

ICE Health & Safety Expert Panel:

CDM 2015 Regulations ICE Position Statement

Introduction

The following states the position of the Institution of Civil Engineers (ICE) in respect of the enactment of the Construction, Design and Management Regulations 2015.

It has been prepared by the Health and Safety Expert Panel, to which all enquiries should be directed.

Although the ICE welcomes the publication of the Construction (Design and Management) Regulations (CDM) 2015 it does have some concerns, as noted below.

Background

We note the progress made in reducing injuries, including fatal injuries, since the introduction of the first CDM Regulations in 1994. We also recognise that there is more to be done, particularly in reduction of work-related ill-health. (*Health and Safety in Construction 2103/14 pub. HSE October 2014*)

We also note that the CDM Regulations, of themselves, have not brought this about, however they have been an important part of the background and environment, providing a regulatory framework within which construction work is managed in a risk-based way.

The research conducted by the HSE and the associated discussions relating to the effectiveness of the CDM Regulations 2007 (*RR920*), indicated that the principles behind the regulations were sound, and that they were generally effective, but could be improved. We concur with this, having produced our own research report (CDM 3 years on) which contributed to the review.

The ICE also recognise that in the wider European Union context, CDM 2007 was considered by the legislators in Brussels not to have fully implemented the TMWPD 1992, with the consequent threat to the UK Government of action by the EU.

Commentary

The ICE notes that under CDM 2015, the Principles of Risk Management, combined with the emphasis on teamwork remain unchanged, even though they are expressed differently, with different relationships and duty holders.

The ICE are particularly pleased that the co-ordination of pre-construction health and safety aspects has been drawn into the centre of the project team (under the Principal Designer), where they are in the best position to influence and control design and planning. No longer is

the co-ordination of health and safety in the pre-construction phase the remit of a “health and safety expert” on the side-lines, but this aspect of management is now much more integrated within the design team.

CDM 2015 provides the opportunity to further promote good project management principles, which pertain to all aspects of projects. This provides the opportunity for greater integration of health and safety through all aspects of projects.

The separation of notification from appointments highlights that appropriate and proportionate risk management is essential to well-run projects, with the consequent avoidance of harm.

Nevertheless, the ICE is concerned that some beneficial aspects of the regulations have been lost, the clarity promised has not been achieved (in some areas), and the current absence of an Approved Code of Practice (ACoP) may contribute to this loss of clarity.

The Guidance (L153 and Industry Guidance) are welcomed, however L153 does not go as far as we would have hoped, and the Industry Guidance, whilst scalable, is targeted at small projects and undertakings.

We note that the HSE has explained in L153 the meaning of “Reasonably Practicable” as *“balancing the level of risk against the measures needed to control the real risk in terms of money, time or trouble. However you do not need to take action if it would be grossly disproportionate to the level of risk”*, but we are particularly disappointed that the opportunity has not been taken to clarify what “proportionate action” means in practical terms, particularly in respect of design.

The ICE has therefore developed a range of materials to support Members, and the wider industry, in the implementation of CDM 2015, aiming at filling the gaps.

The ICE has also published a set of “Frequently Asked Questions” (FAQs) which are published on the ICE web-site.

This is in addition to the revision and publication of three [publications](#) by Thomas Telford, and the development of a new suite of [training](#) under the auspices of the Health and Safety Expert Panel.

The Way Forward

The ICE is strongly pressing the HSE, through the Construction Industry Council, for an Approved Code of Practice. This will bring authoritative clarity for the avoidance of doubt on specific issues, and contribute to reducing bureaucracy by defining the limits of required action. For example how far clients are expected to go to ensure that arrangements are appropriate, how far designers are expected to go to eliminate and reduce risks, the relationship between pre-qualification and selection criteria, and to avoid time-consuming legal disputes which add nothing to effective risk management. .

Time will tell as to the effectiveness of CDM 2015