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## Meeting of Executive Member for Corporate Services and Advisory Panel

30<sup>th</sup> October 2007

Report of the Corporate Landlord

### Managing Health & Safety In Construction: Construction (Design And Management Regulations) 2007

#### Purpose of Report

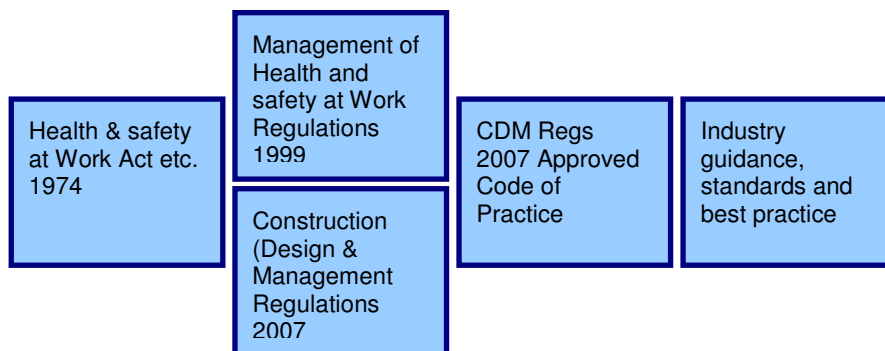
1. To advise the necessary actions to ensure the Council's obligations under these regulations are met, highlighting duties within the authority and the necessary protocols to ensure adherence, for endorsement by Members.

#### Background

##### The Regulations

2. The Construction (Design & Management) Regulations 2007 (hereafter referred to as CDM Regs 2007) aim to help structure the management of Health & Safety in the construction industry, which remains one of the most dangerous areas of work. In 2005/06, 28% of all worker deaths were in the construction industry. Based on the Labour Force Survey (LFS), the rate of reportable injury in construction was 1 790 per 100 000 workers in 2004/05 (three-year average), statistically significantly higher than the average for all industries (1 090 per 100 000 workers).
3. In addition, the structure enabled by the regulations also helps to:
  - Improve planning and management and so help ensure that the project is completed on time, within budget and to the required standards
  - Reduce costs, delays and bad publicity resulting from accidents or ill health
  - Make sure that cleaning, maintenance and repair issues have been thought through
  - Reduce whole life costs of the building/structure
  - Provide useful information for the maintenance and possible future development of the building/structure

4. A person central to initiating processes under CDM Regs 2007 is the CDM Co-ordinator, who must be appointed on projects notifiable to the Health & Safety Executive (HSE), (i.e. those lasting over 30 days or taking more than 500 person hours). This person is responsible for advising the client from the early stages of project, ensuring that all parties co-operate in the design, preparing pre start H&S information and data on completion etc.



*Hierarchy of current H&S and CDM Documentation*

### Recent Changes

5. The CDM Regs 2007 are an update to the original 1994 regulations issued under the Health & Safety at Work Act. Important areas of change in the CDM Regs 2007 include :
- to discourage unnecessary bureaucracy, with paperwork that is proportionate to the complexity of the work and that real actions to improve safety are key.
  - welfare and amenities for construction site workers is now covered under these Regs.
  - the CDM Regs 2007 do not allow the client to transfer their duties to a third party. The appointment of an external agent to carry out tasks relating to the client's duties is still acceptable, but the client retains the responsibility to ensure their duties under these regulations are met. Arrangements for the reporting and monitoring of this role are essential.
  - greater emphasis on the vital role of the client in providing pre-construction information: the client must also engage competent designers, contractors, CDM Co-ordinators and others at an early stage, otherwise the duties required of these specialists fall to the client under the CDM Regs 2007.

### Council Project Health & Safety

6. The last 2 points significantly affect the Authority in its role as client in the commissioning of the design, construction and safe management of all buildings and structures including highways, housing, schools, administration buildings etc. Any member or officer initiating project work must make arrangements to ensure and

satisfy themselves that duties under CDM Regs 2007 are being discharged by competent professionals, contractors and workers. This report sets out options for ensuring these arrangements are made.

