

**The Potential Implications of the
CDM 2014 Revision Being Based on
an EC TMCS Directive 92/57/EEC
'Copy Out' Approach**

Contents

Executive Summary.....	2
Introduction	4
EEC Non-Binding Guidance.....	4
The Broad Implications.....	5
The Role of the Designer	9
Designers Duties	9
Wider Roles for Designers	10
Summary of Conclusions in Respect of the Designer Role.....	10
Coordination	11
Co-ordination and the TMCS Directive	11
Meeting the Directive objectives – Issues and opportunities.....	11
Models and conclusions.....	12
Notes:	13
Competence - considerations on the implications for designers should the requirements of Regulation 4 be removed from the Regulations	14
Summary	14
Conclusions drawn from our investigations	15
Discussion based on the investigation.....	15
Appendices – Additional Background Information	16
Appendix A - Directive 92/57EEC Comparison with GB Construction (Design & Management) Regulations 2007	17
Appendix B – Full Text of TMCS Directive.....	29
Appendix C – Additional Background Notes Re Competency	44
1.1 Review of current position – CDM2007	44
1.2 Robens committee	44
1.3 A commentary on Routes to Competence in the construction industry	45
1.4 Management of Health and Safety Regulations 1999.....	45

Executive Summary

This report sets out the considered view of a CIC CDM2014 Working Group set up to review the potential implications of the proposed revision of the Construction (Design & Management) Regulations being based on a 'copy out' of the EC Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (TMCS Directive). The Group have considered the broad brush implications together with the more detailed implications relating to design, coordination and competence. The implications relating to contractors and the construction phase have not been considered in detail.

A straight 'copy out' of the EC TTMCS Directive raises a number of issues and would result in key changes to the CDM Regulations. These are summarised below.

The TMCS was prepared over 20 years ago, yet technology and practice have moved on since then. Copy out could be "going backwards" which is against principles established in Directives and the Health & Safety at Work Act.

The Directive is very broad and open to a wide range of interpretation, although it should be noted that non-binding guidance on interpretation was published by the EC in 2011. It is considered necessary to ensure that revised regulations are clear, adequately define requirements and are more precise.

Application of Client duties to domestic clients. The removal of the current GB exemption is not considered to be up for debate as EC action would be taken if GB fails to adopt this aspect of the Directive. The client's duties can, however, be carried out by a project supervisor appointed by the client. However, it should be noted that the client assumes any project supervision duties which have not been delegated to an appointed project supervisor. Therefore, in order to address the issue of domestic client's lack of 'competence' in relation to H&S matters, it is suggested that the first point of contact, eg. designer or contractor, should become the project supervisor by default unless alternative arrangements are made – see below.

Project Supervisor role. This will be a new function in GB legislation. It is not considered necessary, however, to 'invent' a new role within the GB CDM framework to undertake the project supervisor duties. It is suggested that the lead designer or project manager would be the natural party to carry out this function unless alternative contractual arrangements are made to appoint an independent party or another member of the project team as project supervisor.

Coordinator roles and duties vary slightly from the current CDM arrangements. Coordinators are required on any project on which there is more than one contractor. Arrangements need to be workable, effective and achievable. Several possible models for the project supervisor and coordinator appointments are possible ranging from fully independent of one another to various combinations of these roles. There will be a requirement for the market to have available suitably identifiable and capable individuals to provide the necessary resource to deliver the project supervisor and coordination functions. Industry will need to be clear about its delivery of any of the co-ordination models and the adoption of appropriate performance standards or practices.

Project Preparations Stage Co-ordinator role. To address the issue of a workable, effective and achievable way forward it is suggested that the lead designer, or a project manager if appointed, should carry out this function unless alternative contractual arrangements are made for the early appointment of an independent third party co-ordinator. This would resolve the current problem of late appointments. Competent specialists or experts may need to be engaged by lead designers to support them if they are appointed to carry out this function, especially on more complex projects.

The role of **Project Execution Stage Co-ordinator** has not been specifically addressed in this report other than in general terms.

/continued

Designers only have implied duties. The responsibility for the consideration of the health and safety implications of the design lies with the client or project supervisor and the preparations stage coordinator – see figure 1.

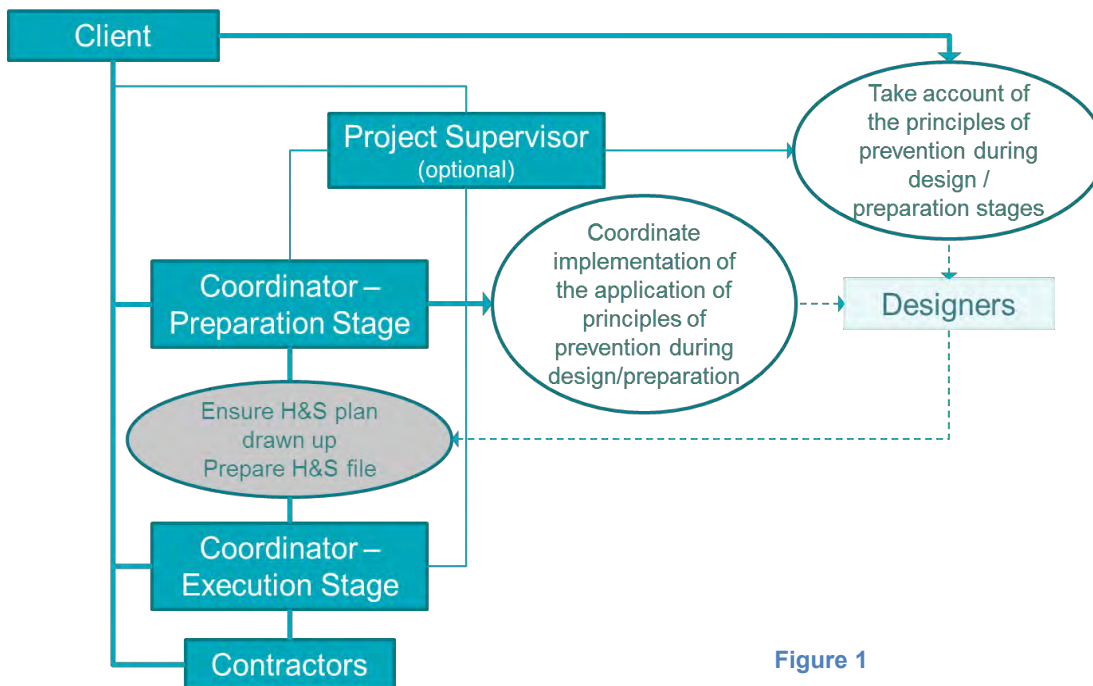


Figure 1

The removal of the general designer duties is not considered to be an issue of concern as the Health & Safety at Work Act and the Management of Health & Safety at Work Regulations duties address the general responsibilities for considering the impact of designs on others. However, as no such duty seems to exist in other H&S legislation, there may be a need for a reciprocal duty on designers to cooperate with the client, project supervisor and preparations stage coordinator to enable them to comply with their duties to ensure that the principles of prevention are applied and adequate information provided. Also, if the broader duties for designers are not included in the revised CDM Regulations, it is considered essential to make the application of HSWA and MHSWR duties clear to designers via a revised CDM ACoP.

It is suggested that the dropping from CDM of the designer duty to take account of the provisions of the Workplace (Health, Safety and Welfare) Regulations would be better addressed through the WHSW Regulations and/or Building Regulations. Such an approach would avoid accusations of 'gold plating' the TMCS Directive.

There are no requirements regarding competence in the TMCS Directive. The removal of the requirements for assessing competence of appointees is seen as positive step towards removing bureaucracy. However it is considered appropriate to include reference to competencies for all duty holders and specifically a duty not to accept an appointment unless competent. The aim should be to make membership of professional institutions the recognised assurance of individual competence in relation to design risk management and coordination. Specific training in design risk management may be needed beyond that in degree courses, possibly mirroring site management courses for contractors, especially for individuals who are not members of recognised professional Institutions. It is suggested that the CIC considers establishing a forum to develop a voluntary code and a mechanism for verifying application of such a code.

Introduction

This report sets out the considered view of a CIC CDM2014 Working Group set up to review the potential implications of the proposed revision of the CDM Regulations being based on a 'copy out' of the EC Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (TMCS Directive). The Group have considered the broad brush implications together with the more detailed implications relating to design, coordination and competence. The implications relating to contractors and the construction phase have not been considered in detail.

The purpose of the report is to provide the full membership of the CIC H&S Committee with sufficient information to stimulate discussion and, if possible, reach agreement on a consensus position to adopt in stakeholder discussions with the Health & Safety Executive during the development of the proposed future Construction (Design & Management) Regulatory (CDM) package.

The working group comprised members of the CONIAC CDM Evaluation Working Group whose organisations are represented on the Construction Industry Council Health and Safety Committee, namely Paul Bussey representing the Royal Institute of British Architects; David Lambert representing the Institution of Civil Engineers; David Watson representing the Institution of Structural Engineers; Greg Brown representing the Association for Project Safety; and Kevin Fear representing Construction Skills.

EEC Non-Binding Guidance

In addition to the Directive the EC published a non-binding guide in 2011 giving practical information for understanding and implementing the TMCS Directive 92/57/EEC. The guide summary states that by explaining the Directive and by giving good practice suggestions and examples, it aims to assist all parties involved in construction, including clients, project supervisors, designers, coordinators, contractors and other employers, workers, suppliers and others, in the following areas:

- in understanding and implementing the general principles of prevention;
- in understanding the safety and health requirements of the Directive including when and to what it applies, the duties and roles of stakeholders and the documentation that is required;
- by identifying some typical hazards and risks during construction work;
- in managing risks throughout the duration of construction projects, from project preparation, during construction, and into the post-construction stage; and
- by summarising the duties of stakeholders by stages.

Whilst the guide provides some useful information, and possibly indicators of intent, by virtue of the fact that it is 'non-binding' its status in respect of aiding interpretation for the UK regulatory package is unclear.

The guide can be downloaded from

<http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=630&type=2&furtherPubs=no>

The Broad Implications

Ref	Issue	Evidence	Suggested Solution	Comments
1	<p>TMCS was prepared over 20 years ago, yet technology and practice have moved on since then. Write-out could be “going backwards” which is against Directives and H&S@W Act</p> <p>2014 Copy-out would be of material 22yrs old without benefit of subsequent experience</p>	<p>Directive enacted June 1992</p> <p>CDM 1994 found wanting and revised by UK</p> <p>EuroGip Report (2005) reviews directive implication and identifies issues to be dealt with.</p> <p>CDM2007 found generally fit for purpose subject to significant comments (mostly on the implementation rather than the regulations) – see independent Research report by Frontline 2012</p> <p>EU communication Com(2008)698 on implementation 2008 (see Annex to Non-Binding Guidance document)</p> <p>Non-Binding Guidance to good practice for understanding and implementing Directive 92/57/EEC published by EU 2011 (http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=630&type=2&furtherPubs=no)</p>	<p>In formulating revised regulations, account must be taken of developments.</p>	<p>The non-binding guidance document is clearly laid out and indexed , with relatively simple guidance and is easy to use by all stakeholders</p>
2	<p>The Directive is very broad and open to a wide range of interpretation</p>	<p>EuroGip Report 1.1.2 identifies “one of the problems posed by the Directive itself is that it is very general and leaves a broad margin for interpretation by the member states”</p> <p>EuroGip Report 1.1.4 identifies that the Netherlands and Luxemburg “transposed the Directive very precisely into their national legislation, and as a result the legislation is felt to be far too vague and imprecise. This does not facilitate its implementation</p> <p>EU Com 698 (8) states “Some member states say it is difficult to apply the Directive because its terms are too general... request non-binding information”</p>	<p>Ensure revised regulations adequately define and are more precise.</p>	<p>The non-binding guidance is presumably intended to provide good practice implementation recommendations which are not mandatory. Its status in GB, however, will need to be clarified.</p>
3	<p>Confusing terminology</p>	<p>EU Com 698</p> <p>Does “Supervision” equate to management?</p> <p>Is ‘employer’ only intended to apply to contractors?</p>	<p>Clarify by definitions</p>	

Ref	Issue	Evidence	Suggested Solution	Comments
4	Vague references	Use of words such as “as possible” “appropriate” “adequately”	Ensure that text incorporates the terminology used and understood under UK legislation and industry (supported by legal precedent), in particular “So far as is Reasonably practicable”	What is the status of Non-binding guidance?
5	Designers only have implied duties	Articles 4 & 5 place responsibilities on Client/ Project Supervisor to implement and Co-ordinator to co-ordinate implementation of design H&S matters but there are no reciprocal duties on designers to cooperate	Include a specific responsibility	There is no general duty in other existing UK legislation to require such co-operation. See section 2 of this report.
6	Competency is not covered	Eurogip report has identified that other member states have identified the need to include competency requirements particularly for Co-ordinators, but does not identify how such competence is defined	Include reference to competencies for all those acting, in whatever capacity, and include the over-riding principle of “no-one may accept an appointment unless they are competent” Do not be prescriptive, limit references in any guidance to professional and technical competence (including H&S)	This is a major issue as it has spawned a vast and bureaucratic “sub-industry” (principally corporate competencies). See section 4 of this report.
7	Co-ordination functions are related to two distinct stages	Directive does not appear to consider “progressive design” or design in parallel with execution as happens with much UK construction. There is nothing in the Directive to prevent the two occurring in parallel	Ensure that text clarifies and allows for and reference to progressive design, and design in parallel with execution phase. Ensure that text identifies that Project Preparation stage includes all preparation activity (eg design), at whatever time it takes place.	This requires clarity in both legislation wording and in associated code of practice / guidance. See section 3 of this report.

