inhibiting contact between the supply chain and those parties engaged at the front end of the delivery process[9].

4.4 This, of course, undermines the obligations requiring contractors to co-operate and co-ordinate their activities with other parties which, in practice, should be with consultants engaged in design. **Effective management of health and safety risks can only be achieved when such risks are actively considered at project conception and are addressed by the delivery team appointed early enough to buy into the decisions.**

[9] The consequence of a lack of early supply chain involvement in risk assessing design outcomes was demonstrated in the facts of a recent prosecution under CDM 1994 involving a firm of architects, Oxford Architects Partnership. The firm was fined £120,000 and ordered to pay costs of £60,000 at Bristol Crown Court on 29 July 2010. An employee of a sub-contractor, H & F Air Conditioning, died after falling during work on an air conditioning plant. The plant could only be accessed by a ladder at the edge of a flat roof. The roof was designed with a low parapet which was not at a height sufficient to prevent the employee from falling 9 metres to the ground. The court found that the architects had failed to take safety considerations into account in their design and this was a contributory factor in the death of the employee. The main contractors, Express Park Construction Co .Ltd, were also fined £75,000 and ordered to pay costs of £60,000.

4.5 In practice this should require a project health and safety plan embracing the planning and design processes. The "delivery team" should contribute to this plan and, prior to construction, should certify to the client that the project is safe to construct. Such certification should be made available for inspection by HSE. For this purpose the delivery team would include:

- parties engaged in design or design development connected with the design of the structure or a product or M&E system intended for a particular structure;
- parties engaged on work that involves a large number of interfaces requiring substantial co-ordination.

SUGGESTED ACTION

Consideration should be given to bringing paragraph 44 in the ACOP into the Regulations. Furthermore the Regulations should be amended to require that a project health and safety plan is developed prior to construction. The plan should include a certification process by which the "delivery team" certifies to the client that the project is safe to construct. This certification should be made available to HSE. The delivery team should comprise those parties listed at paragraph 4.5.

5. INFORMATION ON RELEVANT ASPECTS OF THE DESIGN OF THE STRUCTURE OR ITS CONSTRUCTION OR MAINTENANCE

5.1 Regulation 18 (2) states as follows:

"The designer shall take all reasonable steps to provide with his design sufficient information about aspects of the design of the structure or its construction or maintenance as will adequately assist the CDM co-ordinator to comply with his duties under these Regulations.....".

5.2 There is also a more general obligation upon designers at Regulation 11(6):

"The designer shall take all reasonable steps to provide with his design sufficient information about aspects of the design of the structure or its construction or maintenance as will adequately assist –

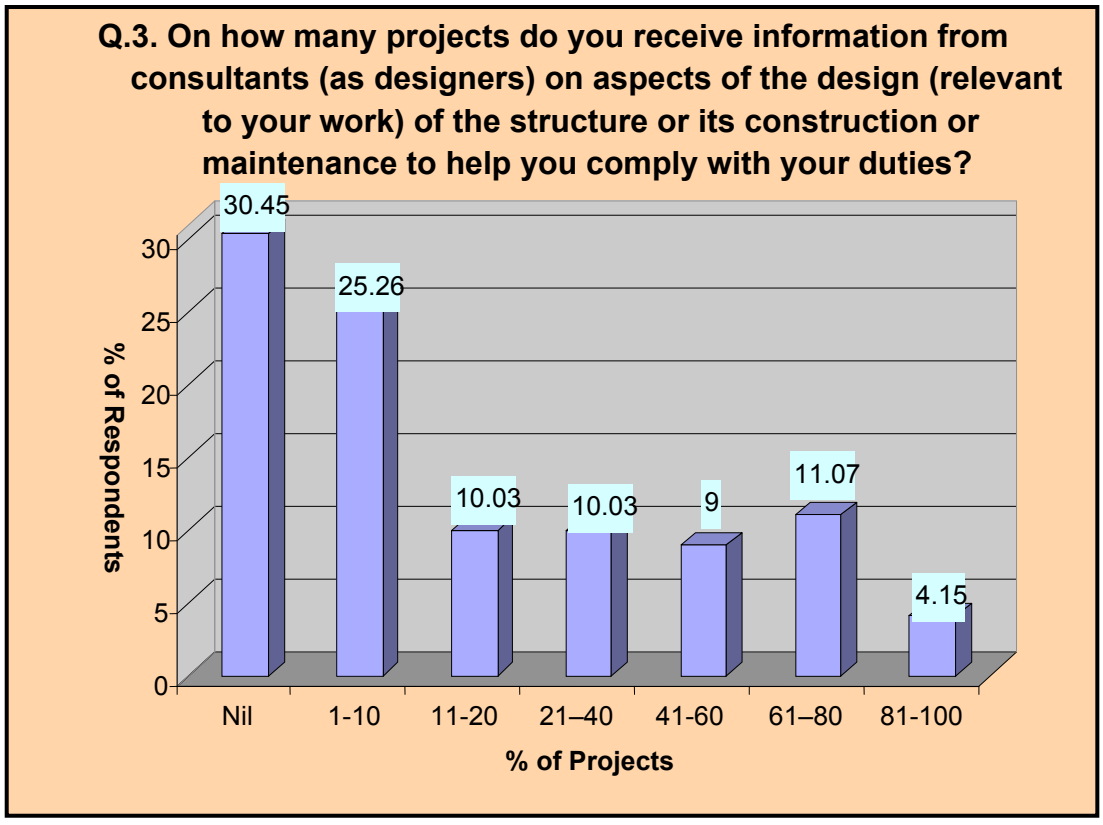
(a) clients;

(b) other designers; and

(c) contractors,

to comply with their duties under these Regulations".

5.3 Under Regulation 23(1)(a) the principal contractor, before the start of the construction phase, is required to prepare a construction phase plan setting out how he proposes to manage the construction works so that – as far as is reasonably practicable – they will be carried out without risk to health and safety. In preparation of the plan the principal contractor must have regard to the information passed by the designer under Regulation 18 to the CDM co-ordinator. The CDM co-ordinator should, of course, make the information available to the principal contractor who, in turn, must ensure that it is made available to contractors.



5.4 The survey results suggest that design information relating to the structure, its construction or maintenance was not, on most projects, made available to contractors. Over 30% of respondents indicated that they never received such information on any project. Furthermore, over 25% of respondents reported that they only received this information on less than 10% of projects.

5.5 From the survey it is not apparent where the blame for this lies. There are four parties involved in the communication loop – consultant designer, CDM co-ordinator, principal contractor and contractor. At some point between the first three of these parties the information is either not being provided or, if it is, it is not being passed on.

5.6 There is also the possibility that some respondents may have overlooked the relevant information contained within the construction phase plan. It is not unknown for information to be lost in the details of the construction phase plan (much of which may be irrelevant to the activity of the particular contractor) or, alternatively, the plan is too generic and ignores project specific information.

5.7 In commenting on the first draft of this Report a health and safety practitioner in the steelwork sector remarked:

"Many consulting engineers/architects are not clear what information to provide (e.g. significant, unusual or out of the ordinary issues). They do not know what format to provide it in (some are still using 'scored' design risk assessments, whilst some are now using 'hazard registers'). Once this information has reached the PC, via the CDM-C (I assume it does!), the PC does not pass on the relevant extracts or – if he does – the relevant issues are buried on the project intranet or amongst hundreds of other documents (with its importance to health and safety not evident)."

5.8 The contractor – as designer – must also comply with Regulation 18(2) as well as the more general duty upon designers in Regulation 11(6). It would make sense to shorten the communication loop by amending the Regulations so that the information required of designers (including contractor designers) under Regulations 11(6) and 18(2) goes through the CDM co-ordinator. The CDM co-

ordinator's responsibility will, then, be to ensure that the information is forwarded to the relevant parties.

SUGGESTED ACTION

Consideration should be given to amending the Regulations so that designers (including contractor designers) provide the information required under Regulations 11(6) and 18(2) to the CDM co-ordinator. The CDM co-ordinator should, then, be obliged to forward this information to the relevant parties.

