

28 March 2006

ICAEW REP 18/06

Mr Tim Kind
Health & Safety Executive
5SW Rose Court
2 Southwark Bridge
London SE1 9HS

By email

Dear Mr Kind

**Proposed Updated Construction and Design Management (CDM) Regulations –
Clients Responsibilities for Controlling Works to Own Premises**

The Institute of Chartered Accountants in England and Wales (the ‘Institute’) welcomes the opportunity to comment on the extract from the new regulations regarding Client Responsibilities for Controlling Works to Own Premises

The Institute is the largest professional accountancy body in Europe, with more than 127,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.

The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry (DTI) through the Financial Reporting Council. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy.

We appreciate being informed about the increased responsibilities being placed on our members when having building works undertaken for them through the proposed revised Construction Design and Management Regulations. In the extremely restricted timescale to respond, it has not proved possible to use our normal process of consultation with members. However, informal soundings amongst the membership support the view that the proposals will be viewed unfavourably by our members.

The ICAEW is concerned by any increase in responsibilities of our membership of 127,000, especially where the majority of which would fall into the category of small business and/or occasional/on-off clients for these Regulations. In addition, we believe that the majority of our members’ clients will also be similar position. We have reservations about any law or regulation which affects such a large sector of the

UK economy imposing ultimate liability for any failure for building work, when many are unaware of that liability. There is a better regulation concern here.

Our members accept that Health, Safety and Welfare are important and take seriously their responsibilities for their staff and visitors alike within their own business workspace. However, like for any service provision supplied to them, they expect that supplier to provide the product at the agreed price at the suppliers own liability. Conversely, our members provide their services to their clients for a price at their risk for which they have insurance cover – Professional Indemnity Insurance. Our members expect that same criteria be applied for the provision of building services, whether maintenance and decoration or larger works requiring planning permission and related approvals. Our members do not agree that they should have an unlimited liability as the person of last resort, for failures within the regulatory framework or for the providers within the construction industry. If our members pay the bills for quotes freely given in a competitive environment, it should be up to the industry and the regulatory framework to be self sufficient. Competency for any aspect of the work required to complete the project should be inherent within the system. If the system is not functioning properly, we do not consider it should be up to our clients to be burdened with rectifying it at their specific liability.

At the smaller end of service provision, where no statutory approvals are required e.g. external repair and maintenance, the service providers should be under a legal obligation to prove competence to the client and their quote must include all their costs of compliance as of legal obligation. This would provide a level playing field, both within the industry and from which our members as clients could fairly assess the quotes. For any works requiring Planning Permission or Building Regulations approval it must be implicit and as a condition before either is issued that the applications are fully compliant with ALL regulations to the specific application. If Health, Safety and Welfare are to be one of the primary aspects of any works, then it must be included within the existing frame work of approvals e.g. planning permission for design aspect.

We are concerned that the concept of a project, as defined in the draft regulations, is highly bureaucratic. The key aspect must be compliance with all regulations at the point of approval. Therefore, we do not consider the new function of co-ordinator needs to be appointed before even a concept has been decided. Additionally, we do not consider our members and their clients should have an open end commitment to the completed works thereafter, as the person of last resort in any action that might have occurred in the construction process, as appears to be the case with the regulations as drafted.

With regard to other definitions, we consider greater clarity is required. The definition of whom or what is the ‘client’ is unclear, particularly within a corporate structure. If residential works are to be exempted this needs to be much clearer. We would suggest any works for a client that is the council tax payer would be a much clearer definition.

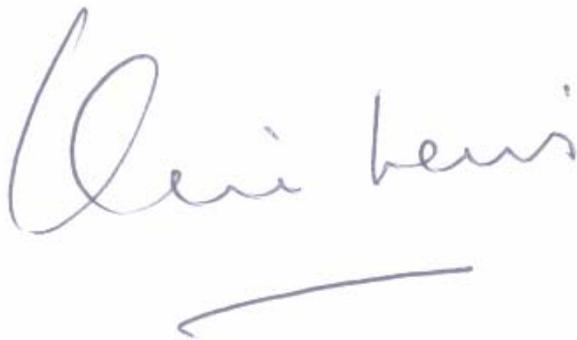
The ICAEW undertakes annual surveys of member’s opinions on wider business issues. The 2005 survey revealed that the annual cost to the UK economy of administrative burdens is approximately £7bn and that 92% of this burden is carried

by Micro and Small enterprises – the businesses who we believe will be most at risk by the proposed new regulations. We therefore strongly urge the Health & Safety Executive reconsiders these proposals. As a result of this feedback from members the ICAEW has a regular dialogue with the Cabinet Office Better Regulation Executive on the government's Simplification Initiative as well as being broadly supportive of the Legislative and Regulatory Reform Bill currently going through parliament.

Should a more comprehensive response be required, we would need considerably more time with which to undertake a formal consultative process with our members.

Please contact me should you wish to discuss any of the points raised in this response.

Yours sincerely

A handwritten signature in blue ink that reads "Clive Lewis". The signature is written in a cursive style. Below the signature is a horizontal line that starts under the first part of the name and extends to the right.

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