Ref	Issue	Evidence	Suggested Solution	Comments
8	Directive has no concept of sub-contractors or supply chain as exists in the UK	Dealt with in the Non-Binding guidance (2011) 2.3.7 which states that sub-contractors are to be treated as contractors.	Expand definitions to reflect UK industry. Incorporate as related in Non-binding guidance. Possibly through definitions.	The application requirement for 2 or more contractors is relevant in this regard.
9	Annex IV of the Directive does not include appear to include structural stability	No UK legislation other than CDM covers this explicitly. Note: Annex IV Part .1 does not appear to obviously relate to structural stability although Part B Section II12.2 contains a reference.	Ensure text includes specific reference to stability	Caution to ensure that under the current regulatory reform activity, legislation and associated ACoPs covering these areas are not "lost".
10	Directive only sets minimum requirements, some of which are below those in place in the UK	Treaty Article 118a provides for "...minimum requirements for encouraging improvements..." (see 92/57/EEC introduction). Framework Directive 89/391/EEC Article 1.3 states " This directive shall be without prejudice to existing or future national or Community provisions which are more favourable to protection of the safety and health of workers at work" Introductory paragraphs to the TCMS state: "... this Directive is an individual directive within the meaning of Article 16(1) of Council Directive 89/391/EEC ... "	Need to review the text to ensure that more favourable protection incorporated in UK legislation (eg CDM2007) is incorporated.	A view could be taken that this does not preclude national legislation being revoked even if it previously set a higher standard of protection.
11	Option of member states to derogate co-ordinator appointment for work which does not involve prescribed risks and is not notifiable	Article 3.1&2 This goes back to CDM1994 and the confusion and complexity, with associated non-compliance, which was amended (simplified) by CDM2007	Ensure clarity and simplicity	This allows for the application of proportionality for small scale "simple" projects which do not involve the prescribed risks

Ref	Issue	Evidence	Suggested Solution	Comments
12	Directive requirement for Plans is unduly onerous and beyond existing UK practice. No reference to design H&S information being provided to those who need it.	Article 3.2 The Directive wording is even more onerous than CDM 1994 as it places responsibilities on those who are not competent to provide such plans, is unduly bureaucratic and the scale is such that enforcement would be unmanageable. The requirement for plans on small projects is unrealistic and unenforceable CDM2007 removed the pre-construction stage Plan and replaced it with the more useful "pre-construction information".	Maintain CDM 2007 requirements. Require reasonable information to be provided as soon as is reasonably practicable to those who require it. (this will align with the pre-construction H&S Plan) Need to ensure clear responsibility on Client and/or project supervisor to provide the information.	Importance is to provide information to those who require it early on.
13	Application to domestic clients	The Directive does not permit exclusion of the application of client duties to 'domestic' clients. Subject of EC challenge of UK application.	"First point of contact" (eg designer, contractor) should be the "project supervisor" by default.	The implementation and enforcement of this will be extremely difficult.
14	Notification thresholds different	Article 3.3 Directive threshold is less onerous than CDM2007 in that it only applies if more than 20 workers. However, it is more onerous in that in that it applies to domestic projects above the threshold.		

The Role of the Designer

Designers Duties

There are no specific duties/responsibilities placed upon designers in the TMCS Directive. The only references to design are:

Article 4 - The client or project supervisor must take account of the principles of prevention when architectural, technical and/or organizational aspects are being decided, in order to plan the various items or stages of work.

Article 5 - The coordinator for the project preparation stage must coordinate the implementation of article 4.

The design related duties in the Directive are shown diagrammatically in figure 1 in the executive summary.

Design organisations and self-employed designers do have duties, under the Health and Safety at Work etc. Act 1974 (HSWA) section 3 to *'conduct their undertakings in such a way as to ensure, so far as is reasonably practicable, that persons not in their employment who may be affected by their activities are not thereby exposed to risks to their health or safety'*. An organisation's, or self-employed person's, activities include their design activities. There is a corresponding duty on individual employees under section 7 of the Act *'as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with'*. There is also a section 7 duty on individual employees *'to take reasonable care for the health and safety of other persons who may be affected by his acts or omissions at work'*.

The Management of Health and Safety at Work Regulations (MHSWR) regulation 3 imposes duties on employers and the self-employed *'make a suitable and sufficient assessment of the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking'*. MHSW regulation 4 furthermore requires employers to implement any preventive and protective measures on the basis of the principles of prevention. The ACoP to the MHSW regulations¹ clarifies this further as *'Employers and the self-employed need to introduce preventive and protective measures to control the risks identified by the risk assessment'*. Again the HSWA section 7 duty cascades cooperation in respect on the MHSW regulation requirements on employers down to individual employees.

It may be considered desirable to maintain the broader CDM duties for designers to 'confront' designers with their duties within the CDM Regulations and avoid having to rely on the more general, and tenuous, duties in the HSWA and MHSWR, although in view of those this would not necessarily be essential. However, if these broader CDM duties for designers are not included in the revised regulations it is considered essential to make the application of HSWA and MHSWR duties clear to designers via a revised CDM ACoP.

What would be lost in a TMCS 'copy out' in respect of designer duties, however, are:

- The CDM regulation 5 duties on all duty-holders to cooperate with all other duty-holders, ie. designer cooperation to allow the client/project supervisor and the coordinator to comply with their TCMS design related duties.
- The CDM regulation 11(5) duties relating to taking account of the provisions of the Workplace (Health, Safety and Welfare) Regulations 1992 which relate to the design of, and materials used in, the structure. Many, but not all, of the requirements of the WHSW Regs are covered in the Building Regulations. The WHSW Regs currently only impose duties on employers and others in control of premises. It would seem more appropriate that the requirement to take into account the WHSW Regs by designers should appear in the WHSW Regs themselves with simply a cross reference to this in CDM guidance notes. Such an approach would avoid accusations of 'gold plating' the TMCS Directive.
- The CDM regulation 11(6) duties relating to the provision of suitable and sufficient pre-construction information. The requirement in the TMCS Directive relating to the preparation of H&S plan is not sufficiently clear to determine if this would include relevant design information, etc.

These three issues do not appear to be addressed in other legislation although it would be possible to include contractual requirements to address these issues.

¹ It should be noted that the ACoP relating to the MHSW Regulations is currently being reviewed by the HSE.

Wider Roles for Designers

Under the TMCS Directive clients may appoint a 'project supervisor' to act on their behalf in respect of all or any of the client's duties. This option is likely to be especially attractive to 'one off' or 'occasional' clients. The client and/or project supervisor duties include:

- appointing one or more coordinators for safety and health matters;
- ensuring a H&S Plan is prepared prior to the setting up of a construction site;
- notifying specific information about the project to the competent authority;
- taking account of the principles of prevention during the various stages of designing and preparing the project.

It is not considered necessary to 'invent' a new role within the UK CDM framework to undertake the project supervisor duties as it is considered appropriate that the project supervisor role could be undertaken by either the lead designer or the project manager depending upon the contractual arrangements made by the client.

The Directive requires the appointment of one or more coordinators with specific duties in relation to the project preparation stage and the project execution stage. The project preparation stage duties include:

- coordinating the implementation of the application of the principles of prevention during the various stages of designing and preparing the project;
- drawing up, or causing to be drawn up, a safety and health plan setting out the rules applicable to the construction site and including specific measures concerning work which falls within specified categories set out in the Directive;
- preparing a file for the project containing relevant safety and health information to be taken into account during any subsequent works.

The project preparation stage coordinator role could also be undertaken by either the lead designer provided that they have the necessary in-house expertise. They could bring in additional, possibly external, competent resources or experts as necessary to assist them in discharging these duties. This approach would avoid the problems currently arising due to the late appointment of CDM-Cs and would help ensure that H&S considerations and coordination were just part of the overall design considerations and coordination.

Summary of Conclusions in Respect of the Designer Role

There are no direct duties imposed on designers in the TMCS Directive although the general duties of designers towards others affected by their designs, including the application of the principles of prevention, are covered in the HSW Act and MHSW Regulations. However, these designer duties need to be emphasised either through specific duties in the CDM Regulations or an accompanying ACoP to the CDM Regulations.

Specific requirements need to be included in the CDM Regulations, or an accompanying ACoP to the CDM Regulations, in respect of cooperation and the provision of suitable and sufficient pre-construction information. These specific requirements need to encompass cooperation and input from all designers.

It is not necessary to establish separate duty-holders to carry out the 'project supervisor' and 'coordinators' functions identified in the Directive. Lead designers or project managers and main contractors could carry out the relevant functions unless alternative contract arrangements are made. Where such organisations/individuals do not have the necessary expertise/competence to carry out these functions in-house they would be expected to appoint appropriate competent 'experts' to assist them.

Coordination

Co-ordination and the TMCS Directive

The TMCS Directive (92/157/EEC) requires member states to create legislation to address minimum requirements relating to construction safety and health. To deliver the responses to the technical minimum requirements (Annex IV) the directive provides roles for the following:-

- Client (and/or)
- Project Supervisor
- Co-ordinator for Preparations Stage Safety and Health matters (CPSH)
- Co-ordinator for Execution Stage Safety and Health matters (CESH)

These roles respond to the delivery of the objectives of the directive utilising the principles of prevention from the framework directive (89/391/EEC). The roles concern, in effect, the supervision and co-ordination of activities to enable the delivery of effective construction health and safety risk management.

There will always be a Client.

The TMCS directive allows the Client to appoint a Project Supervisor for a project,

A CPSH is required for projects with more than one contractor,

A CESH is required for projects with more than one contractor.

Meeting the Directive objectives – Issues and opportunities

There can be no doubt that the CDM Regulations 1994 and 2007 have achieved a great deal.

In the Executive Summary to the HSE Frontline Report (RR920; 2012) (reviewing the Objectives determined for setting CDM2007) Objective 4 includes the following summary comments on co-ordination:

Strengthening the requirements regarding coordination and cooperation, particularly between designers and contractors – to encourage more integration

What works well with CDM 2007:-

- *Early contractor involvement is beneficial when it happens*
- *Good Coordinators with relevant skills and experience can make a difference*

What does not work so well with CDM 2007:-

- *The term 'early appointment' needs to be defined better to prevent the late appointment of Coordinators limiting the impact of the role*
- *Lack of Coordinator involvement during the construction phase*
- *Designers do not have sufficient understanding of construction processes*
- *Multiple designers can lead to a lack of coordination*
- *Integrated risk management is typically not addressed leading to risks being addressed in isolation*
- *The quality of coordination is variable*

As a "Project" the delivery of the requirements of 92/57/EEC has, mostly, been a success story for the UK construction industry in its pursuit of improvements to construction safety risk management.

Even under "copy-out" the principles of the TMCS approach that have created the construction safety landscape that we have developed since 1995 will remain.

The CDM Regulations have been a success because they have provided a model capable of use on all construction projects as a template that applies common sense project management principles.

Under copy-out of the directive does the "UK" template for the delivery of co-ordination need to change? Much depends on the construct of the "new CDM" model and who are given the roles and whether they are empowered to deliver co-ordination.

In re-working the directive the fundamentals of effective co-ordination should not be sacrificed on the altar of “copy-out”. It is clear that in the (CDM2007) response to the directive there is little or no “gold plating” of co-ordination activities.

A significant purpose of TMCS must be to improve construction safety and health through the effective communication and delivery of individual and shared roles.

Strictly, the TMCS sees this as relationships between the Client (or Project Supervisor) and the two directive defined Safety and Health Co-ordinators.

In “copying out” the absolute of co-ordination the question to address is how best to deliver the co-ordination of health and safety in all projects. This is a fundamental point. Many larger projects, major contractors or major design practices already achieve success and good practice. These experiences, and the models used would not be readily replicated on the (by majority) large number of “smaller projects”.

In making recommendations on the next “CDM Generation” of Co-ordination we have to satisfy the needs of all project sizes to meet the revised, practical duties. In principle therefore the TMCS directive sees specific appointments on co-ordination to be made, and therefore in place, at all times during the project. This would be for projects with more than one contractor on site including, technically, domestic client projects too (the consequence of the Nussbaumer case). And to be clear in “copy-out” this means the equivalent of a Project Supervisor, CPSH and CESH.

Of course co-ordination should be a matter for all individuals in any project team (refer to CDM2007 Regs 5 and 6 on co-operation and co-ordination) however the process has to be led, monitored and often occasionally cajoled and executed throughout the project lifecycle from inception to completion. This is presumably why the TMCS calls for specific appointments.

Other “watch points” when seeking better co-ordination:-

1. The adopted model needs to ensure that the co-ordination of health related issues are given a high priority.
2. That the model chosen has to work for small projects (including small contractor and small design organisations).
3. The distinction between “Appointment” and delivery must be made.
4. What was good or bad about the “94” model and the Client’s Agent role?
5. Looking across to the Republic of Ireland’s experience we need to bear in mind that they are likely to change their Regulations possibly looking to the current UK model for some inspiration.
6. If the draft Regulations suggest “Design phase” and “Construction phase” appointments the historical response and willingness, or lack thereof, to take on board co-ordination under CDM94 and CDM07 needs to be borne in mind.

