

Title: Construction (Design and Management) Regulations 2015 (CDM 2015) IA No: HSE0079 Lead department or agency: Health and Safety Executive  Other departments or agencies: <b>None</b>	<b>Impact Assessment (IA)</b>		
	Date: 15/08/2014		
	Stage: Final		
	Source of intervention: EU		
	Type of measure: Secondary legislation		
<b>Contact for enquiries:</b> Anthony Lees – <a href="mailto:anthony.lees@hse.gsi.gov.uk">anthony.lees@hse.gsi.gov.uk</a> / Maria Ottati – <a href="mailto:maria.ottati@hse.gsi.gov.uk">maria.ottati@hse.gsi.gov.uk</a>			

## Summary: Intervention and Options

**RPC Opinion: GREEN**

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£-121 m	£-132 m	£-19.6 m	Yes   Out

### What is the problem under consideration? Why is government intervention necessary?

CDM 2015 will replace an existing set of Regulations (CDM 2007) while maintaining or improving implementation of a European Directive. An evaluation of the existing Regulations revealed a number of shortcomings, including some which disproportionately affect smaller businesses. Small sites are currently responsible for an increasingly large proportion of serious and fatal incidents, and the regulatory framework needs to be made substantially simpler and more accessible to be effective in addressing this. Additionally, HSE has become aware that transposition of the Directive in Great Britain is insufficient in certain respects.

### What are the policy objectives and the intended effects?

The majority of the proposals in this package (sections A to D) are intended to:

- address the shortcomings of the current Regulations identified in the evaluation;
- provide a regulatory framework that is better suited to the needs of small businesses in the sector, thus increasing compliance and improving health and safety outcomes;
- align the Regulations more closely with the Directive, in the most appropriate way, removing measures which go beyond Directive requirements, thus reflecting better regulation principles

Proposals in sections E and F aim to address areas where current transposition is insufficient.

### What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- **Option 1** – Do nothing
- **Option 2** – Shorten and simplify the Regulations; withdraw the Approved Code of Practice and replace with guidance; remove the CDM co-ordinator role and replace it with a new role; alter the conditions used to trigger several duties; remove explicit competence requirements; and remove the exemption from client duties for domestic clients by using a “deeming” approach.

Option 2 is the preferred option, as it is expected to improve health and safety, generates savings to business, and brings the Regulations in line with the Directive.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: TBD

Does implementation go beyond minimum EU requirements?			Yes		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister: \_\_\_\_\_ Freud \_\_\_\_\_ Date: 22 January 2015

# Summary: Analysis & Evidence Policy Option 1

Description: Do nothing

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013 <sup>1</sup>	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	<b>1<sup>st</sup> year</b>		
High			
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

**Option 1 is the status quo and results in no additional costs**

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-		
High			
Best Estimate		<b>0</b>	

Description and scale of key monetised benefits by 'main affected groups'

**Option 1 is the status quo and results in no additional benefits**

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks

Discount rate (%)

**3.5%**

**There is a risk of infraction proceedings if GB fails to make the changes analysed in sections E and F (changes in thresholds for additional duties and removal of the exemption for domestic clients).**

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as

<sup>1</sup> For all options, EANCB presented in 2009 prices, calculated using BRE's Impact Assessment calculator

## Summary: Analysis & Evidence Policy Option 2

**Description:** Variety of changes including removing the exemption for domestic clients by using a 'deeming' approach.

### FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
		Low:	High:	Best Estimate: 121	

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	17.3	10.2	105

Description and scale of key monetised costs by 'main affected groups'

**Costs to homeowners of £1.2 million per year (recurring familiarisation) from removing the exemption from client duties for domestic clients. Annual costs of £8.6 million to business from additional duties due to the same. One-off familiarisation cost of £17.3 million to existing businesses. Average annual costs to business of £0.4 million for changing the threshold for various duties.**

Other key non-monetised costs by 'main affected groups'

**Loss of business to some of those currently specialising on discharging the CDM co-ordinator role (indirect impact under OITO methodology).**

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	0	26.5	226.4

Description and scale of key monetised benefits by 'main affected groups'

**Average annual savings to businesses (undertaking projects of over £200k value) of £23 million from the efficiencies generated by the removal of the CDM co-ordinator role. Average annual savings to businesses of £3 million from not having to notify projects to HSE due to a change in the trigger for notification. Savings to new businesses entering the market of £0.5 million per year from having to familiarise themselves with simpler, more accessible regulations.**

Other key non-monetised benefits by 'main affected groups'

**The simplification of the structure and language of the Regulations will lead them to be more easily accessible to smaller businesses. This is expected to lead to increased compliance, and therefore to improvements in health and safety outcomes. The removal of the explicit requirements for competence from the Regulations could potentially lead to substantial savings over time, especially to small businesses, as HSE continues to work with industry to rationalise the situation.**