6. WERE FIRMS GIVEN THE NAME OF THE CDM CO-ORDINATOR?

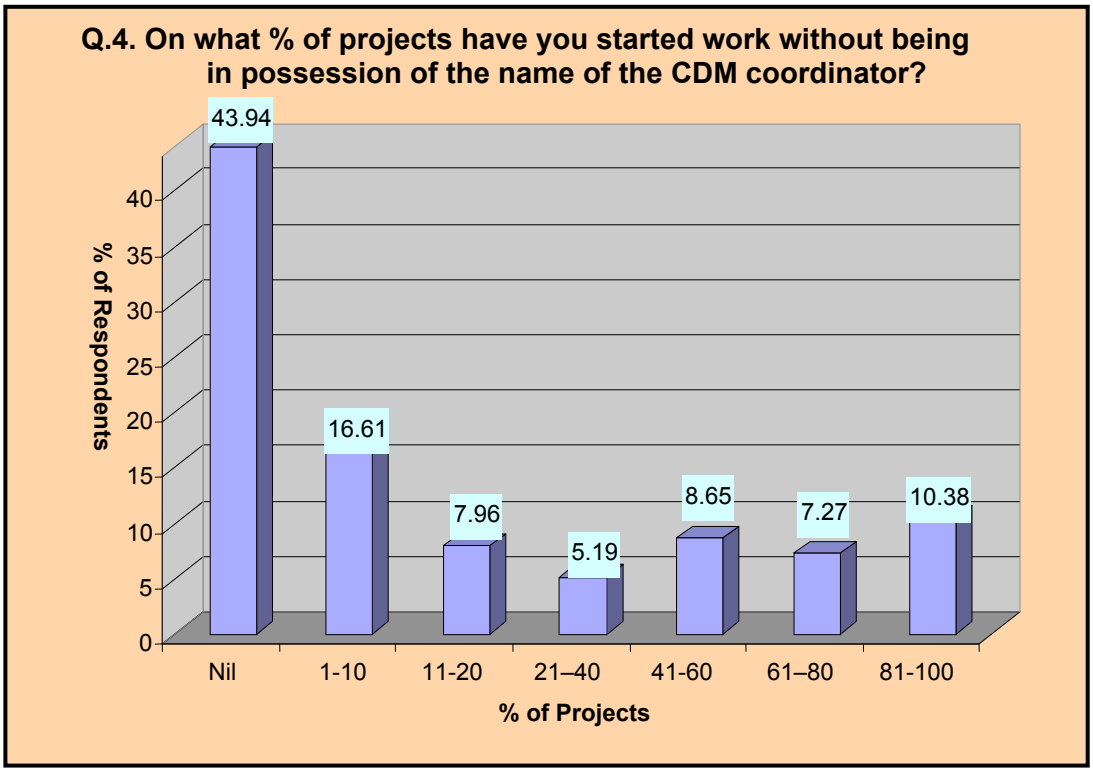
6.1 Under Regulation 14, where a project is notifiable, the client must appoint a CDM co-ordinator as soon as is practicable after the initial design work or other preparation for construction work has begun. Furthermore, under Regulation 19(1):

"....no contractor should carry out construction work in relation to the project unless he has been provided with the names of the CDM co-ordinator and principal contractor".

6.2 A contractor who does begin construction work without being in possession of the name of the CDM co-ordinator is committing a criminal offence. Whilst there is no concomitant obligation on any party to inform the contractor of the name of the CDM co-ordinator, it is assumed that the principal contractor is best placed to do this since he has overall responsibility for managing health and safety risk during the construction phase.

"We are rarely given the name of the CDM co-ordinator for the project at the outset; we are more likely to be given the name of the principal contractor's site manager. As an organisation we are rarely, if ever, supplied with a copy of the F10 notification document. To this end we have added this to our own site safety audit schedules as a pre-check before entering the site. It may also be worth noting that of the site audits we have undertaken 40% of them had out of date liability insurances displayed. Whilst it is accepted that F10 is a legal requirement, valid liability insurances are legally equally relevant and as important to the site management."

Lift contractor



6.3 Astonishingly over 60% of respondents indicated that they were not given the name of the CDM co-ordinator on any project or, if they were, it was on less than 10% of projects. If the contractor is unaware of the name of the CDM co-ordinator he cannot discharge his duty of co-operation to the CDM co-ordinator and vice-versa. Moreover the ACOP makes clear that design continues throughout the project and, therefore, CDM co-ordinators have a continuing role during the construction phase in ensuring that designers (including contractor designers) co-operate with each other and designs are risk assessed so that they meet the requirements of the Regulations.

SUGGESTED ACTION

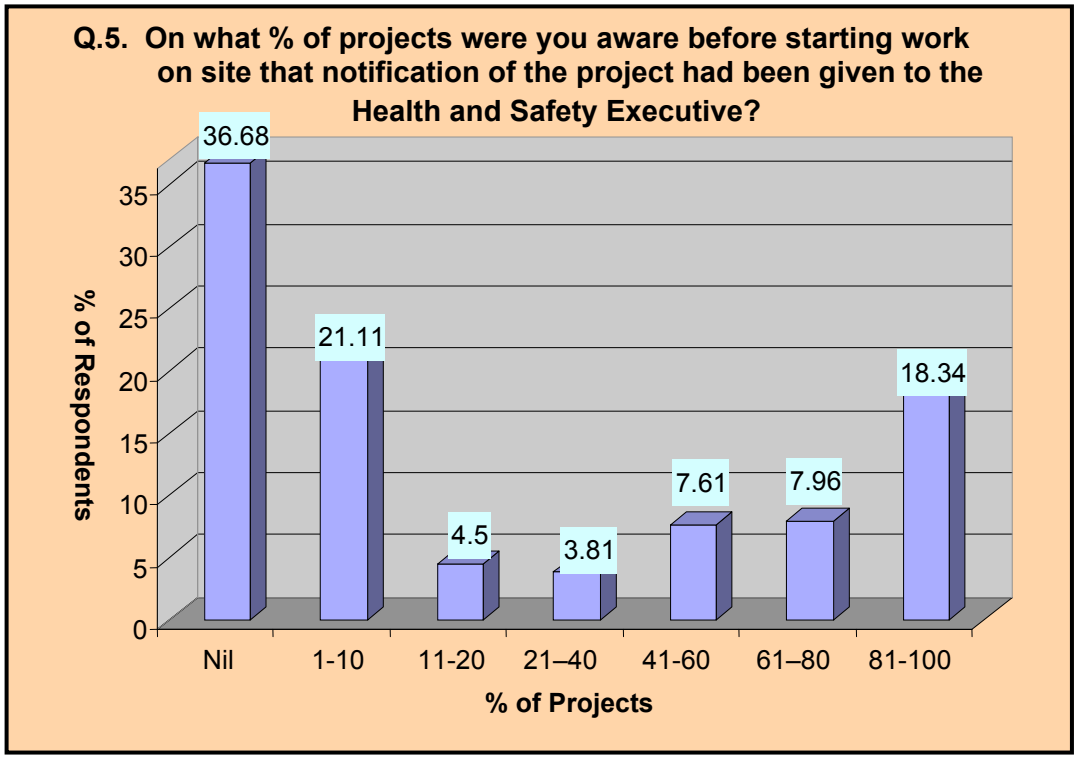
Consideration to be given to whether the Regulations should specifically state that the principal contractor should notify the contractor of the name of the CDM co-ordinator.

7. WERE FIRMS AWARE BEFORE STARTING WORK THAT NOTIFICATION OF THE PROJECT HAD BEEN GIVEN TO THE HSE?

7.1 Under Regulation 21 it is the responsibility of the CDM co-ordinator to give notification to the HSE containing the particulars in Schedule 1 to CDM 2007. In practice the principal contractor should give each contractor a copy of the notification of the project to HSE.

"There is still I believe a lack of understanding in respect to companies knowing the difference between notifiable works and non notifiable....the responses I get is that CDM does not apply to the works because it is not notifiable. The client then has to have it explained to them that CDM 2007 is not a piece of legislation solely for works that require notification but also for building works in general. The aspects of the Regulations that needs emphasis is the understanding by clients of CDM 2007 in general and not on the notifiable aspects which are well known to anyone you speak to."

.M & E contractor (£1m-£2m turnover)



7.2 Almost 58% of respondents indicated that they had not been aware on any project that notification of the project had been given to the HSE or, if they had been aware, it was on less than 10% of the projects. Again starting work without such notification is a criminal offence. At the other end of the spectrum over 18% of

respondents reported that they had been given such notification on 81% to100% of projects.

SUGGESTED ACTION

Consideration should be given to an amendment to the Regulations that places a specific obligation upon the principal contractor to provide a copy of the notice to each contractor on appointment.

8. WERE FIRMS GIVEN A MOBILISATION PERIOD BEFORE START OF CONSTRUCTION WORK?

8.1 The requirement that the principal contractor and contractors have a period of mobilisation before starting work was introduced by CDM 2007. Regulation 22 (1)(f) places the duty upon the principal contractor to *"ensure that every contractor is informed of the minimum amount of time which will be allowed to him for planning and preparation before he begins construction work"*. Respondents were asked to indicate the extent of compliance with this requirement.