Models and conclusions

Under copy-out (of the revised Regulations produced for CDM2014) co-ordination has to be a requirement.

A key issue highlighted in the HSE’s Evaluation of CDM2007 was that to be more effective the required duty holders need to be in place at the appropriate time to make the right impact. In other words early appointment of the co-ordinator(s) needs to be made a much tighter, specific requirement under CDM2014.

In summary the Directive requires these co-ordination duty holders:-

- Project Supervisor (or Client)
- Preparations Stage Co-ordinator
- Execution Stage Co-ordinator

In meeting the directive this can be packaged in several ways, but overall the recommendation taken forward by the CIC Health and Safety Committee needs to be workable, effective and achievable for the whole UK construction sector, not just a part of it.

These are the Appointment models suggested:

Model A:

- Project Supervisor functions carried out as a specific appointment independent of the co-ordinator appointments.
- A Preparations Stage Co-ordinator as a specific appointment acting independently of the Project Supervisor and Execution Stage Co-ordinator.
- An Execution Stage Co-ordinator as a specific appointment acting independently of the Project Supervisor and Preparations Stage Co-ordinator.

Model B:

- Project Supervisor functions carried out as a specific appointment independent of the co-ordinator appointments.
- A Combined Preparations and Execution Stage Co-ordinator as a specific appointment acting independently of the Project Supervisor.

Model C:

- Project Supervisor and Preparations Stage Co-ordinator functions as a combined appointment, acting independently of the Execution Stage Co-ordinator.
- An Execution Stage Co-ordinator as a specific appointment acting independently of the Project Supervisor and Preparations Stage Co-ordinator.

Model D:

- Project Supervisor and Execution Stage Co-ordinator functions as a combined appointment, acting independently of the Preparations Stage Co-ordinator.
- An Preparations Stage Co-ordinator as a specific appointment acting independently of the Project Supervisor and Execution Stage Co-ordinator.

Model E:

- Project Supervisor Preparations Stage functions and Preparations Stage Co-ordinator functions as a combined appointment, acting independently of the Execution Stage Project Supervisor and Co-ordinator.
- Project Supervisor Execution Stage functions and Execution Stage Co-ordinator functions as a combined appointment, acting independently of the Preparations Stage Project Supervisor and Co-ordinator

Notes:

- a. It is likely, under copy-out principles, that the current CDM2007 Reg4 competence duty will not be carried forward in the re-write.
- b. The requirement (in consumer protection terms at the very least) will be for the market to have available suitably identifiable and capable individuals to provide the necessary resource to deliver the PS and coordination functions in any of the Models above.
- c. The industry will need to be clear about its delivery of any of the co-ordination models and the adoption of appropriate performance standards or practices.

Competence - considerations on the implications for designers should the requirements of Regulation 4 be removed from the Regulations

Summary

Having considered this issue the CDM Review Group feel that the industry needs assurance of designers' competence solely through their professional membership. However, generally the industry does not currently accept this. Also, we do not believe that a link between professional membership and designer competence would generally be used in enforcement action. If the link to the Management Regs is accepted and designers are to be the "competent persons" to assist design organisations with the assessment of their design undertaking, then attention needs to be given to the requirement for designers to have "sufficient training and experience or knowledge and other qualities". We understand that standards of H&S knowledge are currently being discussed and drafted that may set out recommendation to assist professional bodies understand what may be needed for their members to demonstrate that they have a required level of competence. This would need to be adopted by professional bodies for their "normal" routes to membership and any required additional professional training would need to satisfy the requirement for "sufficient training". We also think that there is a need to develop the current understanding of what it means to be competent and so the recommendations in RR877 on a definition of "new competence" would need to be incorporated. So, the WG invite the CIC H&S Committee to consider the following:-

Aim – make membership of professional institutions recognition of an assurance of individual designers' personal level of competence to undertake design H&S risk management.

Suggested strategy:-

- a. Develop a working group that have membership from all leading professional bodies that have an interest in construction design and/or H&S risk management (need to embrace IOSH and APS)
- b. This should be under the leadership of CIC and work in a similar manner to the CIC BIM Forum
- c. The purpose of the CIC Competence Forum should be to develop a voluntary code of good practice for professional bodies so that their "normal" routes to membership or subsequent professional development provide a demonstration that members have achieved a level of competence for design H&S risk management, as defined in the code
- d. There would need to be a degree of independent verification that the codes were being applied by the institutions
- e. The development and verification would need to be sufficiently transparent that it would encourage confidence in the process by HSE, the industry and society at large.

Not wishing to pre-judge the considerations and outcome from such a body but we think that design professionals may need to accept that there is a need for specific training required for design risk management, as required by Management Regs 7 and 13, that goes beyond what is currently provided by their existing degree courses. This would be particularly relevant for designers who are not members of professional bodies and thereby not required through their membership of such bodies to acquire/maintain specific risk management knowledge. Contractors have accepted that in order to equip site manager for their H&S responsibilities additional and specific training is required and that this is regularly reviewed and refresher training is required. Potentially, design risk management courses could mirror this set up. Again, this is something that could be established, managed and accredited by CIC or a collective of leading design institutions.

Design input is incredibly broad and encompasses many individuals who are not members of professional Institutions and indeed many such individuals work for design consultancy practices. The working group have not considered the implications for this group of designers as this is a complex issue for which no easy solution can be seen at this stage. Many consultancy practices already address this issue through the provision of training. This is an area that will need to be considered and addressed.

Conclusions drawn from our investigations

- a. HSE will not be able to include the requirements of Reg 4 (competence) under a “copy out” regime
- b. Robens committee identified that there is too much law and not enough emphasis on personal responsibility
- c. Robens committee thought that “industry” was more than capable of drawing up voluntary codes of good working practice; such codes would need to be “recognised” to permit them to be quoted in enforcement matters
- d. It is likely that the HSE will point to the Management Regs as evidence of standards not being reduced for designers and design practices
- e. Management Reg 3 requires employers (Design Companies) to make a suitable and sufficient assessment of the risks to H&S of persons not employed by him arising out of his undertaking (ie the design)
- f. Management Reg 4 requires that when assessments require preventive and protective measures these will follow the hierarchical principles set out in schedule 1
- g. Management Reg 7 states that employers (design organisations) need to appoint one or more competent persons to assist him with his business. To be competent this person needs sufficient training and experience or knowledge and other qualities.
- h. Management Reg 13 states that employers shall, in entrusting tasks to employees, take account of the capabilities as regards health and safety and ensure that employees are provided with adequate health and safety training.
- i. The ACoP to the Management Regs places responsibility upon managers of workers to be aware of legislation and to be competent to manage H&S effectively
- j. Existing CDM Reg 4. 1)b) states that no person shall accept an appointment unless they are competent – this requires personal responsibility.
- k. The ACoP states that competence is a mixture of knowledge and sufficient experience and ability.
- l. The ACoP states that membership of professional bodies is an indication of sufficient task knowledge and ability to recognise H&S issues.
- m. RR877 suggests that there is a need for a new definition of competence
- n. RR877 suggests that there is a need for a card registration authority as an independent body
- o. Routes to professional membership requires a period of experience (initial professional development) to acquire skills and professional approach needed to practise, however,
- p. Standards are being drafted to allow institution members to demonstrate a defined level of competency in H&S risk management within the design and construction process

Discussion based on the investigation

- a. Robens and the existing CDM Regulations recognise that designers can and must take personal responsibility
- b. However, there is currently no voluntary code of what good practice should look like for the role of designer
- c. Being a member of a professional institution is an indicator of sufficient knowledge and experience but is it sufficient to satisfy the Management Regs 7 and 13 requirements for sufficient training and experience or knowledge and other qualities?
- d. However, generally “normal” routes to professional membership are not sufficient for the industry to accept that they provide the necessary “defined level” of competency and do not include “sufficient training” as would be required by Management Regs 7 and 13.
- e. There is a need to more properly define and extend the industry’s current understanding of what it means to be “competent” and this would need to include a definition of “other qualities” as required by Management Reg 7
- f. Competence must be seen as a qualification or professional standard and not be confused with “cards”. Therefore a card registration authority is not a priority and probably not achievable through this work stream.

See Appendix 3 for more background information on competency.

Appendices – Additional Background Information

Appendix A - Directive 92/57/EEC Comparison with GB Construction (Design & Management) Regulations 2007

Abbreviations: PS = Project supervisor (Directive 92/57/EEC); CDM-C = CDM Co-ordinator (CDM2007); PC = Principal Contractor (CDM2007)

Subject Area	Directive 92/57/EEC	CDM2007	Implications / Comments
Definitions / Interpretation	<p>Articles 2</p> <p>Definitions limited to 'temporary or mobile construction sites'; 'client'; 'project supervisor'; 'self-employed person'; 'coordinator for safety and health matters at the project preparations stage' and 'coordinator for safety and health matters at the project execution stage'.</p>	<p>Regulation 2</p> <p>More extensive list of definitions.</p>	<p>The Non-binding guide to good practice for understanding and implementing Directive 92/57/EEC "Construction sites" provides help in interpretation.</p>
Application (Subject)	<p>Article 1</p> <p>Applies to any [<i>project involving a</i>] construction site at which building or civil engineering works are carried out; a non-exhaustive list of such works is given in Annex I and includes excavation, earthworks, construction, assembly and disassembly of prefabricated elements, conversion or fitting-out, alterations, renovation, repairs, dismantling, demolition, upkeep, maintenance - painting and cleaning work, and drainage</p> <p>Excludes drilling and extraction in the extractive industries.</p>	<p>Regulation 3</p> <p>Applies to engineering construction work, including:</p> <p>(a) the construction, alteration, conversion, fitting out, commissioning, renovation, repair, upkeep, redecoration or other maintenance (including cleaning which involves the use of water or an abrasive at high pressure or the use of corrosive or toxic substances), decommissioning, demolition or dismantling of a structure;</p> <p>(b) the preparation for an intended structure, including site clearance, exploration, investigation (but not site survey) and excavation, and the clearance or preparation of the site or structure for use or occupation at its conclusion;</p> <p>(c) the assembly on site of prefabricated elements to form a structure or the disassembly on site of prefabricated elements which, immediately before such disassembly, formed a structure;</p> <p>(d) the removal of a structure or of any product or waste resulting from demolition or dismantling of a structure or from disassembly of prefabricated elements which immediately before such disassembly formed such a structure; and</p> <p>(e) the installation, commissioning, maintenance, repair or removal of mechanical, electrical, gas, compressed air, hydraulic, telecommunications, computer or similar services which are normally fixed within or to a structure,</p> <p>Does not include the exploration for or extraction of mineral resources ...</p>	

Subject Area	Directive 92/57/EEC	CDM2007	Implications / Comments
Notification	<p>Article 3(3) Notification is by Client or PS Additional requirements:</p> <ul style="list-style-type: none"> ▪ Name/address of PS(s) 	<p>Regulation 21 Notification is by CDM-C. Additional / amended requirements:</p> <ul style="list-style-type: none"> ▪ CDM requirements add 'name of LA'. ▪ Brief description of project / construction work whereas Directive just asks for 'type of project'. ▪ CDM asks for names/addresses of designers. ▪ CDM requires declaration by clients that they are aware of their CDM duties. 	<p><i>Notification under the Directive is by client or PS and not by (CDM-)coordinator.</i> <i>No requirement in Directive for notification of names of designers.</i> <i>No requirement for declaration by clients.</i></p>
Appointments	<p>Article 3(1) Client or PS to appoint one or more coordinators for all projects where more than one contractor</p>	<p>Regulation 14 Client to appoint CDM-C & PC for notifiable projects only</p>	<p><i>Non-binding guidance states that sub-contractors should be treated the same as contractors for the purpose of considering the number of contractors!</i> <i>Coordinators required on non-notifiable projects if more than one contractor / sub-contractor.</i> <i>Unclear whether or not the PS is appointed or a 'de facto' role. Directive does not require the appointment of a PS although the non-binding guidance states that the client may 'appoint' a PS if they so wish.</i> <i>Directive allows for the PS to appoint the coordinators.</i> <i>The appointment of a design/preparation stage coordinator dictated by the number of contractors and not the number of designers!</i></p>