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

**The assumptions underpinning the savings to businesses from the removal of the CDM co-ordinator role are key to the size of the 'Out' claimed. The number of projects is well-substantiated from ONS data, and the median cost of the different relevant duties by a formal evaluation. Assumptions about how those costs will change under the proposal were subjected to a sense-check by businesses in the sector (in addition to formal consultation) and the assumptions**

### BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 1.6	Benefits: 21.2	Net: 19.6	Yes	OUT

## Introduction

1. This document sets out an assessment of the impact of the proposed Construction (Design and Management) Regulations 2015 (CDM 2015). CDM 2015 will replace an existing set of Regulations while maintaining or improving implementation of a European Directive.
2. The construction industry employs approximately 2.1 million people in Great Britain<sup>2</sup>. Despite considerable improvements in culture, processes and risk controls in some parts of the industry leading to reductions in the numbers and rates of fatal and other incidents, it remains one of the most dangerous industries to work in, with approximately 45 fatal injuries to workers on average every year<sup>3</sup>. The resulting deaths (60-70% of which occur on smaller projects), major accidents and cases of occupationally-caused or exacerbated ill health are largely preventable.

## Existing Regulations

3. Several sets of health and safety regulations apply to construction work. However, the key set is the Construction (Design and Management) Regulations 2007 (CDM 2007) which is based on and is the principal mechanism for transposing European Council Directive 92/57/EEC on minimum safety and health requirements at temporary or mobile construction sites in Great Britain.
4. In line with the Directive, CDM 2007 defines a system of management roles and processes and prescribes a large number of practical health and safety precautions and welfare requirements for construction projects. The roles are:
  - the client (the person for whom the project is carried out),;
  - the CDM co-ordinator and principal contractor (persons who co-ordinate health and safety during the pre-construction and construction stages of the project respectively);
  - contractors (persons who carry out the construction work);
  - designers (persons who design or contribute to the design of structures to be constructed by the contractors).

The client, contractor and designer roles exist in nearly all projects but the co-ordinators are only required to be appointed for projects that exceed a specified threshold. Additionally, CDM 2007 imposes duties on the self-employed, in recognition of the high degree of self-employment in the construction industry and the Directive requirement to extend duties to the self-employed.

5. CDM 2007 is enforced by the Health and Safety Executive (HSE), the Office of Rail Regulation and in very limited circumstances by local

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<sup>2</sup> Source: Annual Population Survey (ONS), 2013

<sup>3</sup> Source: HSE. The average for the 5-year period 2009-2010 to 2013-2014 is 44 fatal injuries a year.

authorities. The duties imposed impact directly or indirectly on all those who procure, plan, design, manage or carry out construction work. The Regulations are supported by an Approved Code of Practice (ACOP) that gives practical advice on compliance with the law.

## **Evaluation of the existing Regulations**

6. CDM 2007 came into force in April 2007. A post-implementation evaluation of the Regulations<sup>4</sup> was conducted earlier than would normally have been the case, following a commitment given by the Government during a Parliamentary prayer debate in May 2007.
7. The evaluation was completed in early 2011. It comprised a large-scale survey of dutyholders supplemented by data and insights obtained from HSE inspectors and an HSE/industry working group established by the HSE-chaired Construction Industry Advisory Committee (CONIAC). The evidence gathered suggested that while CDM 2007 was regarded as generally better than what had gone before, there was still scope to improve its effectiveness especially in the context of smaller construction sites and businesses.
8. The evaluation also revealed a number of shortcomings in the existing Regulations. The most significant of these was a failure to curb the tendency of dutyholders to adopt bureaucratic responses in their attempts to achieve compliance. In particular, the detailed requirements for competence assessment contained within the Regulations has led to a system of competence assurance that is costly and delivered through a multitude of commercial pre-qualification schemes. This disproportionately affects smaller contractors, who see it as a barrier to business. As a mechanism to demonstrate that it meets individual worker competence requirements, the industry has similarly developed a complex system of individual competence card schemes, which arguably add significant costs to construction projects with often little benefit.
9. Other issues identified include: lateness in appointment of co-ordinators and in provision of information, designers producing or being asked to produce unnecessary paperwork, and limited effectiveness of the CDM co-ordinator role. Furthermore, the ACOP is now seen as too long and not well suited to the characteristics and needs of smaller businesses. These findings are consistent with comments received in the Red Tape Challenge<sup>5</sup>.
10. The larger, more structured part of the industry has made significant progress in improving management of health and safety risks since the Deputy Prime Minister's Construction Summit in 2001. It is arguably less motivated by regulation than by best practice and continuous improvement, and has accepted the need for demonstrable leadership in

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<sup>4</sup> Evaluation of the Construction (Design and Management) Regulations 2007 - <http://www.hse.gov.uk/research/rrhtm/rr920.htm>

<sup>5</sup> See: <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>

delivering improvements in worker protection. A two-tier industry has subsequently emerged, however, with small sites responsible for an increasingly large proportion of serious and fatal incidents. HSE has adapted its inspection programme accordingly but the challenge of providing an effective regulatory framework for small sites remains. Such a framework needs to be substantially simpler and more accessible and CDM 2007 is not seen as delivering in this regard.