"Since 2007 our only projects notifiable to HSE have been with Wessex Water as the client and ourselves as the PC. Our experience of 2007 CDM is that they are working well and certainly in conjunction with Wessex Water's H&S procedures provide a format/framework within which we can manage construction schemes more readily."

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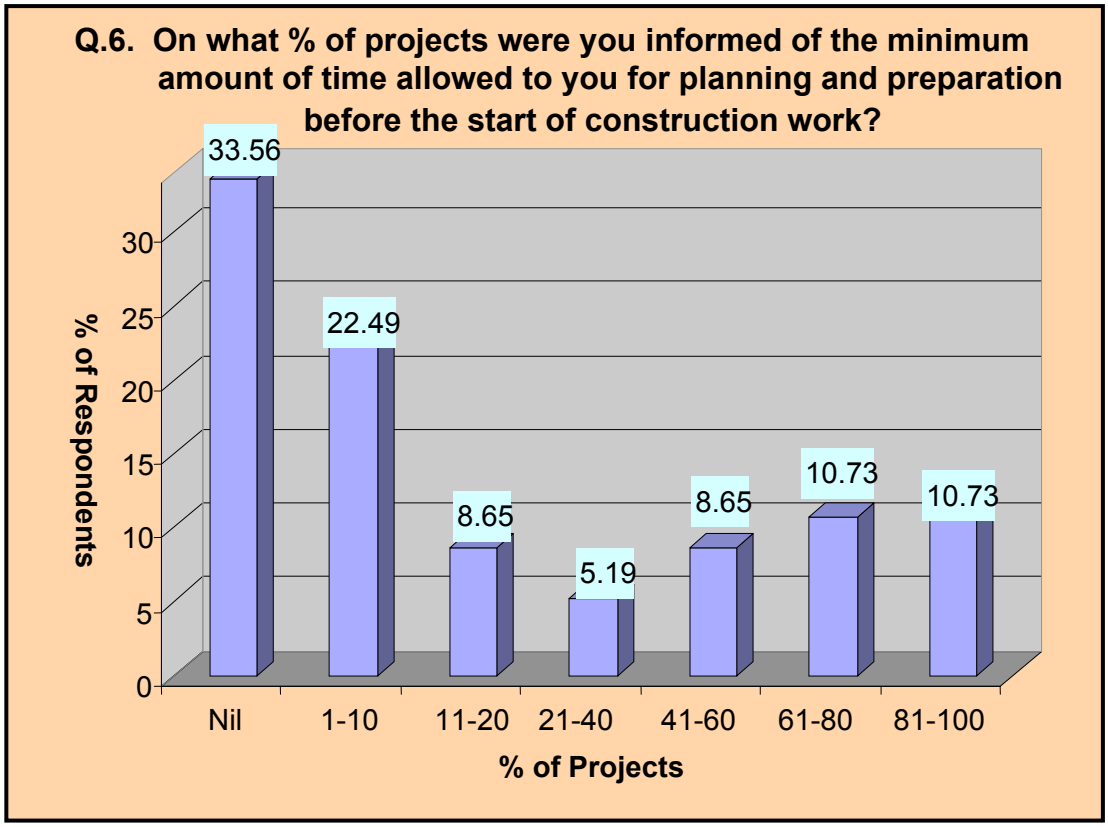
M & E contractor (£200m-£500m turnover)

"The main issue for us that there is still zero effective time allowed for planning of health & safety before our work is required to start. It is not uncommon to be told, we have the job and provided with an order on a Friday and asked to start the following Monday. This obviously causes a number of problems not least the generation of site specific risk assessments and method statements. Pre-tender health & safety plans still do not appear until after tender leaving us to ask the relevant questions (wasting time and money at both ends) and we are never given any details, other than information on site inductions, concerning the construction phase Health and Safety plan."

M & E contractor (£200m-£500m turnover)



8.2 The requirement was introduced in CDM 2007 for a very good reason. The contractor may have to make an input to the construction phase plan. He will need time to give proper consideration to the plan and put in place measures in respect of the management of the site and specific issues which will have been identified in the plan. He will also need to have a dialogue with the principal contractor and, possibly, the CDM co-ordinator in regard to specific health and safety issues connected with his design and/or construction activities. Also he will have to give appropriate consideration to any reasonable directions of the principal contractor under Regulation 22(1)(e).

"Construction projects in my experience rarely set a minimum time for an element of work for large specialist contractors – contractors are asked to prepare a programme and confirm they have allowed adequate time and resource to meet the stated programme."

Large UK M&E contractor

"For the most part our organisation is given sufficient mobilisation time for the commencement of the installation. However in many cases, due to delays on site, our commencement dates in 60% of contracts are put back in the programme but the completion date will remain the same. This necessitates longer hours being worked by the engineers thereby increasing potential risk of injury effectively defeating the object of maintaining a safer working environment."

Lift contractor

8.3 The results of the survey were very disappointing. The majority of respondents were not given a mobilisation period before commencing construction work. Almost 11% of respondents indicated that they were given a mobilisation period on 81% to 100% of their projects. On the other hand 56% of all respondents reported that they were not given a mobilisation period on all their projects or, if they had been given a period of mobilisation, it was on less than 10% of their projects. This, of course, indicates a failure by the majority of principal contractors to comply with the Regulations in this regard.

"Good idea, shocking implementation."

M&E contractor (£500k-£1m turnover)

8.4 Moreover firms have reported that there is often a practical problem in enforcing mobilisation periods. They are rarely given a certain commencement date for works on site or, if they are, the given date is not adhered to. The usual position is that firms are simply given an approximate indication of when their on-site works will commence. Subsequently (which could be many months hence) they are given a notice to start work which notice is often given two or three days beforehand.

SUGGESTED ACTION

HSE should give greater prominence to this requirement in its own communications and the HSE Inspectorate should, as a matter of course, question principal contractors on their compliance with this requirement.

9. AVAILABILITY OF PRE-CONSTRUCTION INFORMATION

9.1 Before commencing work all contractors should be provided with pre-construction information. Under Regulation 10 clients must ensure that every person designing the structure and every contractor who has been or may be appointed by the client is promptly provided with pre-construction information.[10]: Pre-construction

[10]"The pre-construction information shall consist of all the information in the client's possession (or which is reasonably obtainable), including
(a) any information about or affecting the site or the construction work;
(b) any information concerning the proposed use of the structure as a workplace;
(c) the minimum amount of time before the construction phase which will be allowed to the contractors appointed by the client for planning and preparation for construction work; and
(d) any information in any existing health and safety file,
which is relevant to the person to whom the client provides it.....". [Regulation 10(2)]
Where the project is notifiable Regulation 15 requires the client to promptly provide the CDM co-ordinator with pre-construction information listed at Regulation 10(2) including further information of the type listed which would be relevant to the CDM co-ordinator.

information is for the purpose of ensuring the safety of people engaged in or affected by the construction work and those who will use the structure as a workplace. The information is also necessary to help duty holders perform their duties and allocate the necessary resource for managing their work.[11]

"When we act as principal contractor, we get good information from the client, designer etc. When we act as a "contractor" the information is not so good."

M&E contractor

9.2 Appendix 2 to the ACOP amplifies the need for pre-construction information;

"[It] provides information for those bidding for or planning work, and for the development of the construction phase plan. ***The level of detail in the information should be proportionate to the risks involved in the project.****"*

It should, therefore, include - amongst other things - restrictions and risks relating to the site and its environs such as information about existing structures, location of services and restrictions relating to the use of plant and equipment on the site. Furthermore, there should be included information relating to significant design assumptions, suggested work methods, sequences and other control measures. Such information is, of course, critical in ensuring that the appropriate management processes are put in place to address the risks involved.

"The revised Regulations are not working as envisaged; indeed, in some respects there has been a step backwards. We do not receive pre-construction information. We do not receive information from the designer on his assumptions about construction sequencing. We have no contact with the CDM-C (who, presumably, does not see what we do as 'design'). Pre-qualification is bureaucratic (and worsening)."

Steelwork contractor

[11] The ACOP provides an example of pre-construction information:
"A client was aware that there were electrical and gas services passing under the site. He arranged for plans for these to be provided by the relevant utility suppliers, and confirmed the exact location of the services by carrying out on-site tests. This information was then provided to contractors who were asked to tender for the work so that they could take account of the presence of the services when bidding for the work."

9.3 There is no concomitant obligation upon the principal contractor to provide contractors with pre-construction information relevant to the activity of the particular contractor. The assumption, however, is that this would be required by virtue of the principal contractor's duty under Regulation 22(1) to "plan, manage and monitor the construction phase in a way which ensures that, so far as is reasonably practicable, it is carried out without risks to health or safety.....".