Subject Area	Directive 92/57/EEC	CDM2007	Implications / Comments
Client(s)	<p>Articles 3 & 4</p> <p>Responsibilities of either the client or PS to:</p> <ul style="list-style-type: none"> ▪ appoint coordinators; ▪ ensure H&S Plan prepared; ▪ notify; and ▪ take account of the principles of prevention during the various stages of designing and preparing the project when: <ul style="list-style-type: none"> - architectural, technical and/or organizational aspects are being decided, in order to plan the various items or stages of work which are to take place simultaneously or in succession, - estimating the period required for completing such work or work stages. Account shall also be taken, each time this appears necessary, of all safety and health plans and of files. 	<p>Regulations 8, 9, 14, 15, 16 & 17</p> <p>Multiple clients may elect single client to accept the duties.</p> <p>Duties of client include:</p> <ul style="list-style-type: none"> ▪ check competence and resources of all appointees; ▪ ensure there are suitable management arrangements for the project including welfare facilities; ▪ allow sufficient time and resources for all stages; ▪ provide pre-construction information to designers and contractors; <p>and on notifiable projects:</p> <ul style="list-style-type: none"> ▪ appoint CDM co-ordinator; ▪ appoint principal contractor; ▪ make sure that the construction phase does not start unless there are suitable welfare facilities, and construction phase plan in place; ▪ provide information relating to the H&S file to the CDM co-ordinator; ▪ retain and provide access to the H&S file. 	<p><i>Client duties under the Directive apply to domestic work if more than one contractor / sub-contractor with no national exemption permitted.</i></p> <p><i>Unclear in the Directive what determines whether client or PS take on these duties, but the non-binding guidance states that they should agree between themselves who is responsible for each of the duties.</i></p> <p><i>Full set of principles of prevention refers to those set out in the Framework Directive and are not simply ERIC.</i></p> <p><i>Directive allows for there to be more than one client. The non-binding guidance states that it is good practice, however, for agreeing in writing that one client will take the lead on coordinating the client functions.</i></p>
Project Supervisor(s)	<p>Article 2 (definition) and articles 3 & 4</p> <p>The PS is defined as a natural or legal person responsible for the design and/or execution and/or supervision of the execution of a project, acting on behalf of the client.</p> <p>Can take on all or some of the clients' functions.</p>	<p>No such role identified under the CDM Regulations</p>	<p><i>Appointment of PS is optional but functions are carried out by client(s) if PS is not identified / appointed – see ‘appointments’.</i></p> <p><i>Implications of taking on some of the PS functions could be onerous without adequate authority to act on behalf of the client.</i></p> <p><i>Allows for either all or only certain functions to be delegated by client(s) to a PS. Partial delegation would need to be very clearly defined.</i></p> <p><i>Unclear why differentiation between ‘execution’ and ‘supervision of the execution’.</i></p> <p><i>It is unclear whether there is only one overall PS or one for each of the different stages of the project, ie. one for design, one for execution and/or one for the supervision of the execution. Non-binding guidance uses plural, implying more than one.</i></p> <p><i>Pragmatically this could be the lead designer or a project manager for the design and a main/management contractor for the execution.</i></p>

Subject Area	Directive 92/57/EEC	CDM2007	Implications / Comments
Designers / design	<p>No designer role specifically identified in the Directive</p> <p>Client or PS to take account of the principles of prevention when architectural, technical and/or organizational aspects are being decided, in order to plan the various items or stages of work which are to take place simultaneously or in succession (article 4)</p>	<p>Regulations 11, (12) & 18</p> <p>Designers:</p> <ul style="list-style-type: none"> ▪ not to start work until they ensure that client is aware of client's duties; ▪ SFAIRP, taking into account 'other relevant design considerations', in preparing design, to eliminate hazards and reduce risks from remaining hazards, collective measures priority over individual ones; ▪ provide sufficient information about the design that will allow other duty-holders to comply with their duties; ▪ take account of WHSW Regulations in the design; <p>and on notifiable projects:</p> <ul style="list-style-type: none"> ▪ check client has appointed a CDM co-ordinator before progressing design beyond initial design stage; ▪ provide relevant information to CDM-C to allow CDM-C to comply with their duties, including providing any information needed for the health and safety file. 	<p><i>No designer functions or duties mentioned in the Directive. However, the PS is defined as someone responsible for the design (amongst other things).</i></p> <p><i>The non-binding guidance covers the various categories of designers and interprets the Directive as requiring them to apply the principles of prevention.</i></p> <p><i>No specific requirement in Directive for providing sufficient information about the design.</i></p> <p><i>In practice if requirements on designers are not set down in the legislation then this would need to be addressed through contractual obligations in order to ensure that the client, the PS and the coordinator for the project preparation stage can meet their obligations in respect of ensuing and coordinating the application of the principles of prevention in the design and the provision of relevant design information, etc.</i></p> <p><i>There would be no requirement on designers to make the client aware of client's duties.</i></p> <p><i>There would be no limitation on designers progressing the design beyond feasibility stage without a coordinator being appointed.</i></p>

Subject Area	Directive 92/57/EEC	CDM2007	Implications / Comments
<p>Coordinator - project preparation</p>	<p>Article 5</p> <p>Coordinate implementation of article 4 requirements, ie. the application of the principles of prevention during the design and preparation stage.</p> <p>Draw up, or arrange to be drawn up, a H&S plan including specific measures concerning annex II work (eg. work involving earthworks, work at height, hazardous substances, radiation, HV power lines, drowning risk, tunnelling, heavy prefabricated components, etc).</p> <p>Prepare a file containing relevant H&S information to be taken into account during any subsequent works.</p>	<p>CDM-C duties Regulations 20 & 21</p> <p>Advice and assistance clients to comply with their duties, including assessing competence of appointees.</p> <p>Notify the project.</p> <p>Ensure that adequate arrangement in place to facilitate:</p> <ul style="list-style-type: none"> ▪ the co-ordination H&S in design work, planning and other preparation for construction; ▪ the application of the principles of prevention. <p>Identify and collect pre-construction information and advise the client if surveys required to fill significant gaps.</p> <p>Provide relevant preconstruction information to designers and contractors.</p> <p>Liaise with PC regarding preparation of construction phase H&S plan.</p> <p>Take reasonable steps to ensure:</p> <ul style="list-style-type: none"> ▪ that designers comply with their CDM duties; ▪ coordination between designers; ▪ the preparation or updating of a H&S file. <p>Pass the H&S file to the client at the end of the project.</p>	<p><i>Notification under the Directive is by client or PS not by CDM-C.</i></p> <p><i>Passing around relevant pre-construction information not really covered by Directive.</i></p> <p><i>Advising client about missing information not covered by Directive.</i></p> <p><i>It is considered by the WG that there would be benefit in ensuring that the design/preparation stage H&S coordinator was the same person/organisation as the overall design coordinator, ie. the lead designer or a project manager, rather than H&S being treated as a bolt on to the design considerations. Such a person/organisation could be required to be competent to undertake the H&S coordination, if necessary, by employing the services of competent experts.</i></p>

Subject Area	Directive 92/57/EEC	CDM2007	Implications / Comments
<p>Coordinator - project execution</p>	<p>Articles 6 & 8</p> <p>Coordinate the implementation of the principles of prevention and safety when technical and organisational decisions are being made during planning of work.</p> <p>Coordinate various employers duties under the Framework Directive requirements set out in article 8, eg:</p> <ul style="list-style-type: none"> ▪ good site order & cleanliness; ▪ safe access/egress and movement on site; ▪ materials handling; ▪ maintenance & checking of equipment; ▪ demarcation and laying out of storage areas; ▪ removal of dangerous materials; ▪ storage, disposal & removal of waste & debris; ▪ adaptation of the programme to suit site progress; ▪ cooperation between employers (and SE persons); ▪ interaction with other industrial activities on, and in the vicinity of, the site. 	<p>Principal Contractors duties Regulations 22, 23 & 24</p> <p>Plan, manage & monitor the construction phase to ensure, SFAIRP, it is carried out safely and without risk to health including:</p> <ul style="list-style-type: none"> ▪ facilitating cooperation and coordination between relevant parties; ▪ the application of the principles of prevention. <p>Liaise with the CDM-C regarding cooperation with designers during the construction phase.</p> <p>Ensure sufficient welfare facilities.</p> <p>Where necessary for H&S, draw up site rules.</p> <p>Give reasonable direction to contractors.</p> <p>Ensure that contractors are informed of the minimum amount of time for planning and preparation.</p> <p>Consult with contractors before finalising the H&S plan in relation to their activities.</p> <p>Provide relevant H&S plan and other information to contractors in sufficient time to allow them to prepare properly.</p> <p>Inform contractors of the information they need to provide to the CDM-C for inclusion in the H&S file.</p> <p>Display the notification on site.</p> <p>Take reasonable steps to prohibit unauthorised access onto site.</p> <p>Take reasonable steps to ensure that site workers receive:</p> <ul style="list-style-type: none"> ▪ a site induction; ▪ relevant information & training. <p>Before start of construction, prepare a construction phase H&S Plan and then from time to time review, update and refine this plan.</p> <p>Ensure that the H&S plan is implemented.</p> <p>Establish and maintain arrangements for the cooperation of, and consultation with, construction workers.</p>	<p><i>No specific duties in Directive requiring the project execution phase coordinator (eg. PC/MC) to prepare and implement a H&S plan. Instead it is a client or PS duty to ensure that one is prepared and the project preparations phase coordinator's duty draw one up or arrange for one to be drawn up.</i></p> <p><i>No specific duties in Directive on the project execution stage coordinator in respect of the H&S file. Such duties all lie with the project preparation stage coordinator.</i></p> <p><i>If the above requirements are not addressed through the legislation they will need to be addressed contractually.</i></p>

Subject Area	Directive 92/57/EEC	CDM2007	Implications / Comments
Contractors	Articles 9 & 10 Take measures to comply with the minimum requirement in Annex IV. Take account of directions from the project execution phase coordinator.	Regulations 13 & 19 Not included in this document as not relevant to preconstruction issues.	<i>Not addressed in WG exercise</i>
Principles of prevention	Article 4 The PS, or client, to take account of the principles of prevention set out in the Framework Directive during the various stages of designing and preparing the project.	Regulation 7 and appendix 7 Every duty-holder to take account of the principles of prevention which are the hierarchy of: <ul style="list-style-type: none"> ▪ Avoiding risk; ▪ Evaluating risks which can't be avoided; ▪ Combating risks at source; ▪ Adapting work to the individual; ▪ Adapting to technical progress; ▪ Replacing dangerous by non or less dangerous; ▪ Developing a coherent overall prevention policy; ▪ Giving priority to collective protection measures; ▪ Giving appropriate instruction to employees. All persons with duties relating to construction phase to, SFAIRP, ensure that the principles of prevention are applied in carrying out the construction work.	<i>Principles of prevention are the full principles as set out in the Framework Directive and are not simply ERIC.</i> <i>See previous notes re application of the principles to certain parties.</i>
Competence	Not addressed in the Directive	Regulation 4 / ACoP Appendix 4 No duty-holder to: <ul style="list-style-type: none"> ▪ appoint or engage a CDM co-ordinator, designer, principal contractor or contractor unless he has taken reasonable steps to ensure that the person to be appointed or engaged is competent; ▪ accept an appointment unless they are competent; ▪ arrange for, or instruct a worker to carry out or manage, design or construction work unless the worker is competent, or under the supervision of a competent person. 	<i>The competence of employees is addressed through the MHSW Regulations, ie. employers' to take account of capabilities when entrusting tasks to employees. Professional competence addressed through membership of relevant Institutions. Corporate competence not addressed elsewhere, except through voluntary accreditation.</i> <i>It is considered by the WG that the removal of corporate competence requirements on those doing the appointing would be a positive step in removing H&S legislation as the perceived driver of bureaucracy in this area.</i> <i>However, dropping the requirement not to accept an appointment unless competent would be seen by the WG as a detrimental step.</i>

Subject Area	Directive 92/57/EEC	CDM2007	Implications / Comments
Cooperation	<p>No general requirements in the Directive</p> <p>Requirement in article 6 for the construction phase coordination to organize cooperation between employers during the project execution phase.</p>	<p>Regulations 5, 22(a)(i), 24</p> <p>Every duty-holder to seek the cooperation of, and cooperate with, any other person connected with any project involving construction work at the same or an adjoining site so as to allow that person to comply with their CDM duties.</p> <p>Any person working under the control of another person to report anything which they are aware of that might endanger the health or safety of themselves or any other person.</p>	<p><i>No cooperation requirements in the Directive in respect of the project preparation phase.</i></p> <p><i>This again would need to be addressed through contractual obligations to ensure that coordinators can meet their obligations to coordinate the application of the principles of prevention and to ensure that the S&H plan and file are produced.</i></p>
Coordination	<p>Articles 5 & 6</p> <p>Coordinator for project preparation stage to coordinate implementation of article 4 requirements, ie. the application of the principles of prevention during the design and preparation stage.</p> <p>Coordinator for project execution stage to coordinate:</p> <ul style="list-style-type: none"> ▪ the implementation of the principles of prevention and safety when technical and organisational decisions are being made during planning of work; ▪ the various employers duties under the Framework Directive requirements set out in article 8. 	<p>Regulation 6, 22(a)(i)</p> <p>All duty-holders to co-ordinate their activities with one another in a manner which ensures, SFAIRP, the H&S of persons carrying out, or affect by, the construction work.</p>	<p><i>No general requirements in the Directive for parties to coordinate their activities with one another. The onus is on the coordinators to coordinate things. To do this the coordinators will need the cooperation of other parties – see above.</i></p>