### **Policy objectives and intended effects**

11. This package contains a number of proposals, which can be separated into two groups regarding their policy objectives and intended effects.
12. The proposals in the first group are presented in sections A to D and respond to the following policy considerations:
  - the findings of the Evaluation;
  - the policy of “copy out” of Directives;
  - HSE’s focus on effective regulation of smaller sites, which supports the case for radical simplification of CDM 2007 and supporting guidance
13. Those proposals are therefore intended to:
  - address the shortcomings of the current Regulations identified in the evaluation;
  - provide a regulatory framework that is better suited to the needs of small businesses in the sector, thus increasing compliance and improving health and safety;
  - align the Regulations more closely with the Directive in the most appropriate way, reflecting better regulation principles.
14. Following completion of the Löfstedt Review<sup>6</sup> and the Star Chamber process arising from the Red Tape Challenge, the HSE Board considered the arguments for and against a revision of CDM 2007. The Board directed that a revision be undertaken using copy out of the parent Directive as the starting point but directed that HSE should argue for the retention of measures which go beyond the Directive but demonstrably add value. In the context of the proposed revision, the only significant area in this proposal is the retention of explicit duties on designers, whereas the Directive provides for only implicit duties. Stakeholder consultation (both informal, prior to developing the proposals, and through the formal Consultation) suggests that there is strong industry support for the retention of these duties. The Board further directed that the revision should take into account the need to improve compliance at smaller sites, whilst being mindful of requirements of the Government policy on Better Regulation.

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<sup>6</sup> The Löfstedt Review was an independent review of health and safety legislation, carried out by Professor Ragnar Löfstedt and published in November 2011. See: <https://www.gov.uk/government/publications/reclaiming-health-and-safety-for-all-lofstedt-report>

15. The proposals in the second group are presented in sections E and F. They arise from the fact that HSE has become aware that transposition of the Directive in Great Britain is insufficient in certain respects, and revision of the Regulations presents an opportunity to align the Regulations with the Directive.
16. Those proposals are therefore intended to address areas where current transposition is insufficient.

## **Consultation**

17. Formal public consultation<sup>7</sup> on HSE's proposed changes to CDM took place between March 31<sup>st</sup> and June 6<sup>th</sup> 2014.
18. In developing this proposal, HSE engaged in extensive discussions with stakeholders on how best to simplify the Regulations and where measures that could be considered going beyond the Directive should be retained (see paragraph 14). Therefore, for most of the proposed changes the Consultation-stage Impact Assessment (IA)<sup>7</sup> presented a single option in addition to "Do nothing".
19. The exception was the removal of the exemption from client duties for domestic clients. This is one of the areas where the current transposition is now considered insufficient, and the change is proposed to bring national legislation in line with the Directive. In its section F, the Consultation-stage IA presented detailed analysis for two options for implementing this: one which copied out the Directive (option 1) and one which sought to provide a level of relief to domestic clients (option 2, which we describe as a 'deeming' approach). Under the copy-out option, the new client duties would fall on and be discharged by the homeowner. Under the 'deeming' approach option, the Regulations would provide that the contractor(s) for the project would, by default, carry out the client's duties without further intervention required from the homeowner.
20. The analysis presented in the Consultation-stage IA made it clear that the copy-out option resulted in much higher costs to society than the option applying the 'deeming' approach. With copy-out, this element of the proposal resulted in costs of £170 million a year to homeowners, whereas using the 'deeming' approach led to average annual costs of £1.3 million to homeowners and £4.6 million to contractors. The Consultation-stage IA provided a detailed analysis of why we estimated such a large difference in costs between the two options (see, particularly, paragraph 144 of that IA), but in summary, it was for two main reasons: a) contractors would already be familiar with the details of the work to be done and with the regulatory framework, whereas homeowners would have to familiarise themselves with both, and this

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<sup>7</sup> The Consultation Document, which contains the relevant Impact Assessment at Annex 2, can be found here: <http://www.hse.gov.uk/consult/condocs/cd261.htm>

would be a recurring cost for them; and, b) contractors would discharge the supervision element of their client duties as the work proceeds, while they are already in situ, whereas homeowners would need to spend time on supervision that they would otherwise be using for other purposes (work, or leisure pursuits).