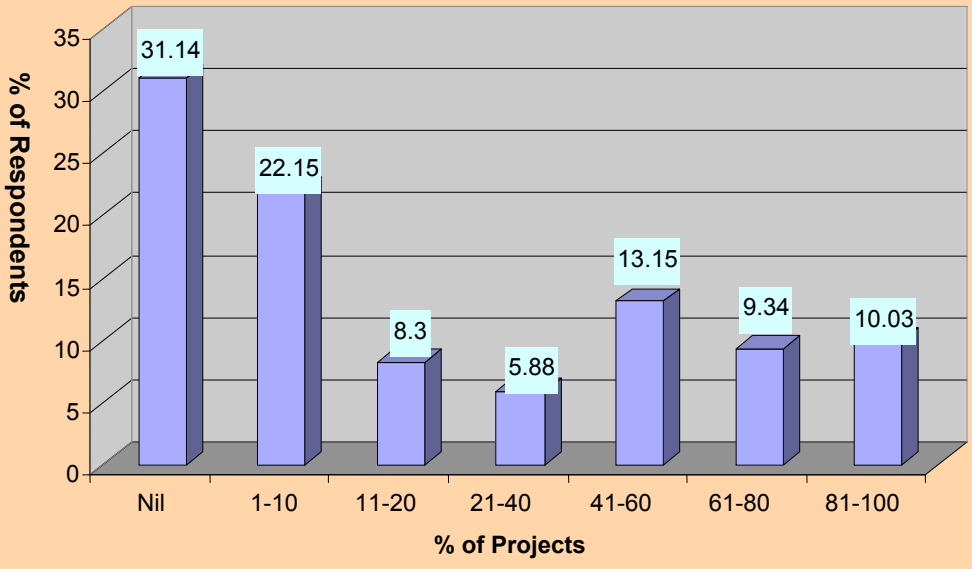
"The pre-construction information has to filter its way down through the PC. It's just not happening in a meaningful way. When it does, the information supplied is generally inadequate and – where we are a contractor-designer – tells us little or nothing of use. CDM-Cs don't have a dialogue with sub-contractors...."

Steelwork contractor

Also of relevance in this context is Regulation 22(1)(i):

"The principal contractor.....shall ensure that every contractor is given, before he begins construction work, such further information as he needs.....to carry out the work to be performed by him without risk, so far as is reasonably practicable, to the health and safety of any person."

Q.7. On what % of projects were you given pre-construction information (e.g. in any existing health and safety file or relating to the state of the site or future use of the structure as a workplace) before commencing work?



9.4 Given the criticality of having access to the pre-construction information (especially at tender stage) it is inconceivable that such information would not be made available to firms. It is simply staggering that over 53% of respondents reported that they had not been given pre-construction information before commencing work on **any** project or, if they had been given the information, it was on less than 10% of projects. This problem is, no doubt, magnified as one progresses along the supply chain to sub-sub-contractors. **With regard to the impact of CDM 2007 this must be of major concern.**

"Pre-construction information is too generic (full of policies and procedures) and little to do with the actual site conditions."

Steelwork contractor

"The provision of pre-construction information is erratic particularly in relation to asbestos where there appears to be a lot of confusion as to who effectively is the duty holder. Many customers are of the opinion that it is the contractor who is responsible for providing this information."

Lift contractor

SUGGESTED ACTION

The HSE inspectorate should give priority to this issue by checking with principal contractors that pre-construction information was provided to contractors prior to their bidding for work. Consideration should also be given to whether there should be an HSE template for pre-construction information, the use of which would aid enforcement. The Safe Site Access Certificate (see section 10) could – with the necessary amendments – be adopted as the template. The Regulations could be amended to require that the principal contractor issues the template at least 10 days prior to the contractor starting on site and that it must be signed-off by the parties before start of work on site. This would, then, provide an audit trail to help enforcement. A similar obligation should be placed upon the client for the benefit of designers and contractors engaged by the client. This action could also help to reduce paperwork.

10. COMMUNICATION BETWEEN CONTRACTOR AND PRINCIPAL CONTRACTOR BEFORE COMMENCEMENT OF WORK ON SITE

10.1 A dialogue between the contractor and principal contractor prior to commencement of work on site is absolutely essential to ensure that the appropriate arrangements are in place for managing health and safety in relation to the contractor's activities. To enable this dialogue to be productive the SEC Group has made available a Safe Site Access Certificate which comprises a checklist of matters to be addressed

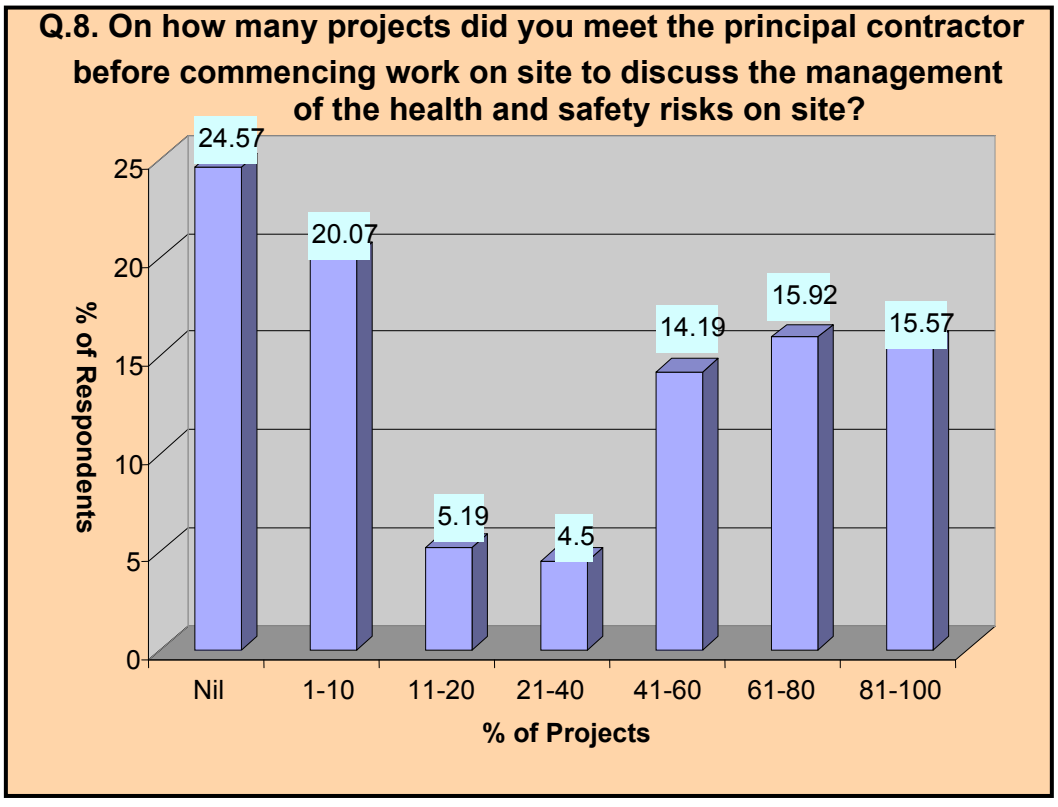
between the principal contractor and contractor. The Certificate aids compliance with CDM 2007 in this context. It is attached to this report at Annex B. Unfortunately the experience to date suggests that there has been reluctance on the part of many principal contractors to sign the Certificate to acknowledge that, together with the contractor, they have addressed all the items listed.

"There is an inconsistent approach by principal contractors across the industry and within certain organisations via geographical region."

Steelwork contractor

"Please note that our answers are in relation to us working as a contractor. On approximately 40% of our projects we are the Principal Contractor, hence a number of answers being "41-60%". We believe further guidance should be issued on the Health and Safety File implementation as a number of Principal Contractors we have worked for appear to include this information within O&M manuals and this means it can become fragmented. H&S files compiled by CDM-Cs where they form a separate file cross-referencing the O&Ms appear to work better in our opinion."

M&E contractor (£20m-50m turnover)



10.2 The results in this context are slightly more encouraging. Almost 44% of respondents reported that, before commencing work, they discussed with the principal contractor management of health and safety risks on the majority of their projects. Nonetheless almost 45% of respondents reported that they had not met

the principal contractor before starting work on any of their projects or, if they had, it was on less than 10% of their projects. Again this gives rise to some concern. This result ties in with the fact that the majority of respondents do not have a mobilisation period on most of their projects. It is difficult to understand how health and safety risks in relation to the construction phase can be effectively managed unless there is adequate communication before work begins. **This, after all, underpins the core requirements of CDM 2007.**

"Most of the time we are the Principal Contractor and we tend to work with companies and CDM Co-ordinators that we have had long established relationships with; this allows us to ensure that works are approached with co-operation and effective communication in place. I believe however without this we would not always get enough involvement in the process."