Subject Area	Directive 92/57/EEC	CDM2007	Implications / Comments
H&S Plan	<p>No general requirements in the Directive, however, specific requirements in Articles 3, 5 & 6</p> <p>Client or PS to ensure that prior to the setting up of a construction site a safety and health plan is drawn up in accordance with Article 5.</p> <p>Coordinator for project preparation stage to draw up, or arrange to be drawn up, a H&S plan including specific measures concerning annex II work (eg. work involving earthworks, work at height, hazardous substances, radiation, HV power lines, drowning risk, tunnelling, heavy prefabricated components, etc).</p> <p>Coordinator for project execution stage to coordinate implementation of the relevant provisions in order to ensure that employers and, if necessary for the protection of workers, self-employed persons where required, follow the safety and health plan.</p>	<p>Regulation 23 / ACoP Appendices 2 & 3</p> <p>Clients to provide pre-construction information to designers and contractors.</p> <p>Designers to provide sufficient information about aspects of the design that will allow other duty-holders to comply with their duties.</p> <p>CDM-C to:</p> <ul style="list-style-type: none"> ▪ identify and collect pre-construction information and advise the client if surveys required to fill significant gaps; ▪ provide relevant preconstruction information to designers and contractors. <p>PC to prepare a construction phase H&S Plan before start of construction, and then from time to time review, update and refine this plan.</p> <p>PC to ensure that the H&S plan is implemented.</p> <p>Appendices 2 & 3 set out detailed issues for consideration for inclusion in pre-construction information pack and construction phase H&S plan respectively.</p>	<p><i>Back to a specific pre-construction H&S Plan rather than just pre-construction information.</i></p> <p><i>Onus for organising the H&S plan shifted to coordinator for project preparation stage.</i></p> <p><i>Need to compare specific requirements of issues to address as identified in the Directive with the CDM ACoP requirements in appendix 2 & 3.</i></p>

Subject Area	Directive 92/57/EEC	CDM2007	Implications / Comments
H&S File	<p>No general requirements in the Directive, however, specific requirements in Article 5</p> <p>Coordinator for project preparation stage to prepare a file containing relevant H&S information to be taken into account during any subsequent works.</p>	<p>Regulations 17, 18(2), 19(2)(a)(iii), 20(1)(e)&(f) and 22(1)(j)</p> <p>NB! Requirements apply to notifiable projects only.</p> <p>Client to:</p> <ul style="list-style-type: none"> ▪ provide relevant information for the H&S file to CDM-C; ▪ ensure that all relevant information for any specific site or structure is easily identifiable; ▪ keep the H&S file available for inspection; ▪ ensure that the H&S file is updated to incorporate any new information; ▪ pass on the H&S file if disposing of structure <p>Designers to provide sufficient information about the design, or its construction or maintenance, to enable the CDM-C to comply with their duties regarding the H&S file.</p> <p>CDM-C to:</p> <ul style="list-style-type: none"> ▪ prepare or update a H&S file containing information likely to be needed during any subsequent construction works; ▪ pass the H&S file onto the client at the end of the construction phase. <p>PC to identify to each contractor the information they need to supply to the CDM-C for inclusion in the H&S file.</p> <p>Contractors to promptly provide the PC with information identified for inclusion in the H&S file.</p>	<p><i>Unclear as to whether 'subsequent works' could be construed as including the construction of the current project.</i></p> <p><i>No specifics in the Directive beyond 'relevant H&S information'.</i></p>
Information for workers	<p>Article 11</p> <p>Workers and/or their representatives to be provided with comprehensible information of all the measures to be taken concerning their H&S on the site.</p>	<p>Regulations 13(4) & 22(2)</p> <p>Contractors to ensure that workers under their control are provide with relevant information and training including:</p> <ul style="list-style-type: none"> ▪ a site induction, if not provided by the PC ▪ information about risks to the health and safety; ▪ any site rules; ▪ procedures in event of serious or imminent danger; ▪ identity of person nominated to implement those procedures. <p>PC to take reasonable steps to ensure that site workers receive a site induction and relevant information & training.</p>	<p><i>Not to be addressed in WG exercise?</i></p>

Subject Area	Directive 92/57/EEC	CDM2007	Implications / Comments
Consultation and participation of workers	Article 12 Consultation and participation of workers and/or of their representatives to take place in accordance with Article 11 of the Framework Directive in respect of matters covered by Articles 6, 8 and 9 of this Directive, ensuring whenever necessary proper coordination between workers and/or workers' representatives in undertakings carrying out their activities at the workplace, having regard to the degree of risk and the size of the work site.	Regulation 24 PC to: <ul style="list-style-type: none"> ▪ make and maintain arrangements for worker cooperation in respect of health, safety & welfare; ▪ make and maintain arrangements for consultation with workers or their representatives; ▪ ensure workers or their representatives can inspect and take copies of information relating to the planning and management of the project or which might otherwise affect their health, safety & welfare. 	<i>Not to be addressed in WG exercise?</i>

Subject Area	Directive 92/57/EEC	CDM2007	Implications / Comments
Minimum safety and health requirements for construction sites	<p>Articles 9 & 10 and Annex IV</p> <p>Employer, etc obligations covering:</p> <ul style="list-style-type: none"> ▪ Stability and solidity ▪ Energy distribution installations ▪ Emergency routes and exits ▪ Fire detection and fire fighting ▪ Exposure to particular risks ▪ Falling objects ▪ Falls from a height ▪ Scaffolding and ladders ▪ Lifting equipment ▪ Excavating and materials-handling vehicles and machinery ▪ Installations, machinery, equipment ▪ Excavations, wells, underground works, tunnels and earthworks ▪ Demolition work ▪ Cofferdams and caissons ▪ Work on roofs ▪ Atmospheric influences ▪ Temperature ▪ Ventilation of indoor workplaces ▪ Floors, walls, ceilings, roofs, windows and skylights of indoor workrooms ▪ Room dimensions and air space in rooms ▪ Natural and artificial lighting of workstations, rooms ▪ Doors and gates ▪ Traffic routes & danger areas ▪ Loading bays and ramps ▪ Freedom of movement at the workstation ▪ First aid ▪ Changing rooms and lockers. ▪ Showers and washbasins ▪ Lavatories, washbasins and sanitary equipment ▪ Rest rooms and/or accommodation areas ▪ Pregnant women and nursing mothers ▪ Handicapped workers ▪ Miscellaneous provisions 	<p>Regulations 25 to 44 inclusive and Regulations 9(1)(b), 13(7), 22(1)(c) and schedule 2</p> <p>Regulations 25 to 44 duties apply to every contractor or person in control of construction work insofar as they relate to matters which are within their control. Also duty on every person at work on construction work to report any defect which he is aware may endanger the H&S of himself or another person. Issues covered are:</p> <ul style="list-style-type: none"> ▪ Safe places of work ▪ Good order and site security ▪ Stability of structures ▪ Demolition or dismantling ▪ Explosives ▪ Excavations ▪ Cofferdams and caissons ▪ Reports of inspections ▪ Energy distribution installations ▪ Prevention of drowning ▪ Traffic routes ▪ Vehicles ▪ Prevention of risk from fire etc. ▪ Emergency procedures ▪ Emergency routes and exits ▪ Fire detection and fire-fighting ▪ Fresh air ▪ Temperature and weather protection ▪ Lighting <p>Regulations 9, 13 & 22 refer to Schedule 2 covering welfare facilities, ie. Sanitary conveniences; Washing facilities; Drinking water; Changing rooms and lockers; and Facilities for rest.</p>	<p><i>Not addressed in WG exercise.</i></p> <p><i>May be issues regarding the full application of the Directive requirements as number of issues relating to indoor workplaces are not addressed in GB regulations applicable to construction sites, ie. issues such as room dimensions which are covered in the WHS&W Regs but those regs exclude construction site offices.</i></p> <p><i>Some issues such as pregnant women and handicapped workers are covered in other general GB legislations, eg. MHSW Regs.</i></p>

Appendix B – Full Text of TMCS Directive

Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

[Amended to incorporate corrigendums 1 and 2]

COUNCIL DIRECTIVE 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 118a thereof,

Having regard to the proposal from the Commission (1), submitted after consulting the Advisory Committee on Safety, Hygiene and Health Protection at Work,

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Article 118a of the Treaty provides that the Council shall adopt, by means of directives, minimum requirements for encouraging improvements, especially in the working environment, to ensure a better level of protection of the safety and health of workers;

Whereas, under the terms of that Article, those directives are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings;

Whereas the communication from the Commission on its programme concerning safety, hygiene and health at work (4) provides for the adoption of a Directive designed to guarantee the safety and health of workers at temporary or mobile construction sites;

Whereas, in its resolution of 21 December 1987 on safety, hygiene and health at work (5), the Council took note of the Commission's intention of submitting to the Council in the near future minimum requirements concerning temporary or mobile construction sites;

Whereas temporary or mobile construction sites constitute an area of activity that exposes workers to particularly high levels of risk;

Whereas unsatisfactory architectural and/or organizational options or poor planning of the works at the project preparation stage have played a role in more than half of the occupational accidents occurring on construction sites in the Community;

Whereas in each Member State the authorities responsible for safety and health at work must be informed, before the beginning of the works, of the execution of works the scale of which exceeds a certain threshold;

Whereas, when a project is being carried out, a large number of occupational accidents may be caused by inadequate coordination, particularly where various undertakings work simultaneously or in succession at the same temporary or mobile construction site;

Whereas it is therefore necessary to improve coordination between the various parties concerned at the project preparation stage and also when the work is being carried out;

Whereas compliance with the minimum requirements designed to guarantee a better standard of safety and health at temporary or mobile construction sites is essential to ensure the safety and health of workers;

Whereas, moreover, self-employed persons and employers, where they are personally engaged in work activity, may, through their activities on a temporary or mobile construction site, jeopardize the safety and health of workers;

Whereas it is therefore necessary to extend to self-employed persons and to employers where they are personally engaged in work activity on the site certain relevant provisions of Council Directive 89/655/EEC of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive) (6), and of Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (third individual Directive) (7);

Whereas this Directive is an individual Directive within the meaning of Article 16 (1) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (8); whereas, therefore, the provisions of the said Directive are fully applicable to temporary or mobile construction sites, without prejudice to more stringent and/or specific provisions contained in this Directive;

Whereas this Directive constitutes a practical step towards the achievement of the social dimension of the internal market with special reference to the subject matter of Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (9) and the subject matter covered by Council Directive 89/440/EEC of 18 July 1989 amending Directive 71/305/EEC concerning coordination of procedures for the award of public work contracts (10);

Whereas, pursuant to Council Decision 74/325/EEC (11), the Advisory Committee on Safety, Hygiene and Health Protection at Work is consulted by the Commission with a view to drawing up proposals in this field,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Subject

1. This Directive, which is the eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC, lays down minimum safety and health requirements for temporary or mobile construction sites, as defined in Article 2 (a).
2. This Directive shall not apply to drilling and extraction in the extractive industries within the meaning of Article 1 (2) of Council Decision 74/326/EEC of 27 June 1974 on the extension of the responsibilities of the Mines Safety and Health Commission to all mineral-extracting industries (12).
3. The provisions of Directive 89/391/EEC are fully applicable to the whole scope referred to in paragraph 1, without prejudice to more stringent and/or specific provisions contained in this Directive.

Article 2

Definitions

For the purposes of this Directive:

- (a) 'temporary or mobile construction sites' (hereinafter referred to as 'construction sites') means any construction site at which building or civil engineering works are carried out; a non-exhaustive list of such works is given in Annex I;
- (b) 'client' means any natural or legal person for whom a project is carried out;
- (c) 'project supervisor' means any natural or legal person responsible for the design and/or execution and/or supervision of the execution of a project, acting on behalf of the client;
- (d) 'self-employed person' means any person other than those referred to in Article 3 (a) and (b) of Directive 89/391/EEC whose professional activity contributes to the completion of a project;
- (e) 'coordinator for safety and health matters at the project preparations stage' means any natural or legal person entrusted by the client and/or project supervisor, during the project preparation stage, with performing the duties referred to in Article 5;
- (f) 'coordinator for safety and health matters at the project execution stage' means any natural or legal person entrusted by the client and/or project supervisor, during execution of the project, with performing the duties referred to in Article 6.

Article 3

Appointment of coordinators - Safety and health plan - Prior notice

1. The client or the project supervisor shall appoint one or more coordinators for safety and health matters, as defined in Article 2 (e) and (f), for any construction site on which more than one contractor is present.
2. The client or the project supervisor shall ensure that prior to the setting up of a construction site a safety and health plan is drawn up in accordance with Article 5 (b).
The Member States may, after consulting both management and the workforce, allow derogations from the provisions of the first paragraph, except where it is a question of:
 - work involving particular risks as listed in Annex II; or
 - work for which prior notice is required pursuant to paragraph 3 of this article.
3. In the case of constructions sites:
 - on which work is scheduled to last longer than 30 working days and on which more than 20 workers are occupied simultaneously, or
 - on which the volume of work is scheduled to exceed 500 person-days,

the client or the project supervisor shall communicate a prior notice drawn up in accordance with Annex III to the competent authorities before work starts.

The prior notice must be clearly displayed on the construction site and, if necessary, periodically updated.

Article 4

Project preparation stage: general principles

The project supervisor, or where appropriate the client, shall take account of the general principles of prevention concerning safety and health referred to in Directive 89/391/EEC during the various stages of designing and preparing the project, in particular:

- when architectural, technical and/or organizational aspects are being decided, in order to plan the various items or stages of work which are to take place simultaneously or in succession,
- when estimating the period required for completing such work or work stages. Account shall also be taken, each time this appears necessary, of all safety and health plans and of files drawn up in accordance with Article 5 (b) or (c) or adjusted in accordance with Article 6 (c).