21. Both of these options were based on continuing to apply our current risk-based enforcement policy, but section F also considered options where more HSE resources would be devoted to the enforcement of the new client duties. These options were discussed but were not formally consulted upon, although comments from consultees were still welcome.
22. Over the 10 weeks of the formal consultation, we received a total of 1427 responses. Over 600 responses were from consultancies, and almost 300 hundred from industry. Trade associations and trade unions were also well represented. In terms of roles of the respondents, over 500 responses were received from CDM co-ordinators, whose role would be removed under the proposed revision. We also had many responses from clients, designers and contractors (in the region of 150 for each role).
23. The consultation sought views on the degree of support for the overall aims of the package. From industry stakeholders there is strong degree of support for these aims, with the clearest support from organisations representing contractors and construction clients, Trades Unions cautiously support the proposals, generally supporting its aims, but qualifying this with concerns over worker protection and whether real improvements can be delivered with SMEs. Support was more heavily qualified by those representing design professionals and health and safety professionals.
24. There were also questions asking in more detail about the different changes proposed in the package. Details can be found in our analysis of the outcome of the public consultation presented to the HSE Board<sup>8</sup>, but we have included some of that feedback (especially when it was relevant to our analysis of the impacts of the proposal) throughout this IA.
25. Finally, the consultation document included questions about the consultation-stage IA. Due to the large number of questions we needed to ask on the substance of the proposed regulatory changes, we did not ask detailed questions about the different assumptions in the IA. Respondents had the option to comment on the assumptions made and to highlight areas they thought we had missed.
26. Almost half of all respondents made comments on the IA, in differing levels of detail. The main themes that emerged from the responses were: that the time taken for familiarisation had been underestimated,

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<sup>8</sup> See: <http://www.hse.gov.uk/aboutus/meetings/hseboard/2014/130814/paugb1462.pdf>

that some of the costs of time used were too low, that the transitional costs had not been adequately addressed, and that the assumed savings from the replacement of the CDM co-ordinator role with that of the principal designer were overestimated (specifically, many suggested that clients would continue to contract out the role to an external party). All these issues have been addressed by adjusting the relevant assumptions in this IA (after further stakeholder work, as described below). In the case of transitional costs, there has also been a change in the proposals to address this issue.

27. In addition to the formal public consultation, we also engaged closely with construction industry stakeholders through the development of the draft Regulations, in advance of, during and after the public consultation. The Construction Industry Advisory Committee (CONIAC) with its wide representation provided an appropriate forum for engagement at a collective level. We also undertook a great deal of *ad hoc* work with different groups of stakeholders. This included a range of activities, from supporting stakeholder organisations by attending consultation events organised by them and answering questions about the proposals, to individual meetings with representatives of organisations of particular interest. Some of the latter took place after the formal consultation had closed and were used to explore issues raised in the relevant organisation's consultation response and identified in the previous paragraphs.
28. The IA and the assumptions made in it were one of the subjects discussed in this additional consultation work. We were particularly interested in the assumptions underlying Section B (Removal of the CDM co-ordinator role and its replacement with a new role), which is where the bulk of these proposals' savings to business arise, but other areas were also discussed.
29. Detailed analysis of the feedback received on particular assumptions is included in the relevant sections of this IA.
30. After analysis of the feedback from consultation and consideration of the impacts of the different options considered, it has been decided by the HSE Board that the 2<sup>nd</sup> option analysed in the consultation-stage IA (going forward with the revision to CDM 2007 and removing the exemption for domestic clients through a "deeming" approach; also referred to as option 2 in the present IA) is the preferred option. We therefore only present an updated analysis of it and the "Do nothing" option in this final IA.

### **Proposed Regulations – key changes**

31. The key proposed changes in CDM 2015 are:
  - shortening and structural simplification of the Regulations (Section A);

- removal of the Approved Code of Practice (ACOP) and its replacement with straightforward guidance aimed at specific industry sub-sectors (Section A);
- removal of CDM co-ordinator role and its replacement with a new role (Section B);
- removal of the detailed framework for the assessment of individual and corporate competence (Section C);
- tightening of the condition used to trigger notification of a construction project to the competent authority (Section D);
- alteration of the conditions used to trigger a raft of additional duties (Section E);
- removal of the exemption from client duties for domestic clients, implemented by using a “deeming” approach. (Section F).

32. These changes are analysed in option 2, and were also option 2 in the consultation-stage IA. Option 1 is the “do nothing” option, which functions as the baseline against which we compare option 2.

### **Alternatives to regulation**

33. The proposed revision of CDM 2007 would replace the detailed competence assurance requirements with a non-regulatory approach led by industry and focused on adding value and not bureaucracy. Section C (starting at paragraph 93) analyses this proposal.

### **Costs and benefits of the changes in CDM 2015**

#### ***Option 1 - Do nothing***

34. Option 1 continues with the status quo, and would therefore not lead to additional costs or benefits. However, there is a risk of infraction proceedings if GB fails to make the changes analysed in sections E and F (changes in thresholds for additional duties and removal of the exemption for domestic clients), which are intended to align the Regulations more closely with the Directive.