7. The need for highly controlled processes in the managing of projects is further reinforced by the needs of the CDM Regs 2007 that require the evaluation of competent persons or organisations with subsequent monitoring and reporting on performance. This lends even greater weight to Council's policy of having single point responsibility for project work, with clear roles and lines of communication.
8. The CDM Regs will affect construction and related design work commissioned by any part of the Authority. Currently the Council's client's duties under CDM Regs 2007 are discharged in a somewhat ad hoc way by the various teams involved in the commissioning and management of projects: either by one of the professional teams within the Council or by one of the commissioning agencies sponsoring work within the Council. But a risk remains with the projects undertaken outside the influence of those regularly involved in construction and design related Health & Safety.
9. Please refer to Annex 1 for the HSE summary of duties that are placed on various parties by the Regulations including clients. Please see Annex 2 for detailed description of the CDM Regs 2007 changes and duties.

## **Consultation**

10. Directorates with professionally based services within the council with officers involved with discharging duties under the CDM Regs include:
  - Resources (Property Services)
  - City Strategy (Engineering Consultancy, City Development & Transport)
  - Neighbourhood Services (Building Maintenance and Civil Engineering)
  - Housing & Adult Social Services (Asset Management, Housing Services Division)

The process of consulting with the professional teams has commenced and views on the differing ways that the recommendations on CDM Regs 2007 will be acted upon will be incorporated into the final protocol.

There are potential sponsors and officers commissioning design and construction across all directorates within the Council including all schools, education planning or the leisure team within LCCS, also various departments within highways and housing etc. Information on their obligations under CDM Regs 2007 will be briefed to all relevant staff under the Recommendations.

## **Options**

### **Option A**

11. Do nothing.

12. The management of Health & Safety relating to construction and design could continue to be managed by the various parts of the organisation currently commissioning work and assembling project teams to manage the situation in their various ways.
13. The updated CDM Regs and increased vigilance needed across all Council schemes place current arrangements under greater strain, do not represent the concerted effort needed to manage the health and safety risks associated with construction design & management and would not stand up to close scrutiny by the HSE.

### **Option B**

14. A more efficient and consistent approach would be for the professionally based services within the council, with officers regularly involved with discharging duties under the CDM Regs, to be represented on the Project Board or be formally consulted by the sponsor team for all projects. This representative would provide:
  - early advice on budget allowance for Health & Safety, specific to the job
  - engage and brief specialist advisors on Health & Safety, e.g. CDM Co-ordinators
  - assurance on competence of designers and contractors relevant to safety through being party to the procurement process and tender evaluation.

The professionally based service may be already represented on the Project Board or consulted by the sponsor for certain projects, but this is not always the case and not with ensuring we meet the CDM Regs as a specific remit.

15. Those responsible for initiating project work of any kind must recognise the need for compliance with CDM Regs 2007 and make sure that project programmes and budgets are sufficiently robust to comply with them. After inception, any construction related project after must include formal assignment of CDM related duties to suitably competent people and organisations, including the Council's own client representative, CDM Co-ordinator, Designers, Principle Contractor or other Contractors.
16. It is proposed that project sponsors and project commissioning teams discharge the clients duty under CDM to allow sufficient time and resources for all stages of a project under guidance of the professional teams. All other client duties will be delegated to the professionally based services such as those indicated above, with projects referred to these services for action to meet CDM Regs 2007 under an internal fee arrangement.
17. The only exception to this regime would be where, by approval of written proposals for an alternative regime submitted to the Corporate Landlord, sponsors would themselves engage and monitor competent agents, CDM co-ordinators, designers, contractors etc.

18. The methodology for assessing competency of persons or organisations with regard to responsibilities under CDM Regs 2007 will vary depending on the scale and type of work being proposed. Please refer to Annex 3 for an indicative checklist for contractors competency. The methodology for assessing contractors would complement the Council H&S Policy utilising the Contractors Health & Safety (CHAS) Assessment Scheme. Designers, the CDM Co-ordinator and others involved in the project need to be evaluated in a similar way.
19. There are limited resources within the Council to undertake the role of CDM Co-ordinator with the regularity of work and depth of experience to carry out this duty. It is proposed therefore to externalise this service under normal procurement procedures, to provide a CDM Co-ordinator service available to all professional teams, under a long term frame work arrangement managed by Property Services. This provider would also support Council teams in providing relevant training and in providing advice on safety related to construction and design.
20. A briefing programme on CDM Regs 2007 will be implemented for Council staff involved with project management and the commissioning of design and construction work. This would include an investigation on the full extent of officers acting as client or sponsoring work within the Council. Based on this a programme to promote senior level awareness will be developed for cascade to relevant teams. The training of professional teams on the requirements of CDM Regs 2007 has commenced and is on going.

## Analysis

21.