Article 5

Project preparation stage: duties of coordinators

The coordinator(s) for safety and health matters during the project preparation stage appointed in accordance with Article 3 (1) shall:

- (a) coordinate implementation of the provisions of Article 4;
- (b) draw up, or cause to be drawn up, a safety and health plan setting out the rules applicable to the construction site concerned, taking into account where necessary the industrial activities taking place on the site; this plan must also include specific measures concerning work which falls within one or more of the categories of Annex II;
- (c) prepare a file appropriate to the characteristics of the project containing relevant safety and health information to be taken into account during any subsequent works.

Article 6

Project execution stage: duties of coordinators

The coordinator(s) for safety and health matters during the project execution stage appointed in accordance with Article 3 (1) shall:

- (a) coordinate implementation of the general principles of prevention and safety:
 - when technical and/or organizational aspects are being decided, in order to plan the various items or stages of work which are to take place simultaneously or in succession,
 - when estimating the period required for completing such work or work stages;
- (b) coordinate implementation of the relevant provisions in order to ensure that employers and, if necessary for the protection of workers, self-employed persons:
 - apply the principles referred to in Article 8 in a consistent manner,
 - where required, follow the safety and health plan referred to in Article 5 (b);
- (c) make, or cause to be made, any adjustments required to the safety and health plan referred to in Article 5 (b) and the file referred to in Article 5 (c) to take account of the progress of the work and any changes which have occurred;
- (d) organize cooperation between employers, including successive employers on the same site, coordination of their activities with a view to protecting workers and preventing accidents and occupational health hazards and reciprocal information as provided for in Article 6 (4) of Directive 89/391/EEC, ensuring that self-employed persons are brought into this process where necessary;
- (e) coordinate arrangements to check that the working procedures are being implemented correctly;
- (f) take the steps necessary to ensure that only authorized persons are allowed onto the construction site.

Article 7

Responsibilities of clients, project supervisors and employers

1. Where a client or project supervisor has appointed a coordinator or coordinators to perform the duties referred to in Articles 5 and 6, this does not relieve the client or project supervisor of his responsibilities in that respect.
2. The implementation of Articles 5 and 6, and of paragraph 1 of this Article shall not affect the principle of employers' responsibility as provided for in Directive 89/391/EEC.

Article 8

Implementation of Article 6 of Directive 89/391/EEC

When the work is being carried out, the principles set out in Article 6 of Directive 89/391/EEC shall be applied, in particular as regards:

- (a) keeping the construction site in good order and in a satisfactory state of cleanliness;
- (b) choosing the location of workstations bearing in mind how access to these workplaces is obtained, and determining routes or areas for the passage and movement and equipment;

- (c) the conditions under which various materials are handled;
- (d) technical maintenance, pre-commissioning checks and regular checks on installations and equipment with a view to correcting any faults which might affect the safety and health of workers;
- (e) the demarcation and laying-out of areas for the storage of various materials, in particular where dangerous materials or substances are concerned;
- (f) the conditions under which the dangerous materials used are removed;
- (g) the storage and disposal or removal of waste and debris;
- (h) the adaptation, based on progress made with the site, of the actual period to be allocated for the various types of work or work stages;
- (i) cooperation between employers and self-employed persons;
- (j) interaction with industrial activities at the place within which or in the vicinity of which the construction site is located.

Article 9

Obligations of employers

In order to preserve safety and health on the construction site, under the conditions set out in Article 6 and 7, employers shall:

- (a) in particular when implementing Article 8, take measures that are in line with the minimum requirements set out in Annex IV;
- (b) take into account directions from the coordinator(s) for safety and health matters.

Article 10

Obligations of other groups of persons

1. In order to preserve safety and health on the construction site, self-employed persons shall:

- (a) comply in particular with the following, mutatis mutandis:
 - (i) the requirements of Article 6 (4) and Article 13 of Directive 89/391/EEC and Article 8 and Annex IV of this Directive;
 - (ii) Article 4 of Directive 89/655/EEC and the relevant provisions of the Annex thereto;
 - (iii) Article 3, Article 4 (1) to (4) and (9) and Article 5 of Directive 89/656/EEC;
- (b) take into account directions from the coordinator(s) for safety and health matters.

2. In order to preserve safety and health on the site, where employers are personally engaged in work activity on the construction site, they shall:

- (a) comply in particular with the following, mutatis mutandis:
 - (i) Article 13 of Directive 89/391/EEC;
 - (ii) Article 4 of Directive 89/655/EEC and the relevant provisions of the Annex thereto;
 - (iii) Articles 3, 4 (1), (2), (3), (4), (9) and 5 of Directive 89/656/EEC;
- (b) take account of the comments of the coordinator(s) for safety and health.

Article 11

Information for workers

1. Without prejudice to Article 10 of Directive 89/391/EEC, workers and/or their representatives shall be informed of all the measures to be taken concerning their safety and health on the construction site.
2. The information must be comprehensible to the workers concerned.

Article 12

Consultation and participation of workers

Consultation and participation of workers and/or of their representatives shall take place in accordance with Article 11 of Directive 89/391/EEC on matters covered by Articles 6, 8 and 9 of this Directive, ensuring whenever necessary proper coordination between workers and/or workers' representatives in undertakings carrying out their activities at the workplace, having regard to the degree of risk and the size of the work site.

Article 13

Amendment of the Annexes

1. Amendments to Annexes I, II and III shall be adopted by the Council in accordance with the procedure laid down in Article 118a of the Treaty.

2. Strictly technical adaptations of Annex IV as a result of:

- the adoption of directives on technical harmonization and standardization regarding temporary or mobile construction sites, and/or
- technical progress, changes in international regulations or specifications or knowledge in the field of temporary or mobile construction sites

shall be adopted in accordance with the procedure laid down in Article 17 of Directive 89/391/EEC.

Article 14

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1993 at the latest.

They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

3. Member States shall communicate to the Commission the texts of the provisions of national law which they have already adopted or adopt in the field governed by this Directive.

4. Member States shall report to the Commission every four years on the practical implementation of the provisions of this Directive, indicating the points of view of employers and workers.

The Commission shall inform the European Parliament, the Council, the Economic and Social Committee and the Advisory Committee on Safety, Hygiene and Health Protection at Work.

5. The Commission shall submit periodically to the European Parliament, the Council and the Economic and Social Committee a report on the implementation of this Directive, taking into account paragraphs 1, 2, 3 and 4.

Article 15

This Directive is addressed to the Member States.

Done at Luxembourg, 24 June 1992.

For the Council

The President

José da SILVA PENEDA

(1) OJ No C 213, 28. 8. 1990, p. 2 and OJ No C 112, 27. 4. 1991, p. 4. (2) OJ No C 78, 18. 3. 1990, p. 172 and OJ No C 150, 15. 6. 1992. (3) OJ No C 120, 6. 5. 1991, p. 24. (4) OJ No C 28, 3. 2. 1988, p. 3. (5) OJ No C 28, 3. 2. 1988, p. 1. (6) OJ No L 393, 30. 12. 1989, p. 13. (7) OJ No L 393, 30. 12. 1989, p. 18. (8) OJ No L 183, 29. 6. 1989, p. 1. (9) OJ No L 40, 11. 2. 1989, p. 12. (10) OJ No L 210, 21. 7. 1989, p. 1. Amended by Commission Decision 90/380/EEC (OJ No L 187, 19. 7. 1990, p. 55). (11) OJ No L 185, 9. 7. 1974, p. 15. Last amended by the 1985 Act of Accession. (12) OJ No L 185, 9. 7. 1974, p. 18.

ANNEX I

NON-EXHAUSTIVE LIST OF BUILDING AND CIVIL ENGINEERING WORKS REFERRED TO IN ARTICLE 2 (a) OF THE DIRECTIVE

1. Excavation
2. Earthworks
3. Construction
4. Assembly and disassembly of prefabricated elements
5. Conversion or fitting-out
6. Alterations
7. Renovation
8. Repairs
9. Dismantling
10. Demolition
11. Upkeep
12. Maintenance - Painting and cleaning work
13. Drainage

ANNEX II

NON-EXHAUSTIVE LIST OF WORK INVOLVING PARTICULAR RISKS TO THE SAFETY AND HEALTH OF WORKERS REFERRED TO IN ARTICLE 3 (2), SECOND PARAGRAPH OF THE DIRECTIVE

1. Work which puts workers at risk of burial under earthfalls, engulfment in swampland or falling from a height, where the risk is particularly aggravated by the nature of the work or processes used or by the environment at the place of work or site ⁽²⁾.
2. Work which puts workers at risk from chemical or biological substances constituting a particular danger to the safety and health of workers or involving a legal requirement for health monitoring.
3. Work with ionizing radiation requiring the designation of controlled or supervised areas as defined in Article 20 of Directive 80/836/Euratom ⁽³⁾.
4. Work near high voltage power lines.
5. Work exposing workers to the risk of drowning.
6. Work on wells, underground earthworks and tunnels.
7. Work carried out by divers having a system of air supply.
8. Work carried out by workers in caissons with a compressed-air atmosphere.
9. Work involving the use of explosives.
10. Work involving the assembly or dismantling of heavy prefabricated components.

² In implementing point 1, Member States have the option of setting figures for individual situations.

³ OJ No L 246, 17. 9. 1980, p. 1. Last amended by Directive 84/467/Euratom (OJ No L 265, 5. 10. 1984, p. 4).

ANNEX III

CONTENT OF THE PRIOR NOTICE REFERRED TO IN ARTICLE 3 (3), FIRST PARAGRAPH OF THE DIRECTIVE

1. Date of forwarding: .
.
2. Exact address of the construction site: .
.
3. Client(s) (name(s) and address(es)): .
.
4. Type of project: .
5. Project supervisor(s) (name(s) and address(es)):.
.
6. Safety and health coordinators(s) during the project preparation stage (name(s) and address(es)) .
.
7. Coordinator(s) for safety and health matters during the project execution stage (name(s) and address(es)):.
.
.
8. Date planned for start of work on the construction site:
9. Planned duration of work on the construction site: .
10. Estimated maximum number of workers on the construction site:
11. Planned number of contractors and self-employed persons on the construction site:.
.
12. Details of contractors already chosen: .
.
.
.
.

ANNEX IV

MINIMUM SAFETY AND HEALTH REQUIREMENTS FOR CONSTRUCTION SITES Referred to in Article 9 (a) and Article 10 (1) (a) (i) of the Directive

Preliminary remarks

The obligations laid down in this Annex apply wherever required by the features of the construction site, the activity, the circumstances or a hazard.

For the purposes of this Annex, 'rooms' covers, inter alia, hatted accommodation.

PART A GENERAL MINIMUM REQUIREMENTS FOR ON-SITE WORKPLACES

1. Stability and solidity

1.1. Materials, equipment and, more generally, any component which, when moving in any way, may affect the safety and health of workers must be stabilized in an appropriate and safe manner.

1.2. Access to any surface involving insufficiently resistant materials is not authorized unless appropriate equipment or means are provided to enable the work to be carried out safely.

2. Energy distribution installations

2.1. The installations must be designed, constructed and used so as not to present a fire or explosion hazard; persons must be adequately protected against the risk of electrocution caused by direct or indirect contact.

2.2. The design, construction and choice of equipment and protection devices must take account of the type and power of the energy distributed, external conditions and the competence of persons with access to parts of the installation.

3. Emergency routes and exits

3.1. Emergency routes and exits must remain clear and lead as directly as possible to a safe area.

3.2. In the event of danger, it must be possible for workers to evacuate all workstations quickly and as safely as possible.

3.3. The number, distribution and dimensions of emergency routes and exits depend on the use, equipment and dimensions of the site and of the rooms and the maximum number of persons that may be present.

3.4. Specific emergency routes and exits must be indicated by signs in accordance with the national regulations implementing Directive 77/576/EEC⁴.

Such signs must be sufficiently resistant and be placed at appropriate points.

3.5. Emergency routes and exits, and the traffic routes and doors giving access to them, must be free from obstruction so that they can be used at any time without hindrance.

3.6. Emergency routes and exits requiring illumination must be provided with emergency lighting of adequate intensity in case the lighting fails.

4. Fire detection and fire fighting

4.1. Depending of the characteristics of the site, the dimensions and use of the rooms, the on-site equipment, the physical and chemical properties of the substances present and the maximum potential number of people present, an adequate number of appropriate fire-fighting devices and, where required, fire detectors and alarm systems must be provided.

4.2. These fire-fighting devices, fire detectors and alarm systems must be regularly checked and maintained.

Appropriate tests and drills must take place at regular intervals.

4.3. Non-automatic fire-fighting equipment be easily accessible and simple to use.

The equipment must be indicated by signs in accordance with the national regulations implementing Directive 77/576/EEC.

Such signs must be sufficiently resistant and placed at appropriate points.

5. Ventilation

Steps shall be taken to ensure that there is sufficient fresh air, having regard to the working methods used and the physical demands placed on the workers.

If a forced ventilation system is used, it must be maintained in working order and must not expose workers to draughts which are harmful to health.

Any breakdown must be indicated by a control system where this is necessary for workers' health.

⁴ OJ No L 229, 7. 9. 1977, p. 12. Last amended by Directive 79/640/EEC (OJ No L 183, 19. 7. 1979, p. 1).

6. Exposure to particular risks

6.1. Workers must not be exposed to harmful levels of noise or to harmful external influences (e.g. gases, vapours, dust).