M&E contractor (£5m-£20m)

"Mostly poor main contractors are still with a them and us attitude."

M&E contractor (£5m-£20m turnover)

SUGGESTED ACTION

HSE to consider developing the Safe Site Access Certificate as a template incorporating pre-construction information (see section 9). This could be included in the ACOP and should be completed prior to work starting on site.

11. EXTENT TO WHICH FIRMS WERE GIVEN THE *CONSTRUCTION PHASE PLAN* BEFORE COMMENCING WORK ON SITE

11.1 Regulation 22 (1)(h) places an obligation on the principal contractor to:

*"ensure that every contractor is given, before he begins construction work and in sufficient time to enable him to prepare properly for that work, access to such part of the **construction phase plan** as is relevant to the work to be performed by him".*[12]

[12] See also paragraph 5.3 in Section 5 of this Report.

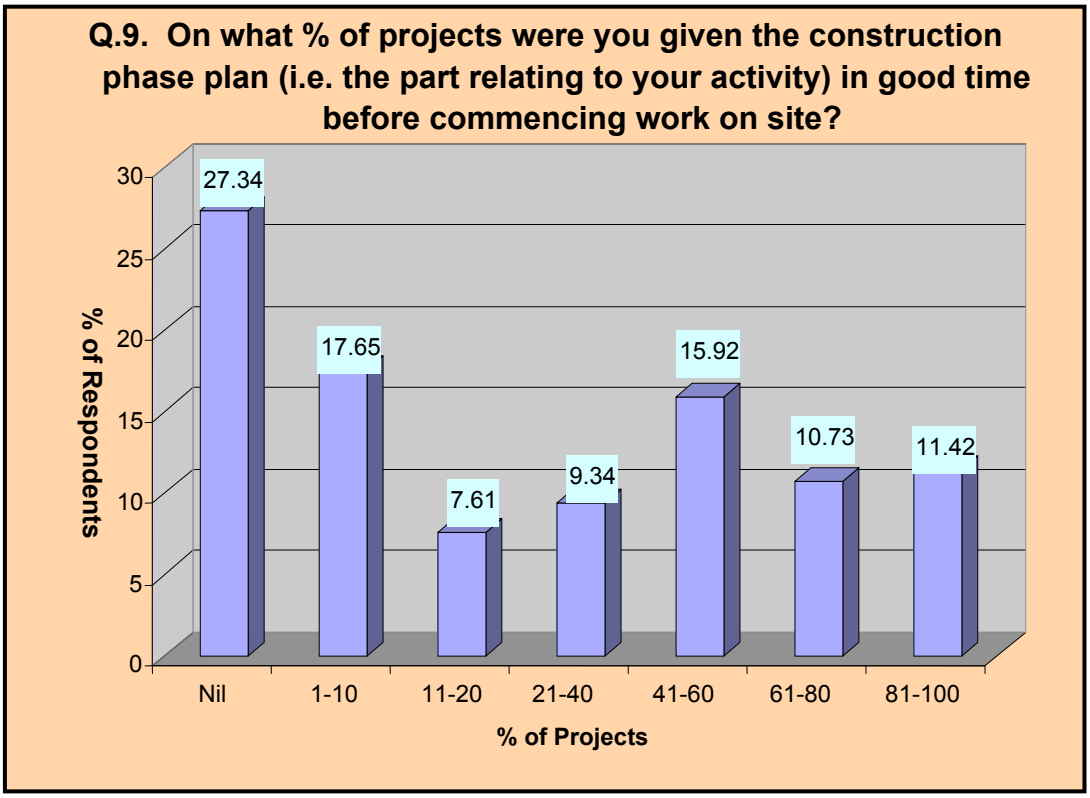
This, then, is an absolute obligation, the discharge of which is fundamental to the contractor being able to manage his input in compliance with the requirements of the plan.

11.2 Paragraph 160 in the ACOP explains the *construction phase plan* as follows:

"....the way in which the construction phase will be managed and the key health and safety issues for the particular project must be set out in writing in the construction phase plan. This plan should set out the organisation and arrangements that have been put in place to manage risk and co-ordinate the work on site".

"We are rarely given a copy of the construction phase plan prior to commencing the installation. We are given copies of the required specification and installation programmes but they are constantly being amended by the customer with little or no consideration given when other associated trades are working around the lift shaft."

Lift contractor:



11.3 Over 27% of respondents had not received the *construction phase plan* in good time before commencing work on site. Over 17% of respondents reported that they had received the *construction phase plan* at the appropriate time on less than 10% of all projects. It may be worth obtaining more feedback to establish at what point (if at all) respondents received the *construction phase plan* and the extent to which they were provided with the relevant parts of the plan.

"In my experience the principal contractor keeps control of construction phase plan and specialist M&E information is inserted into the plan as appropriate to the template and systems."

M&E contractor

11.4 If the contractor is not in possession of the *construction phase plan* he could fall foul of his obligations under Regulation 19. For example, Regulation 19(2)(a) requires the contractor to promptly provide the principal contractor with any information (including any relevant part of any risk assessment) which might justify a review of the *construction phase plan*. If he does not have the *construction phase plan* in the first place the contractor will not be in a position to discharge this particular obligation.

"As a contractor we are increasingly receiving more in depth and detailed questionnaires not just in paper copy but also electronic internet accessible questionnaires regarding core criteria compliance for inclusion within a customer's supply chain. Principal contractors continue to see themselves as exempt from complying with their own prescribed standards relating to H&S. They would, rather than identify specific hazards, risk assess and implement control measures across the board. For example they will blanket-issue mandatory PPE wearing instructions. Also there is an increasing trend to place the responsibility for controlling site safety upon contractors and not via their own health and safety audit control systems."

Lift contractor

11.5 Moreover the contractor may be inhibited from fulfilling his general duty under Regulation 13(2):

"Every contractor shall plan, manage and monitor construction work carried out by him or under his control in a way which ensures that, so far as is reasonably practicable, it is carried out without risks to health and safety".

SUGGESTED ACTION

The Health and Safety Inspectorate should prioritise this issue by regularly checking with contractors on site that the *construction phase plan* has been given in good time before the start of work.

12. EXTENT TO WHICH RESPONDENTS MADE INPUT TO THE *CONSTRUCTION PHASE PLAN*

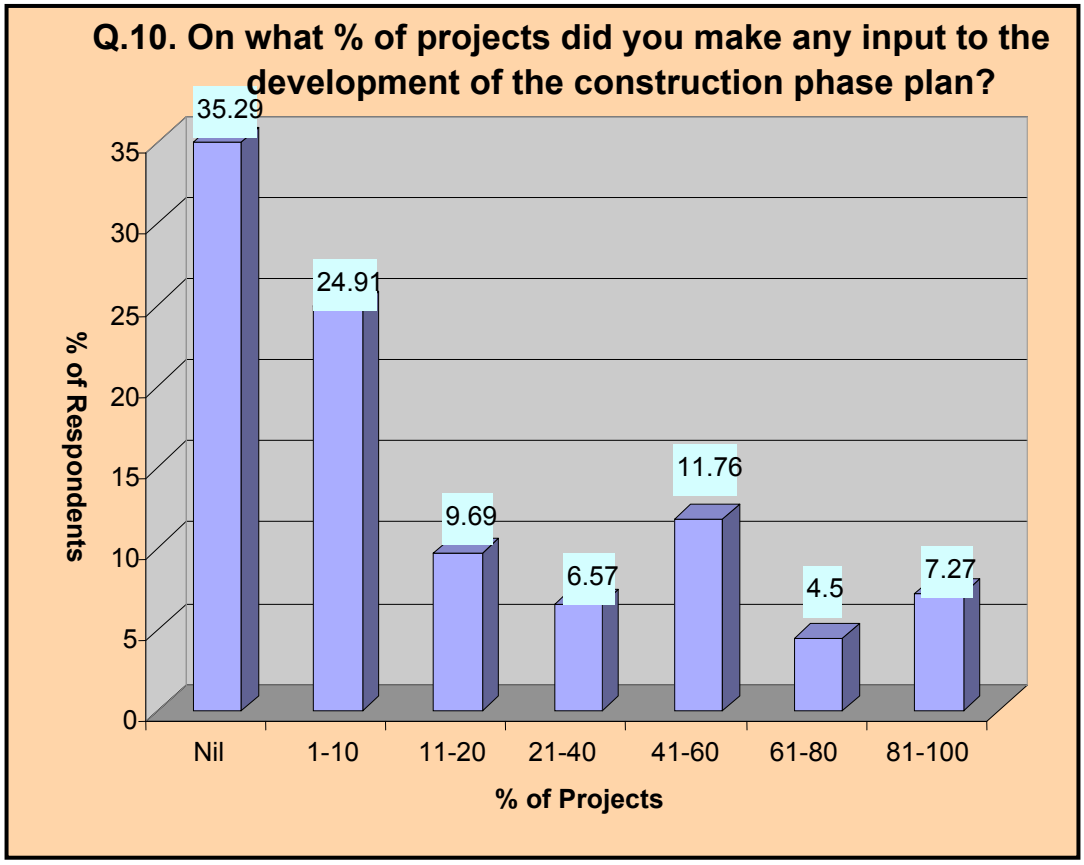
12.1 Regulation 22(1)(g) states that the principal contractor shall:

*"where necessary, consult a contractor before finalising such part of the **construction phase plan** as is relevant to the work performed by him".*

"Construction phase plans are too generic".