	<b>OPTION A</b>	<b>OPTION B</b>
<b>Options</b>	Status quo.	Project Board representation of, or referral by sponsors to, professional teams with CDM experience for CDM Regs compliance. Delegation of CDM tasks and duties on all projects to the Council's professional teams, with exception of budgeting. Set up CDM Co-ordinator framework and briefing for 'client' teams.
<b>Pro's and Cons</b>	Council obligations to meet the CDM Regs 2007 could be met through current arrangements, but an extensive awareness	Discharges the Council obligation to meet the CDM Regs 2007 in a consistent way. Through a structured approach opening up the

	<b>OPTION A</b>	<b>OPTION B</b>
	programme would be needed and operations potentially disrupted through staff diverting efforts to CDM. This would also lead to an inconsistent approach, losing the opportunity to develop and learn in the field of construction safety.	potential for improved planning and management of projects, also leading to more assured maintenance practice and building data. Provides the most secure protocol for future safe implementation of projects and a basis for pro-active management of construction and building safety.
<b>Financial Implications</b>	Research & briefing, £10k.	Research & briefing, £10k.
<b>Legal Implications</b>	Civil and criminal actions are brought by the HSE for breach of CDM Regulations under the Health & Safety at Work Act 1974.	Civil and criminal actions are brought by the HSE for breach of CDM Regulations under the Health & Safety at Work Act 1974.
<b>HR Implications</b>	Major awareness and training programme for staff commissioning projects outside construction related services.	Briefing for sponsors and normal continuing professional development for technical teams.
<b>Other implications as appropriate Eg: Crime Equalities Sustainability etc</b>	N/A	N/A
<b>Consultation</b>	See above	See above
<b>Recommendation</b>		Option B

## Corporate Strategy

22. This recommendation falls within Council Values in supporting and developing people, which will be achieved through improved collaboration between services and awareness of construction, design and management responsibilities through the briefing programme.

## Financial Implications

23. This report covers the processes necessary in meeting the requirements of CDM Regs 2007. The safety requirements and regimes required within projects to meet these do not differ significantly in financial terms from previous requirements. The monitoring of CDM duties undertaken on behalf of the Council as client under the regulations will fall principally to the Council's construction professional teams under these proposals. It is currently envisaged that this will be absorbed within current staffing levels. If, option B is adopted and cost pressures are revealed this will be identified and addressed as part of the monitoring and budget processes.
24. There will be a cost involved in researching client bodies within the Council to build up information on those who need to be briefed and cascade information. It will then be necessary to devise an awareness raising programme for senior managers and briefing for those directly involved with initiating project work. This research and setting up the briefing framework would cost in the region of £10,000, but can be funded through existing budgets.

### **Legal Implications**

25. The CDM Regs 2007 fall under the Health & safety at Work Act with all the civil and criminal actions available to the HSE under this legislation.

### **Human Resources (HR) and other implications**

26. Under the recommended option, briefing for sponsors and normal continuing professional development will be required for technical teams. There are no other HR, Crime & Disorder, IT, Equalities or Property implications to note.

### **Risk Management**

27. In compliance with the Councils risk management strategy the main risks that have been identified are those which could lead to the inability to meet business objectives (Strategic) and to deliver services (Operational), leading to financial loss (Financial), non-compliance with legislation (Legal & Regulatory), damage to the Council's image and reputation and failure to meet stakeholders' expectations (Governance).
28. The management of this risk provides the Council with the opportunity to provide enhanced and effective services through improved collaboration between services and awareness of construction, design and management responsibilities through the briefing programme.

## **Recommendations**

29. It is recommended that Members endorse Option B for action across Directorates involved in construction design and management.

### **Reason**

The Council is vulnerable under the Health & Safety at Work Act if construction design and management and the safe operation of buildings is compromised. The current position is that the design of buildings, the project management of construction work and the operation of premises may be carried out by various sections within the council, including schools, without real direction or monitoring in the application of the CDM Regs.

This should not be allowed to continue. Formal channels for the development of projects and the safe management of buildings under an auditable regime relative to the CDM Regs should be put in place.

### **Contact Details**

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**Report Approved**      *γ*      **Date** 16 October 2007

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**Wards Affected**

All

**For further information please contact the author of the report**

**Background Papers:** None

**Annexes:**

- Annex 1 - HSE summary of duties under CDM Regs 2007
  - Annex 2 - CITB detailed description of the CDM Regs 2007 changes and duties
  - Annex 3 - CITB indicative checklist for contractors competency.
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