6.2. If workers have to enter an area where the atmosphere is liable to contain a toxic or harmful substance or to have an insufficient oxygen level or to be inflammable, the confined atmosphere must be monitored and appropriate steps taken to prevent any hazards.

6.3. A worker may not in any circumstances be exposed to a high-risk confined atmosphere.

He must at least be watched at all times from outside and all appropriate precautions must be taken to ensure that he can be assisted effectively and immediately.

7. Temperature

During working hours, the temperature must be appropriate for human beings, having regard to the working methods used and the physical demands placed on the workers.

8. Natural and artificial lighting of workstations, rooms and traffic routes on the site

8.1. Workstations, rooms and traffic routes must as far as possible have sufficient natural lighting and be provided with appropriate and sufficient artificial lighting at night and when natural daylight is inadequate; where necessary, portable light sources that are protected against impact must be used.

The colour of artificial light used must not alter or affect the perception of signals or signposts.

8.2. Lighting installations for rooms, workstations and traffic routes must be placed in such a way that there is no risk of accident to workers as a result of the type of lighting fitted.

8.3. Rooms, workstations and traffic routes where workers are especially exposed to risks in the event of [failure of artificial lighting](#) must be provided with emergency lighting of adequate intensity.

9. Doors and gates

9.1. Sliding doors must be fitted with a safety device to prevent them from being derailed and falling over.

9.2. Doors and gates opening upwards must be fitted with a mechanism to secure them against falling back.

9.3. Doors and gates along escape routes must be appropriately marked.

9.4. In the immediate vicinity of gates intended primarily for vehicle traffic, there must be doors for pedestrian traffic unless it is safe for pedestrians to cross; such doors must be clearly marked and kept free at all times.

9.5. Mechanical doors and gates must operate without any risk of accident to workers.

They must be fitted with emergency stop devices which are easily identifiable and accessible and, unless they open automatically in the event of a power-cut, it must be possible for them to be opened manually.

10. Traffic routes - danger areas

10.1. Traffic routes, including stairs, fixed ladders and loading bays and ramps, must be calculated, located, laid out and made negotiable to ensure easy, safe and appropriate access in such a way as not to endanger workers employed in the vicinity of these traffic routes.

10.2. Routes used for pedestrian traffic and/or goods traffic including those used for loading and unloading must be dimensioned in accordance with the number of potential users and the type of activity concerned.

If means of transport are used on traffic routes, a sufficient safety clearance or adequate protective devices must be provided for other site users.

Routes must be clearly marked, regularly checked and properly maintained.

10.3. Sufficient clearance must be allowed between vehicle traffic routes and doors, gates, passages for pedestrians, corridors and staircases.

10.4. If the site includes limited-access areas, these must be equipped with devices to prevent unauthorized workers from entering.

Appropriate measures must be taken to protect workers who are authorized to enter the danger areas.

Danger areas must be clearly signposted.

11. Loading bays and ramps

11.1. Loading bays and ramps must be suitable for the dimensions of the loads to be transported.

11.2. Loading bays must have at least one exit point.

11.3. Loading ramps must be sufficiently safe to prevent workers from falling off.

12. Freedom of movement at the workstation

The floor area at the workstation must be such as to allow workers sufficient freedom of movement to perform their work, taking account of any necessary equipment or appliances present.

13. First aid

13.1. The employer must ensure that first aid can be provided, and that the staff trained to provide it can be called upon, at any time.

Measures must be taken to ensure that workers who have had an accident or have suddenly been taken ill can be removed for medical treatment.

13.2. One or more first-aid rooms must be provided where the scale of the works or the types of activity being carried out so require.

13.3. First-aid rooms must be fitted with essential first-aid installations and equipment and be easily accessible to stretchers.

They must be signposted in accordance with the national regulations implementing Directive 77/576/EEC.

13.4. In addition, first-aid equipment must be available at all places where working conditions so require.

This equipment must be suitably marked and easily accessible.

The address and telephone number of the local emergency service must be clearly displayed.

14. Sanitary equipment

14.1. Changing rooms and lockers.

14.1.1. Appropriate changing rooms must be provided for workers if they have to wear special work clothes and if, for reasons of health or propriety, they cannot be expected to change in another area.

Changing rooms must be easily accessible, be of sufficient capacity and be provided with seating.

14.1.2. Changing rooms must be sufficiently large and have facilities to enable each worker, where necessary, to dry his working clothes as well as his own clothing and personal effects and to lock them away.

If circumstances so require (e.g. dangerous substances, humidity, dirt), facilities must be provided to enable working clothes to be kept in a place separate from workers' own clothes and personal effects.

14.1.3. Provisions must be made for separate changing rooms or separate use of changing rooms for men and women.

14.1.4. If changing rooms are not required as referred to in point 14.1.1, first paragraph, each worker must be provided with a place in which he can lock away his own clothes and personal effects.

14.2. Showers and washbasins

14.2.1. Suitable showers in sufficient numbers must be provided for workers if required by the nature of the work or for health reasons.

Provisions must be made for separate shower rooms or separate use of shower rooms for men and women.

14.2.2. The shower rooms must be sufficiently large to permit each worker to wash without hindrance in conditions of an appropriate standard of hygiene.

The showers must be equipped with hot and cold running water.

14.2.3. Where showers are not required under the first paragraph of 14.2.1, a sufficient number of suitable washbasins with running water (hot water if necessary) must be provided in the vicinity of the workstations and the changing rooms.

Provisions must be made for separate washbasins, or separate use of washbasins for men and women when so required for reasons of propriety.

14.2.4. Where the rooms housing, the showers or washbasins are separate from the changing rooms, there must be easy communication between the two.

14.3. Lavatories and washbasins

Special facilities with an adequate number of lavatories and washbasins must be provided for workers in the vicinity of workstations, rest rooms, changing rooms and rooms housing showers or washbasins.

Provision must be made for separate lavatories or separate use of lavatories for men and women.

15. Rest rooms and/or accommodation areas

15.1. Where the safety or health of workers, in particular because of the type of activity carried out or the presence of more than a certain number of employees as well as the remote nature of the site, so require, workers must be provided with easily accessible rest rooms and/or accommodation areas.

15.2. Rest rooms and/or accommodation areas must be large enough and equipped with an adequate number of tables and seats with backs for the number of workers concerned.

15.3. If there are no facilities of this kind, other facilities must be provided in which workers can stay during interruptions in work.

15.4. Fixed accommodation areas unless used only in exceptional cases, must have sufficient sanitary equipment, a rest room and a leisure room.

They must be equipped with beds, cupboards, tables and seats with backs taking account of the number of workers, and be allocated taking account, where appropriate, of the presence of workers of both sexes.

15.5. Appropriate measures should be taken for the protection of non-smokers against discomfort caused by tobacco smoke in rest rooms and/or accommodation areas.

16. Pregnant women and nursing mothers

Pregnant women and nursing mothers must be able to lie down to rest in appropriate conditions.

17. Handicapped workers

Workplaces must be organized to take account of handicapped workers, if necessary.

The provision applies in particular to the doors, passageways, staircases, showers, washbasins, lavatories and workstations used or occupied directly by handicapped persons.

18. Miscellaneous provisions

18.1. The surroundings and the perimeter of the site must be signposted and laid out so as to be clearly visible and identifiable.

18.2. Workers must be provided at the site with a sufficient quantity of drinking water and possibly another suitable non-alcoholic beverage both in occupied rooms and in the vicinity of workstations.

18.3. workers must:

- be provided with facilities enabling them to take their meals in satisfactory conditions,
- where appropriate, be provided with facilities enabling them to prepare their meals in satisfactory conditions.

PART B SPECIFIC MINIMUM REQUIREMENTS FOR ON-SITE WORKSTATIONS

Preliminary remark

If special situations so dictate, the classification of these minimum requirements into two sections, as below, should not be regarded as binding.

Section I On-site indoor workstations

1. Stability and solidity

Premises must have a structure and stability appropriate to the nature of their use.

2. Emergency doors

Emergency doors must open outwards.

Emergency doors must not be so locked or fastened that they cannot be easily and immediately opened by any person who may require to use them in an emergency.

Sliding or revolving doors are not permitted if intended as emergency exits.

3. Ventilation

If air-conditioning or mechanical ventilation installations are used, they must operate in such a way that workers are not exposed to draughts which cause discomfort.

Any deposit or dirt likely to create an immediate danger to the health of workers by polluting the atmosphere must be removed without delay.

4. Temperature

4.1. The temperature in rest areas, rooms for duty staff, sanitary facilities, canteens and first-aid rooms must be appropriate to the particular purpose of such areas.

4.2. Windows, skylights and glass partitions should allow excessive effects of sunlight to be avoided, having regard to the nature of the work and the use of the room.

5. Natural and artificial lighting

Workplaces must as far as possible have sufficient natural light and be equipped with the means of providing artificial lighting which is adequate for the purposes of protecting workers' safety and health.

6. Floors, walls, ceilings and roofs of rooms

6.1. The floors of workplaces must have no dangerous bumps, holes or slopes and must be fixed, stable and not slippery.

6.2. The surfaces of floors, walls and ceilings in rooms must be such that they can be cleaned or refurbished to an appropriate standard of hygiene.

6.3. Transparent or translucent walls, in particular all-glass partitions, in rooms or in the vicinity of workplaces and traffic routes must be clearly indicated and made of safety material or be shielded from such places or traffic routes to prevent workers from coming into contact with walls or being injured should the walls shatter.

7. Windows and skylights

7.1. It must be possible for workers to open, close, adjust or secure windows, skylights and ventilators in a safe manner.

When open, they must not be positioned so as to constitute a hazard to workers.

7.2. Windows and skylights must be designed in conjunction with equipment or otherwise fitted with devices allowing them to be cleaned without risk to the workers carrying out this work or to workers present.

8. Doors and Gates

8.1. The position, number and dimensions of doors and gates, and the materials used in their construction, are determined by the nature and use of the rooms or areas.

8.2. Transparent doors must be appropriately marked at a conspicuous level.

8.3. Swing doors and gates must be transparent or have see-through panels.

8.4. If transparent or translucent surfaces in doors and gates are not made of safety material and if there is a danger that workers may be injured if a door or gate should shatter, the surfaces must be protected against breakage.

9. Traffic routes

Where the use and equipment of rooms so requires for the protection of workers, traffic routes must be clearly identified.

10. Specific measures for escalators and travelators

Escalators and travelators must function safely.

They must be equipped with any necessary safety devices.

They must be fitted with easily identifiable and accessible emergency shut-down devices.

11. Room dimensions and air space in rooms

Workrooms must have sufficient surface area and height to allow workers to perform their work without risk to their safety, health or well-being.

Section II On-site outdoor workstations

1. Stability and solidity

1.1. High-level or low-level movable or fixed workstations must be solid and stable, taking account of:

- the number of workers occupying them,
- the maximum loads they may have to bear and the weight distribution,
- the outside influences to which they may be subject.

If the support and the other components of these workstations are not intrinsically stable, their stability will have to be ensured by appropriate and safe methods of fixing to avoid any untimely or spontaneous movement of the whole or of parts of the workstations.

1.2. Checking

Stability and solidity must be checked appropriately and especially after any change in the height or depth of the workstation.

2. Energy distribution installations

2.1. On-site energy distribution installations, especially those subject to outside influences, must be regularly checked and maintained.

2.2. Installations existing before the site began must be identified, checked and clearly signposted.

2.3. Whenever possible, where overhead electric power lines exist, either they must be redirected away from the area of the site or else the current must be cut off.

If this is not possible, there will be barriers or notices to ensure that vehicles and installations are kept away.

Suitable warnings and suspended protections must be provided where vehicles have to pass beneath the lines.

3. Atmospheric influences

Workers must be protected against atmospheric influences which could affect their health and safety.

4. Falling objects

Wherever technically feasible, workers must be protected by collective methods against falling objects.

Materials and equipment must be laid out or stacked in such a way as to prevent their collapsing or overturning.

Where necessary, there must be covered passageways on the ~~side~~ site or access to danger areas must be made impossible.

5. Falls from a height

5.1. Falls from a height must be physically prevented in particular by means of solid cradles which are sufficiently high and have at least an end-board, a main handrail and an intermediate handrail or an equivalent alternative.

5.2. In principle, work at a height must be carried out only with appropriate equipment or using collective protection devices such as cradles, platforms or safety nets.

If the use of such equipment is not possible because of the nature of the work, suitable means of access must be provided and safety harnesses or other anchoring safety methods must be used.

6. Scaffolding and ladders (*)

6.1. All scaffolding must be properly designed, constructed and maintained to ensure that it does not collapse or move accidentally.

6.2. Work platforms, gangways and scaffolding stairways must be constructed, dimensioned, protected and used in such a way as to prevent people from falling or being exposed to falling objects.

6.3. Scaffolding must be inspected by a competent person:

(a) before being put into service;

(b) subsequently, at periodic intervals;

(c) after any modification, period without use, exposure to bad weather or seismic tremors, or any other circumstance which may have affected its strength or stability.

6.4. Ladders must be sufficiently strong and correctly maintained.

They must be correctly used, in appropriate places and in accordance with their intended purpose.