Steelwork contractor

Whilst this is not an absolute obligation it would be considered good practice for the principal contractor to do this as a matter of course. Any plan would be deficient without input (such as method statements and risk assessments) from contractors. Moreover the principal contractor's duties of co-operation and co-ordination should incline him to do this especially where the input of the contractor – such as a specialist engineering contractor - is significant in relation to the type and complexity of the work to be carried out.



12.2 Given that the responses to question 9 indicated that, for the most part, the *construction phase plan* was not available in good time before commencement of the work, it is not surprising that only very few respondents made a regular input into the development of the plan. Other than a very small minority of respondents who did make a regular input to the *construction phase plan*, the overwhelming majority had no or very little input on most of their projects.

"For the most part our organisational input into the principal contractor's construction phase plan is limited to producing method statements, risk assessment and datasheets for the health and safety file."

Lift contractor

SUGGESTED ACTION

This action follows on from the last suggested action. The Health and Safety Inspectorate should regularly inquire of principal contractors the reasons for not involving contractors in the development of the *construction phase plan*.

13. HAS PAPERWORK ASSOCIATED WITH THE MANAGEMENT OF HEALTH AND SAFETY RISK BEEN REDUCED?

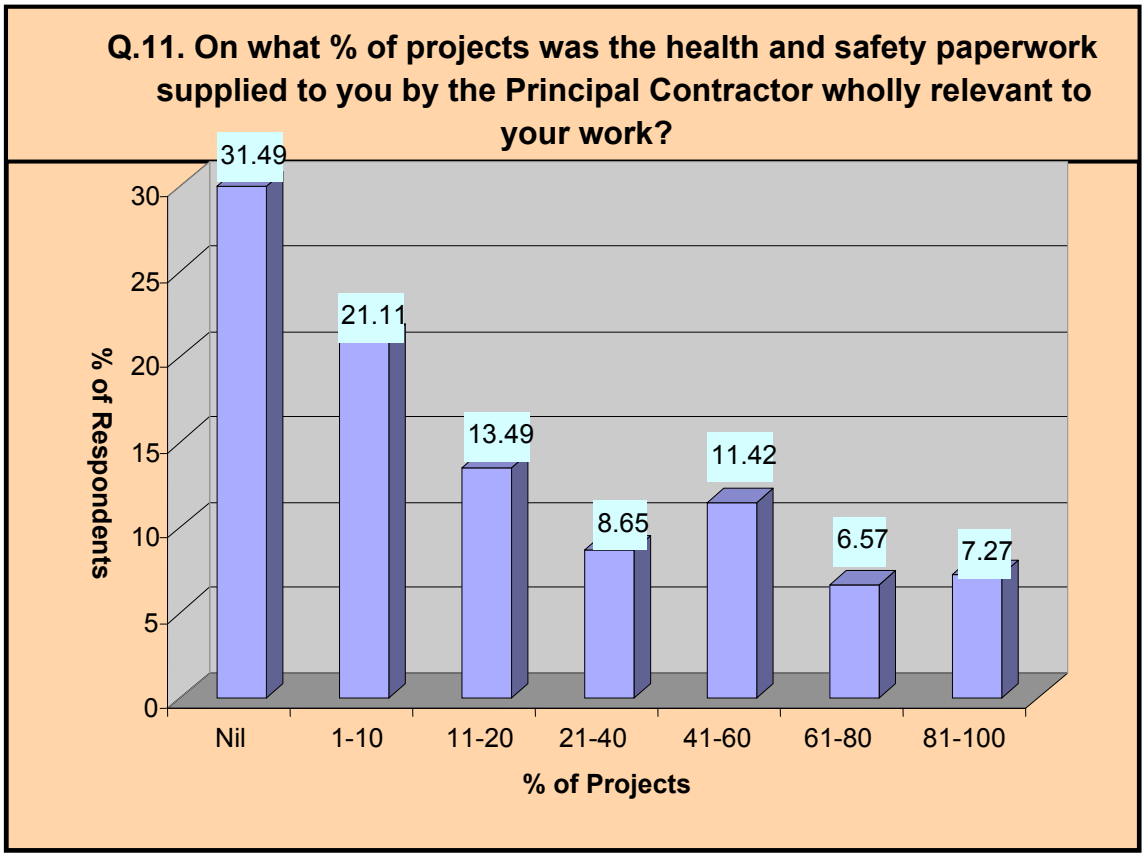
"If anything the amount of paperwork now generated by our organisation to comply with the principal contractor's interpretation of the Regulations has significantly increased. This is more prevalent in the size of PQQs that are generated along with the supporting documentation to be completed. A common sense approach needs to be adopted and where a company is in membership of schemes such as Chas and industry related schemes, this should be sufficient evidence of a contractor's compliance with the required H&S legislation and associated industry related regulations (i.e. Lift Regulations). The introduction of PAS91 would be of considerable benefit to all."

Lift contractor

13.1 As already been mentioned a key objective of CDM 2007 was to reduce bureaucracy. Anecdotal evidence has suggested that there has not been a significant reduction in the paperwork. In fact the bureaucracy appears to have increased. There is now an increased use of CDs in the tendering process which means that a massive amount of generic project data has to be sifted by the tenderer; such data will include a large amount of information relating to health and safety most of which may not have any relevance to the tendering contractor. Furthermore the desire to protect oneself against prosecution or claims and pressures from the insurance industry have contributed towards the increase in bureaucracy.

"Far too much regulation and pen pushing instead of a common sense approach. Health & Safety has been allowed to go far beyond its original intention which now creates more dangers than it reduces."

Electrical contractor (£200k-£500k turnover)



"The CDM Regulations have turned into a paper chase where everyone is trying to cover themselves; the paperwork is so large that the operatives on site, who are the ones at most risk, are turned off by the amount and the wording, which is more for a solicitor than an electrician or a joiner. This is very sad as it is spoiling a good idea. I recently did my Gold Card CSR and the instructor was asked if the statistics showed an improvement in health and safety but it had not proved to be positive."

Electrical contractor (£1m-£21m turnover)

13.2 The majority of respondents - over 52% - indicated that the paperwork was not relevant to their work on all their projects or, if it was relevant, this was on less than 10% of their projects.

"The questionnaire does not take into account any aspect of the huge increase of documentation that now has to be produced before, during and after any CDM job."

Electrical contractor in Scotland

SUGGESTION ACTION

The solution in the longer-term to this continuing problem is more teamworking amongst project participants especially at the planning and design stages. We have already proposed that paragraph 44 in the ACOP should be brought into the Regulations. Furthermore our suggested action on page 31 should also help to reduce paperwork.

"Too much red tape and no common sense."

Electrical contractor (turnover under £200k)

14. INVOLVEMENT IN DESIGN REVIEWS

14.1 Paragraph 98 of the ACOP states:

"The CDM co-ordinator's legal responsibility in respect of design work only extends to health and safety aspects of the design – checking that.....the different design elements work together without causing danger. This is best achieved through design reviews during which health and safety issues are addressed alongside practicality and cost in a wider review of the design's buildability, maintainability and usability".