#### ***Option 2 – A variety of changes to CDM 2007, including the removal of the exemption for domestic clients by using a “deeming” approach.***

### **General assumptions: transitional provisions**

35. One of the issues widely raised by stakeholders was that the lack of a transitional period in between CDM 2007 and CDM 2015 would generate difficulties for projects already underway when CDM 2015 comes into force in April 2015. It emerged that the main problem would be that a CDM co-ordinator would already be appointed in those projects, often with a contract running past April 2015. Moving to the new regime would require renegotiating those CDM co-ordinators’ contracts to account for the early termination, and this would have a cost to business.

36. To take account of that feedback, HSE now proposes transitional provisions which would allow for CDM co-ordinators to continue in post for six months from the coming into force of the revised Regulations, or the duration of the existing project, whichever should come sooner.
37. This period was chosen after analysing the data from projects notified to HSE (which are those that would require the appointment of a CDM co-ordinator). Notifications include data on projected start and end dates of projects. In order to avoid seasonal variations, we modelled what the situation would have been at the beginning of April 2014.
38. Our analysis showed that over 90% of all projects started before April 1<sup>st</sup> 2014 were expected to be over by that date. A total of 98% would be over after 6 further months (and more than 96% would be over by 3 months after April 1<sup>st</sup>).
39. To reflect this, we will apply a factor of 0.95 to any of the costs or benefits that are incurred in the first year by projects that would have appointed a CDM co-ordinator under CDM 2007 (please note that this results in a smaller net benefit for that year).
40. This, however, assumes that stakeholders have not already incorporated prior knowledge of the upcoming changes into their contractual arrangements. The details of our proposals (including the date when the Regulations are expected to come into force) have been known to industry for a long time. Projects running for a long period tend to be the largest ones and, as we will assume throughout this IA, the larger sector of the industry tends to be most engaged with health and safety regulatory requirements and HSE. We expect most will have been aware of the upcoming changes and incorporated that information into their contracts with CDM co-ordinators. For this reason, we expect the transitional impacts after the 6-month period will be virtually nil, and that the reduction in net benefits could be smaller in reality than we estimated above. We will, however, take a conservative approach and use that estimate.
41. We note that introducing transitional provisions results in costs to business that are lower or, at most, equal to those that would be incurred under an option with no transitional provisions. This is because businesses will not be forced to make use of these provisions. If they judge that the savings from CDM 2015 compensate for any transitional costs, they will be able to switch to that regime on the day the regulations come into force.

**A) Shortening and simplification of the text of the Regulations, and removal of the ACOP**

42. The evaluation confirmed that, while the clarity of CDM 2007 had improved on its predecessor Regulations, it remains a difficult text, with

a structure that is complex when compared with the Directive. A substantial body of evidence from the evaluation of CDM 2007, including from HSE inspectors, small construction contractors and the bodies which represent them suggests that the Regulations are poorly understood by those who most need to apply its principles and precautions in order to improve health and safety conditions (that is, those operating on small construction sites). It is clear that, five years after the introduction of CDM 2007, numerous misunderstandings persist. These shortcomings contribute to reduced compliance and result in unnecessary bureaucracy.

43. CDM 2015 takes the text of the Directive as a starting point and is substantially shorter than CDM 2007. This has been achieved by a more concise expression of duties together with the removal of detailed provisions which in some cases went beyond the Directive or in other cases only signposted more general requirements. The structure of the revised Regulations has been significantly simplified in that frequent cross-referencing between individual Regulations has been reduced. Instead, the revision is based on a linear structure which corresponds to the timeline of involvement of duty holders in a typical construction project.
44. It is proposed that the revised regulatory package does not contain an Approved Code of Practice (ACOP). The existing ACOP attempts to define management arrangements and standards for the entire spectrum of construction projects, and as such it has not been fully effective. In particular, the ACOP is long and is often over-interpreted. The CDM evaluation showed that it has had very limited impact in the SME sector, to whom it appears inaccessible and irrelevant.
45. The textual improvements aim to make the Regulations and guidance significantly easier to understand and this in turn will reduce time needed for familiarisation for new businesses and contribute to the amelioration of many of the issues identified in paragraphs 8 - 9. It is planned that the Regulations will be supplemented by a suite of concise, accessible guidance tailored to the needs of dutyholders in specific industry sub-sectors, especially those operating on smaller sites.
46. One of the main messages from the formal consultation was that respondents (most of whom are from the relatively larger sector of the industry) like and value having an ACOP, especially because they perceive it as having a special legal status. To address these concerns, we propose to introduce a new, simplified ACOP next year, once the industry has had a chance to familiarise itself with the guidance. Any additional costs that would derive from that would be analysed in the corresponding IA. This CDM 2015 IA therefore analyses the situation with the withdrawal of the ACOP, which will be the case after the Regulations come into force and until a new ACOP is introduced.