6.5. Mobile scaffolding must be secured against spontaneous movements.

7. Lifting equipment (*)

7.1. All lifting devices and accessories, including their component parts, attachments, anchorings and supports, must be:

(a) properly designed and constructed and sufficiently strong for the use to which they are put;

(b) correctly installed and used;

(c) maintained in good working order;

(d) checked and subjected to periodic tests and inspections in accordance with current legislation;

(e) operated by qualified workers who have received appropriate training.

7.2. All lifting devices and accessories must clearly display their maximum load values.

7.3. Lifting equipment and accessories may not be used for other than their intended purposes.

8. Excavating and materials-handling vehicles and machinery (*)

8.1. All excavating and materials-handling vehicles and machinery must be:

(a) properly designed and constructed taking account, as far as possible, of the principles of ergonomics;

(b) kept in good working order;

(c) used correctly.

8.2. Drivers and operators of excavating and materials-handling vehicles and machinery must be specially trained.

8.3. Preventive measures must be taken to ensure that excavating and materials-handling vehicles and machinery do not fall into the excavations or into water.

8.4. Where appropriate, excavating machinery and materials-handling machinery must be fitted with structures to protect the driver against being crushed if the machine overturns, and against falling objects.

* This point will be specified in the framework of the future Directive amending Directive 89/655/EEC, particularly with a view to supplementing point 3 of the Annex thereto.

9. Installations, machinery, equipment (*)

9.1. Installations, machinery and equipment, including hand tools whether power-driven or not, must be:

- (a) properly designed and constructed taking account, as far as possible, of the principle of ergonomics;
- (b) kept in good working order;
- (c) used solely for the work for which they were designed;
- (d) operated by workers who have received appropriate training.

9.2. Installations and equipment under pressure must be checked and subjected to regular tests and inspections in accordance with existing legislation.

10. Excavations, wells, underground works, tunnels and earthworks

10.1. Suitable precautions must be taken in an excavation, well, underground, working or tunnel:

- (a) using an appropriate support or embankment;
- (b) to prevent hazards entailed in the fall of a person, materials or objects, or flooding;
- (c) to provide sufficient ventilation at all workstations so as to ensure a breathable atmosphere which is not dangerous or harmful to health;
- (d) to enable workers to reach safety in the event of fire or inrush of water or materials.

10.2. Before excavation starts, measures must be taken to identify and reduce to a minimum any hazard due to underground cables and other distribution systems.

10.3. Safe routes into and out of the excavation must be provided.

10.4. Piles of earth, materials and moving vehicles must be kept away from the excavation; appropriate barriers must be built if necessary.

11. Demolition work

Where the demolition of a building or construction may present a danger:

- (a) appropriate precautions, methods and procedures must be adopted;
- (b) the work must be planned and undertaken only under the supervision of a competent person.

12. Metal or concrete frameworks, shutterings and heavy prefabricated components

12.1. Metal or concrete frameworks and their components, shutterings, prefabricated components or temporary supports, and buttresses must be erected and dismantled only under the supervision of a competent person.

12.2. Adequate precautions must be taken to protect workers against risks arising from the temporary fragility or instability of a structure.

12.3. Shutterings, temporary supports and buttresses must be ~~devised~~ **devised** and designed, installed and maintained so as to safely withstand any strains and stresses which may be placed on them.

13. Cofferdams and caissons

13.1. All cofferdams and caissons must be:

- (a) well-constructed, of appropriate, solid materials of adequate strength;
- (b) appropriately equipped so that workers can gain shelter in the event of an eruption of water and materials.

13.2. The construction, installation, transformation or dismantling of a cofferdam or caisson must take place only under the supervision of a competent person.

13.3. All cofferdams and caissons must be inspected by a competent person at regular intervals.

14. Work on roofs

14.1. Where necessary to avert a risk or where the height or the slope exceed values set by the Member States, collective preventive measures must be taken to prevent workers, and tools or other objects or materials, from falling.

14.2. Where workers have to work on or near a roof or any other surface made of fragile materials through which it is possible to fall, preventive measures must be taken to ensure that they do not inadvertently walk on the surface made of fragile materials, or fall to the ground.

Appendix C – Additional Background Notes Re Competency

1.1 Review of current position – CDM2007

Regulation 4 - Competence

(1) *No person on whom these Regulations place a duty shall—*

- (a) appoint or engage a CDM co-ordinator, designer, principal contractor or contractor unless he has taken reasonable steps to ensure that the person to be appointed or engaged is competent;*
- (b) accept such an appointment or engagement unless he is competent;*
- (c) arrange for or instruct a worker to carry out or manage design or construction work unless the worker is—*
 - (i) competent, or*
 - (ii) under the supervision of a competent person.*

(2) *Any reference in this regulation to a person being competent shall extend only to his being competent to—*

- (a) perform any requirement; and*
- (b) avoid contravening any prohibition, imposed on him by or under any of the relevant statutory provisions.*

The ACoP adds:-

195 To be competent, an organisation or individual must have:

- (a) sufficient knowledge of the specific tasks to be undertaken and the risks which the work will entail;
- (b) sufficient experience and ability to carry out their duties in relation to the project; to recognise their limitations and take appropriate action in order to prevent harm to those carrying out construction work, or those affected by the work.

222 Membership of a relevant professional institution for example CIBSE; ICE; IMechE; IStructE; RIBA; RICS; CIAT; CIOB is a strong indicator that a designer has the necessary task knowledge and an ability to recognise the health and safety implications of their design work. Membership of a relevant register administered by such an institution gives a more detailed indication that the designer has the necessary knowledge and experience, for example the Construction Health and Safety Register of the ICE, or the design register operated by the APS.

1.2 Robens committee

In 1972 the Robens' committee report included these key findings

1. *The most important single reason for accidents at work is apathy.*
2. *too much law.... our present system encourages rather too much reliance on state regulation, and rather too little on personal responsibility and voluntary self-generating effort.*
3. *legislation is badly structured, and the attempt to cover contingency after contingency has resulted in a degree of elaboration, detail and complexity that deters even the most determined reader. It is written in a style that renders it largely unintelligible to those whose actions it is intended to influence.*
4. *Regulations which lay down precise methods of compliance have an intrinsic rigidity, and their details may be quickly overtaken by technological developments. On the other hand, lack of precision creates uncertainty... (so) the need is to reconcile flexibility with precision.*
 - Industry, the committee felt, was more than capable of drawing up voluntary codes of "good" practice and using such documents to inform the improvement of working conditions. Such codes of good practice need to be given some 'recognition' to permit them to be quoted in enforcement matters but nevertheless they could far more quickly and easily be revised than statutory sets of Regulations; and thus -
 - The Committee took the view that from now on the voluntary code approach should be taken in preference to any new Regulations.

1.3 A commentary on Routes to Competence in the construction industry

In 2011 joint HSE and CITB-ConstructionSkills report "RR877 A Commentary on Routes to Competence in the Construction Industry" was published. Although this did not address the professional sector of the industry, it did highlight some of the general issues that affect the industry.

Competence, defined as 'the ability to do a particular activity to a prescribed standard', was held to require:

- *Skills to specified standards.*
- *Relevant knowledge and understanding.*
- *The ability to use skills and to apply knowledge.*
- *An understanding [of] the performance of relevant tasks. (p12)*
- *The construction industry should move to this new phase and the 'new competence' approach which requires not just occupational (job) competence, but more robust general health & safety competence and behavioural/human factors implementation throughout an operative's working life. (p5)*
- *To further aid transparency and reliability, and in support of the move to a revised standard for competence, the industry should consider establishing a single "Construction Industry Card Registration Authority" as an independent agency whereby all cards are recognised as having value commensurate with an independently researched/objective set of metrics. (p6)*

1.4 Management of Health and Safety Regulations 1999

Regulation 3 Risk assessment

(1) Every employer shall make a suitable and sufficient assessment of-

- (a) the risks to the health and safety of his employees to which they are exposed whilst they are at work; and*
- (b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,*

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions and by Part II of the Fire Precautions (Workplace) Regulations 1997.

ACoP General principles and purpose of risk assessment

9 This regulation requires all employers and self-employed people to assess the risks to workers and any others who may be affected by their work or business. This will enable them to identify the measures they need to take to comply with health and safety law. All employers should carry out a systematic general examination of the effect of their undertaking, their work activities and the condition of the premises. Those who employ five or more employees should record the significant findings of that risk assessment.

10 A risk assessment is carried out to identify the risks to health and safety to any person arising out of, or in connection with, work or the conduct of their undertaking. It should identify how the risks arise and how they impact on those affected. This information is needed to make decisions on how to manage those risks so that the decisions are made in an informed, rational and structured manner, and the action taken is proportionate.

11 A risk assessment should usually involve identifying the hazards present in any working environment or arising out of commercial activities and work activities, and evaluating the extent of the risks involved, taking into account existing precautions and their effectiveness. In this Approved Code of Practice:

- (a) a hazard is something with the potential to cause harm (this can include articles, substances, plant or machines, methods of work, the working environment and other aspects of work organisation);*
- (b) a risk is the likelihood of potential harm from that hazard being realised. The extent of the risk will depend on:
 - (i) the likelihood of that harm occurring;*
 - (ii) the potential severity of that harm, ie of any resultant injury or adverse health effect; and*
 - (iii) the population which might be affected by the hazard, ie the number of people who might be exposed.**

12 The purpose of the risk assessment is to help the employer or self-employed person to determine what measures should be taken to comply with the employer's or self-employed person's duties under the 'relevant statutory provisions' and Part II of the Fire Regulations. This covers the general duties in the HSW Act and the requirements of Part II of the Fire Regulations and the more specific duties in the various acts and regulations (including these Regulations) associated with the HSW Act. Once the measures have been determined in this way, the duty to put them into effect will be defined in the statutory provisions. For example a risk assessment on machinery would be undertaken under these Regulations, but the Provision and Use of Work Equipment Regulations (PUWER 1998)⁹ determine what precautions must be carried out. A risk assessment carried out by a self-employed person in circumstances where he or she does not employ others does not have to take into account duties arising under Part II of the Fire Regulations.

Regulation 4 Principles of prevention to be applied

Where an employer implements any preventive and protective measures he shall do so on the basis of the principles specified in Schedule 1 to these Regulations.

Regulation 5 Health and safety arrangements

(1) Every employer shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.

Regulation 7 Health and safety assistance

(1) Every employer shall, subject to paragraphs (6) and (7), appoint one or more competent persons to assist him in undertaking the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions and by Part II of the Fire Precautions (Workplace) Regulations 1997.

(2) Where an employer appoints persons in accordance with paragraph (1), he shall make arrangements for ensuring adequate co-operation between them.

(3) The employer shall ensure that the number of persons appointed under paragraph (1), the time available for them to fulfil their functions and the means at their disposal are adequate having regard to the size of his undertaking, the risks to which his employees are exposed and the distribution of those risks throughout the undertaking.

(4) The employer shall ensure that-

(a) any person appointed by him in accordance with paragraph (1) who is not in his employment-

(i) is informed of the factors known by him to affect, or suspected by him of affecting, the health and safety of any other person who may be affected by the conduct of his undertaking, and

(ii) has access to the information referred to in regulation 10; and

(b) any person appointed by him in accordance with paragraph (1) is given such information about any person working in his undertaking who is-

(i) employed by him under a fixed-term contract of employment, or

(ii) employed in an employment business,

as is necessary to enable that person properly to carry out the function specified in that paragraph.

(5) A person shall be regarded as competent for the purposes of paragraphs (1) and (8) where he has sufficient training and experience or knowledge and other qualities to enable him properly to assist in undertaking the measures referred to in paragraph (1).

(6) Paragraph (1) shall not apply to a self-employed employer who is not in partnership with any other person where he has sufficient training and experience or knowledge and other qualities properly to undertake the measures referred to in that paragraph himself.

(7) Paragraph (1) shall not apply to individuals who are employers and who are together carrying on business in partnership where at least one of the individuals concerned has sufficient training and experience or knowledge and other qualities-

(a) properly to undertake the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions; and

(b) properly to assist his fellow partners in undertaking the measures they need to take to comply with the requirements and prohibitions imposed upon them by or under the relevant statutory provisions.

(8) Where there is a competent person in the employer's employment, that person shall be appointed for the purposes of paragraph (1) in preference to a competent person not in his employment.

Regulation 13 Capabilities and training

(1) Every employer shall, in entrusting tasks to his employees, take into account their capabilities as regards health and safety.

(2) Every employer shall ensure that his employees are provided with adequate health and safety training-

(a) on their being recruited into the employer's undertaking; and

(b) on their being exposed to new or increased risks because of -

(i) their being transferred or given a change of responsibilities within the employer's undertaking,

(ii) the introduction of new work equipment into or a change respecting work equipment already in use within the employer's undertaking,

(iii) the introduction of new technology into the employer's undertaking, or

(iv) the introduction of a new system of work into or a change respecting a system of work already in use within the employer's undertaking.

(3) The training referred to in paragraph (2) shall-

(a) be repeated periodically where appropriate;

(b) be adapted to take account of any new or changed risks to the health and safety of the employees concerned; and

(c) take place during working hours.

(ACoP Para 80) Employers should take account of the employees' capabilities and the level of their training, knowledge and experience. Managers should be aware of relevant legislation and should be competent to manage health and safety effectively. Employers should review their employees' capabilities to carry out their work, as necessary.