The ACOP adds:

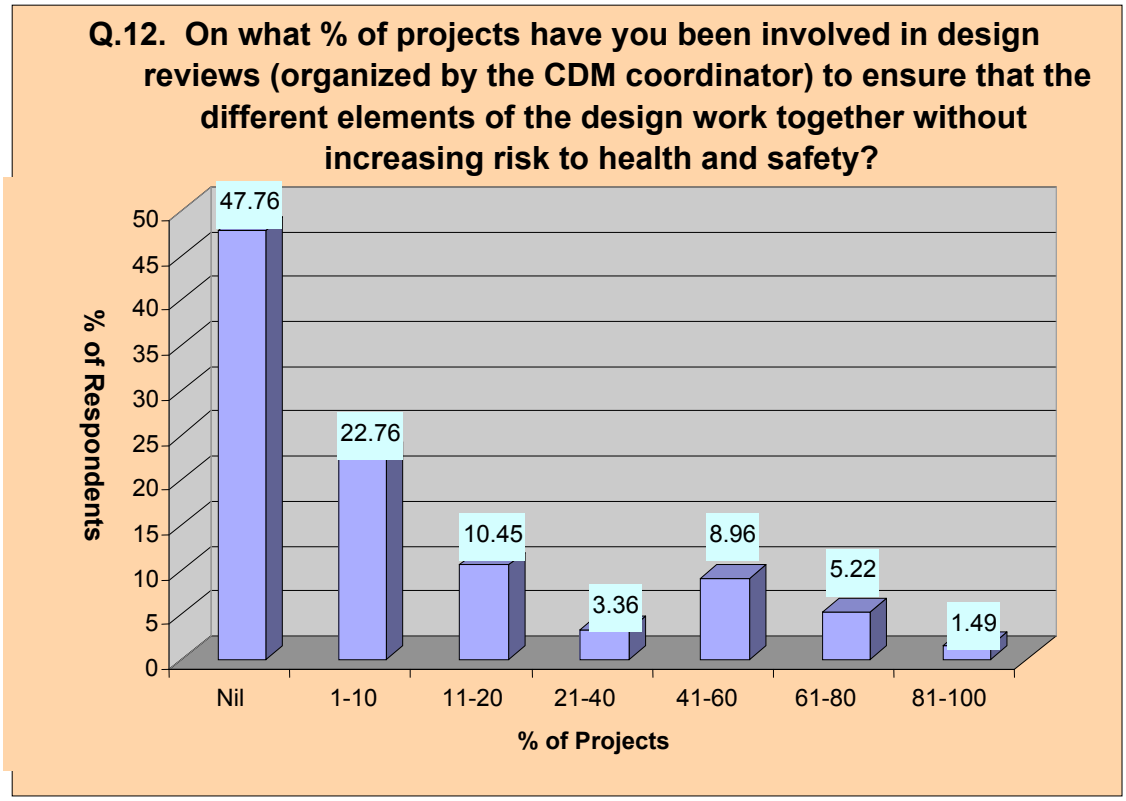
"as part of design reviews, CDM co-ordinators need to ensure that the designers have identified a safe method for construction for unusual or complex designs, and that the designs include the information needed by other designers and contractors to allow them to work safety and without risk to health. ***This information needs to be clear and concise****".* (emphasis added)

"CDM co-ordinators are seldom seen or heard. We have attended one design review meeting specific to health and safety in the past 12 months and this was organised by the Principal Contractor not the CDM co-ordinator."

Steelwork contractor

"We are invited to attend pre-let/construction meetings, but again these are more geared around the compliance with the requirements of the contract itself and health and safety on the site and not from a design input or review point of view."

Lift contractor



14.2 The responses clearly indicate that the overwhelming majority of respondents have had little or no part in design reviews organised by the CDM co-ordinator. It is not known the extent to which the CDM co-ordinators have failed to hold design reviews at all or whether they have simply failed to involve contractors in design reviews. Over 77% of respondents reported that they had no involvement in design reviews at all or, if they had, it was on less than 10% of projects. This is a major failing on the part of CDM co-ordinators particularly where, as is here, the specialist engineering contractor is likely to be engaged in a significant amount of design work.

"Most principal contractors do not understand specialist contractor requirements and so do not involve us in their designs and constructions but expect us to adapt existing structures to suit the Data Centre requirements within their own plan but in the same time scales as given to them for the complete project."

M&E contractor

SUGGESTED ACTION

Consideration should be given to an amendment to the Regulations that requires CDM co-ordinators:

(a) to involve contractors in design reviews where they are engaged in design work, particularly where their design has to be co-ordinated with elements of the design of the structure; and
(b) to organise and participate in design reviews throughout the life of the project.

Annex A

CDM QUESTIONNAIRE

2007 CDM REGULATIONS
SURVEY ON IMPLEMENTATION OF THE REGULATIONS

INTRODUCTION TO THE SURVEY

The 2007 Construction, Design and Management (CDM) Regulations came into force on 6 April 2007. The Regulations provide a framework for the management of health and safety risks on projects from the design and planning stages to construction and post-handover works. The 2007 Regulations amended the 1994 CDM Regulations in order to achieve the following:

- Simplification: all duty-holders (client, designer, CDM coordinator, principal contractor and contractor) should be clear about their respective responsibilities.
- Flexibility so that the Regulations fit in with the various procurement routes.
- Greater focus on management of health and safety risk.
- Reduction in paperwork.
- Improvement in cooperation and coordination.
- Simplification of competence assessment.

The Health and Safety Executive is now evaluating the impact of the 2007 Regulations and is keen to obtain information on how they are working in practice. This survey, therefore, seeks to establish the experience of working with the 2007 Regulations and whether they are achieving the above aims.

The questions primarily relate to projects which have to be notified to the Health and Safety Executive. These are projects where the construction phase is likely to involve more than 30 days or 500 person days of construction work. Please complete this form only where the majority of your projects since April 2007 have been notifiable.

Size of firm (by annual turnover)

Under £200k ☐ £200k to £½m ☐ £½m to £1m ☐ £1m to £2m ☐
£2m to £5m ☐ £5m to £20m ☐ £20m to £50m ☐ £5Om+ ☐

GENERAL QUESTIONS

1. Indicate the % of projects on which your firm was asked to demonstrate compliance with the *core criteria* for health and safety competence set out in the Approved Code of Practice to the 2007 Regulations.

None ☐ less than 10% ☐ between 11%-20% ☐ between 21%-40% ☐ between 41%-60% ☐ between 61%-80% ☐ between 81%-100% ☐

2. On what % of projects (where you have been involved in design or design development) have you engaged with consultants in risk assessing the design outcomes?

None ☐ less than 10% ☐ between 11%-20% ☐ between 21%-40% ☐ between 41%-60% ☐ between 61%-80% ☐ between 81%-100% ☐

3. On how many projects do you receive information from consultants (as designers) on aspects of the design (relevant to your work) of the structure or its construction or maintenance to help you comply with your duties?

None ☐ less than 10% ☐ between 11%-20% ☐ between 21%-40% ☐ between 41%-50% ☐ between 61%-80% ☐ between 81%-100% ☐

4. On what % of projects have you started work without being in possession of the name of the CDM Co-ordinator?

None ☐ less than 10% ☐ between 11%-20% ☐ between 21%-40% ☐ between 41%-60% ☐ between 61%-80% ☐ between 81%-100% ☐

5. On what % of projects were you aware before starting work on site that notification of the project had been given to the Health and Safety Executive?

None ☐ less than 10% ☐ between 11%-20% ☐ between 21%-40% ☐ between 41%-60% ☐ between 61%-80% ☐ between 81%-100% ☐

QUESTIONS RELATING TO YOUR DUTIES AS A CONTRACTOR

6. On what % of projects were you informed of the minimum amount of time allowed to you for planning and preparation before the start of construction work.

None ☐ less than 10% ☐ between 11%-20% ☐ between 21%-40% ☐ between 41%-60% ☐ between 61%-80% ☐ between 81%-100% ☐

7. On what % of projects were you given pre-construction information (e.g. in any existing health and safety file or relating to the state of the site or future use of the structure as a workplace) before commencing work?

None ☐ less than 10% ☐ between 11%-20% ☐ between 21%-40% ☐ between 41%-60% ☐ between 61%-80% ☐ between 81%-100% ☐

8. On how many projects did you meet the **principal contractor** before commencing work on site to discuss the management of the health and safety risks on site?

None ☐ less than 10% ☐ between 11%-20% ☐ between 21%-40% ☐ between 41%-60% ☐ between 61%-80% ☐ between 81%-100% ☐

9. On what % of projects were you given the **construction phase plan** (i.e. the part relating to your activity) in good time before commencing work on site?

None ☐ less than 10% ☐ between 11%-20% ☐ between 21%-40% ☐ between 41%-60% ☐ between 61%-80% ☐ between 81%-100% ☐

10. On what % of projects did you make any input to the development of the ***construction phase plan***?

None ☐ less than 10% ☐ between 11%-20% ☐ between 21%-40% ☐ between 41%-60% ☐ between 61%-80% ☐ between 81%-100% ☐

11. On what % of projects was the health and safety paperwork supplied to you by the **Principal Contractor** wholly relevant to your work?