Number of businesses affected<sup>9</sup>:

47. The changes in the text of the regulations will impact both on existing businesses in the sector and on those entering the sector each year. The types of businesses affected would be mainly contractors and designers.
48. For the number of contractors, we consulted several recent sources. The Office for National Statistics (ONS) Construction Statistics Annual Report 2013<sup>10</sup> and a pamphlet released by the UK Contractors Group<sup>11</sup> presented numbers that varied between 230,000 and 260,000. We will use an estimate somewhere in the middle, of 240,000 contractors.
49. For the number of design professionals, we used estimates from the Construction Skills Network, based on data from ONS and Experian. Their document “Blueprint for UK Construction Skills 2012-2016”<sup>12</sup>, presents estimates for 2012 of total employment by occupation. They estimate a total of approximately 150,000 architects, surveyors and civil engineers.
50. Based on the data for 2012-2016 presented by Construction Skills, we will assume that the number of contractors entering the market every year will be approximately 7,000 and the number of new designers approximately 3,000.

Cost implications of the changes in the text of the regulations and removal of the ACOP:

51. There would be costs to existing businesses from understanding the changes to the regulations, and savings to new businesses entering the sector, as we expect it would take them less time to understand requirements.
52. The CDM 2015 Regulations have been made much shorter (the number of pages has been reduced by a quarter) and they have been written in a way that should make them much easier to understand. Replacement of the long, complex ACOP with concise and accessible guidance tailored for specific industry sectors should facilitate this. We expect that those existing businesses familiarising themselves with the new Regulations and guidance would already be familiar with the current Regulations, and therefore familiar with most of the concepts in the new ones. However, as the new Regulations contain changes in regulatory requirements, those businesses will have to spend some time understanding them.

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<sup>9</sup> This section will not include familiarisation costs for domestic clients. Those costs will be analysed in section F, together with all costs on domestic clients.

<sup>10</sup> See: <http://www.ons.gov.uk/ons/rel/construction/construction-statistics/no--14--2013-edition/art-construction-statistics-annual--2013.html>

<sup>11</sup> See:

[http://www.ukcg.org.uk/fileadmin/documents/UKCG/futures/Construction\\_in\\_the\\_UK\\_economy.pdf](http://www.ukcg.org.uk/fileadmin/documents/UKCG/futures/Construction_in_the_UK_economy.pdf)

<sup>12</sup> See: [http://www.eskills.org/uploads/CSN-Report-National-Overview\\_tcm17-28589.pdf](http://www.eskills.org/uploads/CSN-Report-National-Overview_tcm17-28589.pdf)

53. The CDM 2007 IA<sup>13</sup> estimated that it would take 8 hours per contractor and 6 hours per designer to familiarise themselves with the 2007 Regulations (this would include the ACOP). We would mainly expect businesses that are already aware of the content of the current regulations to seek to understand the changes, so the majority of those will already have a grounding in how the regulatory framework works. Additionally, we would expect that most smaller contractors would make use of the new, more concise guidance, specifically tailored to their needs, rather than the actual Regulations.
54. In the consultation-stage IA we assumed that for existing businesses, it would take approximately 1 hour to understand the changes. Feedback from stakeholders suggested that we had underestimated that time, and a number of respondents added that some would chose to attend a training course, rather than read through the guidance themselves (this would happen at the higher end of the market). Suggested alternative estimates for the time familiarisation would take varied widely, so we explored the issue in the interviews we did during and after the consultation period. For this we spoke with contractors and designers, as well as with an experienced training provider specialised in health and safety in the construction industry.
55. From this feedback we conclude that an estimate of 3 hours would be more appropriate. This overall figure would be an average for the whole industry that would cover a wide variety of situations: from the great majority of very small contractors, who would only read through the guidance and spend a lot less than 3 hours, to the more professional end of the market, where individuals would attend a course of an estimated 2-3 hours (and costs would therefore include both opportunity cost and the cost of the training course).
56. Not all existing businesses would spend time on familiarisation. A recent consultation for the revocation of a construction-specific regulation<sup>14</sup> sought views from stakeholders (both through formal consultation and qualitative research) on issues relating to familiarisation and compliance. Those views are summarised in the final impact assessment (IA) for that proposal<sup>15</sup>. There was a consensus that familiarisation in the industry, especially for contractors, operates through trickle-down. Respondents agreed that only the largest contractors actively seek to keep up-to-date with regulatory changes. Smaller contractors would generally become aware with requirements through working as subcontractors in sites operated by those larger contractors. Based on this, we used low rates of compliance in that IA (5% for self-employed contractors and 25% for employers).