None ☐ less than 10% ☐ between 11%-20% ☐ between 21%-40% ☐ between 41%-60% ☐ between 61%-80% ☐ between 81%-100% ☐

12. On what % of projects have you been involved in design reviews (organised by the CDM Co-ordinator) to ensure that the different elements of the design work together without increasing risk to health and safety?

None ☐ less than 10% ☐ between 11%-20% ☐ between 21%-40% ☐ between 41%-60% ☐ between 61%-80% ☐ between 81%-100% ☐

Any other comments on how 2007 CDM is working……
.....
……
……

Annex B

SAFE SITE ACCESS CERTIFICATE

SAFE SITE ACCESS CERTIFICATE

November 2008 Revision
GUIDANCE NOTES

[All references to regulations are to the 2007 Construction (Design and Management) Regulations]

The 2007 Construction (Design and Management) Regulations state:

"The principal contractor for a project shall….ensure that every contractor is given, before he begins construction work and in sufficient time to enable him to prepare properly for that work, such further information as he needs to carry out the work to be performed by him without risk, so far as is reasonably practicable, to the health and safety of any person". [REG. 22 (1) (l)]

The attached Safe Site Access Certificate has been revised by the Specialist Engineering Contractors' (SEC) Group to comply with the 2007 Construction (Design and Management) Regulations. The Certificate is aimed at helping principal contractors and their contractors to comply with the Regulations.

The use of this Certificate will facilitate compliance with the Regulations by:

- establishing a clear line of communication and mutually agreed criteria for site safety before the work starts;
- helping to make the work safer by reducing, or removing altogether, the risks arising from poor conditions on site;
- providing a consistent approach to site safety through helping all parties to meet their health and safety responsibilities.

The Regulations give added emphasis to the need for:

- competency of both the business and its employees;
- co-operation and co-ordination between all parties;
- early appointment of contractors so that risk is managed earlier, rather than later;
- sufficient time before the contractor starts on site, to plan and prepare;
- effective (i.e. **relevant**) and transparent information flow between all parties.

'Co-operation and co-ordination can only be achieved if there is good communication between all parties….". *[Approved Code of Practice to the CDM Regulations, para.92]*

THE PRINCIPAL CONTRACTOR AND THE CONTRACTOR SHOULD JOINTLY COMPLETE THIS CERTIFICATE, WHICH IS IN THE FORM OF A CHECKLIST, BEFORE WORK STARTS ON SITE.

The safety of the site work areas, access routes, etc should be checked at that time, by walking through the areas that the Contractor will have to use. ***Both parties must be fully satisfied that the conditions are safe and suitable for work before signing the certificate.*** *The signatures of those representing the Principal Contractor and Contractor should be inserted in the appropriate boxes on page 1. The Contractor should check the site again on starting work. Where all the responses to the questions are still valid he should sign in the box on page 4. The Contractor's site representative should have a copy of the completed certificate on site.*

"Cooperation between parties and co-ordination of the work are key to the successful management of construction health and safety". *[Approved Code of Practice to the CDM Regulations, para.44]*

FAILURE TO ADDRESS THE QUESTIONS IN THE CERTIFICATE COULD INCREASE THE RISK OF PROSECUTION UNDER THE REGULATIONS

The SEC Group comprises the construction industry's six premier trade associations which, in turn, represent a sector with 60,000 companies. They are the Association of Plumbing and Heating Contractors; the British Constructional Steelwork Association; the Electrical Contractors' Association; the Heating and Ventilating Contractors' Association; the Lift and Escalator Industry Association; SELECT (Electrical Contractors Association of Scotland).

SAFE SITE ACCESS CERTIFICATE

November 2008 Revision

Contract information

Contract Name: Principal Contractor: Contractor:	Brief details of the contractor's work:
Site Address:	Areas of the site the contractor will work in:

Site confirmed as safe and suitable for work by the principal contractor			**Site accepted as safe and suitable for work by the contractor** *This must be re-checked at the time of starting work on the site – see page 4.*		
Name:	Position:		Name:	Position:	
Signature:	Date:	Time:	Signature:	Date:	Time:

Provision of Information

	No. Weeks	No. Days	Details / Comments (in general terms)
1. Minimum amount of time before start of construction / installation for planning and preparation [REG.22 (1) (f)]	☐	☐ ▶	

	NO	YES	
2. Has the Principal Contractor issued the part(s) of the ***construction phase plan*** relevant to the work to be carried out? [REG.22 (1) (g)]	☐	☐ ▶	

General hazards [REG.22 (1) (i)]

	N/A	NO	YES	Details / Comments (in general terms)
3. Has the Principal Contractor reported the known significant hazards to the Contractor? (e.g. presence of asbestos containing materials, etc)	☐	☐	☐ ▶	
4. Has the Principal Contractor given details and locations of all fixed site hazards to Contractor? (e.g. deep water, microwave dishes, contaminated ground, etc)	☐	☐	☐ ▶	
5. Have other suspected or possible significant hazards been advised to the Contractor? (e.g. work by other contractors, such as lifting operations)	☐	☐	☐ ▶	
6. Are there any other site-specific hazards?	☐	☐	☐ ▶	

Site access & storage

	N/A	NO	YES	Details / Comments (in general terms)
7. Is there clear, adequate and safe access to areas where the Contractor has to work? [REGS 26 & 27] (i.e. free from slipping, tripping and falling hazards, etc)	☐	☐	☐ ▶	
8. Has the Principal Contractor supplied suitable and sufficient site access lighting and power supplies? [REG 44][1]	☐	☐	☐ ▶	
9. Are the emergency escape routes clear, suitably marked and provided with emergency lighting where necessary? (i.e. a minimum of 5 lux of lighting from battery operated units) [REG 40 (3)]	☐	☐	☐ ▶	
10. Have overhead and underground services and/or obstructions on the site been identified and marked? (e.g. cables, manholes, voids, etc affecting access routes, etc) [REG 34]	☐	☐	☐ ▶	
11. Is hard standing and space available for the delivery and off-loading of huttage, materials, etc, together with easily reached secure storage for materials and/or equipment? [2] [REG.22 (1) (g)]	☐	☐	☐ ▶	

[1] ***For <u>all</u> areas on UK construction site, SEC Group recommends a standard maintained illuminance of between 20 and 50 lux. Where access lighting to these values is not present, the lighting should be considered inadequate and the area should not be accessed until such time as the lighting has been corrected.***

[2] *This should be in the construction phase plan (see Q.2)*

Contractor's personnel

	N/A	NO	YES	Details / Comments (in general terms)
12. Has a site induction, on site-specific health and safety matters, been given / arranged, before work starts? (This must include particular risks associated with the site) [REG.24 (a) & (b)]	☐	☐	☐ ▶	
13. Does the Contractor have details of, and understand, the emergency alarms, evacuation procedures and the use of the emergency equipment and services? [REGS.13 (7) & 22 (1) (c)]	☐	☐	☐ ▶	
14. Has the Principal Contractor provided work and rest rooms that are suitable, clean and properly maintained? (i.e. with good room heating, ventilation and facilities) [REGS.13(7)&22(1)(c)]	☐	☐	☐ ▶	
15. Are the welfare facilities clean, hygienic and properly maintained? (i.e. meeting the minimum regulatory requirements) [REGS.13 (7) & 22 (1) (c)]	☐	☐	☐ ▶	

General protection [REGS. 22 (1) (l) & 26]

	N/A	NO	YES	Details / Comments (in general terms)
16. Are there adequate and effective means of keeping the area/s where the contractor will be working, free from:				
• other tradesmen and any hazards arising from their work	☐	☐	☐ ▶	
• moving plant and vehicles	☐	☐	☐ ▶	
• persons using nearby site access routes	☐	☐	☐ ▶	
• members of the public and/or visitors	☐	☐	☐ ▶	

Note: This can be achieved by physical distance, protective measures to ensure separation (such as a screen), or programming (to separate an adjacent activity in "time")

Other site safety issues [REG.22 (1) (i) (ii)]

17. Are there any other site safety issues that may affect the work? **(These should be listed here or on an attached sheet)**

Principal contractor's directions?

18. Are there any specific directions from the principal contractor? [3] [REG.22(1)(e)] **(These should be listed here or on an attached sheet and cross-referenced to the relevant regulation.)**

Any other comments

Site re-checked at the time of starting work on the site and acceptable

Name: Position:

Signature: Date: Time:

[3] "***The principal contractor for a project shall…. give reasonable instructions to any contractor so far as is necessary to enable the principal contractor to comply with his duties under these Regulations". [REG.22 (1)(e)]***

INFORMATION

Information about the SEC Group can be found by visiting the SEC Group website (www.secgroup.org.uk). Further information can be obtained by contacting:

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