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<sup>13</sup> See: <http://www.hse.gov.uk/ria/construction/cdm07.pdf>

<sup>14</sup> Consultation on the revocation of the Construction (Head Protection) Regulations. See: <http://www.hse.gov.uk/consult/condocs/cd239.htm>

<sup>15</sup> See: <http://www.legislation.gov.uk/ukxi/2013/448/impacts>

57. However, that regulatory change was a much more minor one than the amendment of CDM 2007, which would be expected to attract more attention. We expect that even some of the smaller contractors would spend some time understanding what has changed, even if that is through interactions with principal contractors, rather than through reading the new Regulations. We therefore used a compliance rate of 50% for contractors in the IA. Feedback from the consultation was that this figure was too high, and after considering the wide variety of alternative estimates provided in the consultation, an estimate of 33% is felt to be more appropriate.
58. We would expect a higher proportion of design professionals to spend time in understanding what has changed, due to the nature of their work and training, the existence of professional organisations, and the nature of the changes (which have a direct impact on their role). In the consultation-stage IA we assumed a compliance rate of 100% for them, but again, feedback from stakeholders was firm that this figure was too high. Based on that feedback, we will lower our assumption to 75%.
59. In the consultation-stage IA we assumed an average full economic cost per hour of approximately £15<sup>16</sup> per contractor<sup>17</sup>, and of £25<sup>18</sup> per design professional. Feedback from stakeholders was that these figures were too low, especially for designers, who, when employed by a company, would have their services charged out at a rate higher than their wages. We have reconsidered these figures.
60. For contractors, we have decided that the full economic cost per hour used in the consultation-stage IA is the most appropriate estimate. We do not doubt that for large contractors, the time of their employees might be charged out at a higher rate, but this is a sector dominated by very small contractors and the self-employed, and most will be working on small projects, where profit margins will be slim. Our estimate will be equivalent to an average salary / cost of employing an individual of approximately £30 thousand a year, which we feel is reasonable.
61. From discussions with stakeholders, the situation is different for designers. They are less likely to be self-employed, and projects likely to involve specialised designers will be on the larger side. We will assume that on average, designers' time will be charged out rate at 2 times their

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<sup>16</sup> Source: Annual Survey of Hours and Earnings (ASHE) 2012, Office for National Statistics. Salary for SOC category 814 (Construction operatives), uprated by 30% to account for non-wage costs. The figure is also approximately £15 per hour in ASHE 2013.

<sup>17</sup> We assume one manager in each of those businesses would undertake familiarisation. We recognise that for larger companies, more than one manager would engage in this activity. However, the vast majority of businesses in this sector are very small. According to the Inter-Departmental Business Register, for instance, 81% of businesses in the construction sector have fewer than 5 employees, and the IDBR estimates do not even include the majority of the self-employed in the sector.

<sup>18</sup> Source: Annual Survey of Hours and Earnings (ASHE) 2012, Office for National Statistics. Weighted average of the salary for SOC categories 2121 (Civil engineers), 2431 (Architects), 2433 (Quantity surveyors) and 2434 (Chartered surveyors, not quantity surveyors), uprated by 30% to account for non-wage costs.

wage. This results in a full economic cost of £40 per hour<sup>19</sup> for designers' time.

62. Applying these assumptions, we estimate a **one-off familiarisation cost of £17.3 million**.
63. New businesses entering the construction industry, which previously would have had to familiarise themselves with CDM 2007 Regulations and ACOP would now familiarise themselves with their health and safety obligations through much shorter and simpler Regulations, designed to be more easily understandable by small businesses, as well as targeted guidance, rather than a long and complex ACOP. We would therefore expect them to spend less time on this activity than they would have without the proposed amendments. This would generate savings to these businesses.
64. As mentioned above, we would not expect all new businesses to spend time on familiarisation. We will use the same compliance rate for contractors and designers as in the previous section (see paragraphs 57 and 58): 33% for contractors and 75% for designers.
65. The CDM 2007 IA assumed that it would take 8 hours per contractor and 6 hours per designer to familiarise themselves with the regulations and ACOP. Based on the evaluation, where it was highlighted that the ACOP, especially, was confusing and difficult to understand, these estimates sound reasonable. We will use the same estimates as in the previous section (see paragraphs 54 and 55) for how long it would take contractors and designers to understand the new Regulations and guidance: 3 hours. The time savings would therefore be of 5 hours for contractors and 3 for designers.
66. Based on the same assumptions as above on full economic cost of contractors' and designers' time, this results in **annual savings of £0.5 million with a 10-year present value of £3.9 million**.
67. Both the familiarisation costs to existing businesses and familiarisation savings to new businesses are in scope for One-In, Two-Out (OITO)<sup>20</sup>.

## **B) Removal of CDM co-ordinator role and its replacement with a new role**

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<sup>19</sup> Source: Annual Survey of Hours and Earnings (ASHE) 2013, Office for National Statistics. Weighted average of the salary for SOC categories 2121 (Civil engineers), 2431 (Architects), 2433 (Quantity surveyors) and 2434 (Chartered surveyors, not quantity surveyors),

<sup>20</sup> Savings to new businesses, such as those considered here, have previously caused issues regarding whether they are 'direct' or 'indirect'. The latest OITO guidance is explicit about how they should be considered: "1.9.36 - Categorisation of direct and indirect impacts should be the same for existing business and new entrants. Direct and indirect impacts should be determined with reference to the existing business. Subsequently, the same categories of impacts (e.g. familiarisation costs) should be applied to new entrants"

68. The role of the CDM co-ordinator under CDM 2007 is to provide the client with a key project advisor in respect of the management of construction health and safety risks. The role was intended to assist the client in advising on the selection of competent contractors and the adequacy of management arrangements, to ensure proper co-ordination of the design process, facilitate good communication and co-operation between project team members and to prepare the health and safety file. The focus of the CDM co-ordinator should be on the 'project preparation' phase (as described by the Directive) or, in more common construction language, the 'pre-construction phase'. Their existence is a recognition that the experience of clients in procuring construction work varies enormously. Some clients - for example a national supermarket chain - will have a wealth of experience in procurement of construction work, but at the same time may fail to appreciate how their design choices may affect the safety of those carrying out the construction work. Most though will be inexperienced in procuring construction work, and in a majority of cases will be a first-time client. The CDM co-ordinator role would emphasise advising the client on the operation of their relationship with the designer and contractor.
69. In addition to advising on legal duties and the appointment of competent contractors, a key part of the CDM co-ordinator role is to facilitate the effective flow of information between the client, designer and principal contractor. This information should include so-called 'pre-construction information' which the client is obliged to provide where it relates to matters which may have a bearing on the control of health and safety risks later in the project. For example, this might include details known only to the client about the location of buried services. Administratively, the CDM co-ordinator is responsible, where necessary, for notifying the project to HSE, and for collating information into a health and safety file for presentation to the end user of the project.
70. In short, the CDM co-ordinator should be a pivotal role in the preconstruction phase of a construction project. However, the experience of CDM 2007 has been that in many cases the CDM co-ordinator has been claimed to add significant cost but no value. This was one of the conclusions of the CDM 2007 evaluation. Often co-ordinators are appointed so late in the project that there is little role for them. They have often not become integrated well into the project team of designer, client and principal contractor and are perceived as creating paperwork and bureaucracy. Often their role has been more focused on influencing the ultimate design of the building (to improve its 'buildability') at the expense of the valuable role of co-ordinating activities and information. Their role has tended to become more technical and less managerial in nature.
71. The proposed revision removes the pre-construction co-ordination role of the CDM co-ordinator and passes the responsibility to a 'principal designer'. This is expected to deliver a number of positive effects. Firstly, it will mean that the co-ordination will be delivered through a pre-existing

part of a project team, for example, the lead designer, the project management company acting on behalf of the client or the client themselves - rather than it being seen as an 'add-on' who is often only appointed to satisfy legal requirements. Secondly, co-ordination of information and liaison between the different parties to a construction contract is a natural part of a designer's role. It is intended that co-ordination will become accepted as a core business function of the pre-existing project team rather than an externalised role, where the default position is to appoint an outside co-ordinator to deliver this.

72. In addition to this, having one party delivering both functions is expected to generate significant savings, as co-ordination and information exchange is simplified. This is explored in the following paragraphs.

#### Number of projects affected

73. According to the Directive, where a construction site has more than one contractor present, this triggers a number of additional duties. These duties include formal appointments and documents, and are described in more detail in Section E, which analyses the impact of changing the current trigger in CDM 2007 to align it with that in the Directive (in summary, this has the effect of imposing these duties on projects which would have been out of scope under CDM 2007).
74. The projects affected by the removal of the CDM co-ordinator role and its replacement with a new role would be those which are above the threshold for formal appointments and documents (as described in Section E), as that is when the requirement to formally appoint someone to perform a co-ordination role would apply. Both non-domestic and (after the changes analysed in Section F, removing the exemption for domestic clients) domestic projects would be affected.
75. As Section E sets out in more detail, a third of the approximately 180,000 projects under £200,000 and all the 70,000 projects over £200,000 would be above this threshold. Section F shows that approximately 1 million domestic projects would also be above the threshold. All of these would be, in theory, affected by the removal of the CDM co-ordinator role.
76. In practice, however, it would only be commercial projects of over £200,000 that would experience actual savings from this change. For all domestic projects and the 60,000 non-domestic projects under £200,000 any savings arising from this change would be notional, and would not actually be felt as real savings by business. This is because they would relate to duties that are new to them, and that would be more costly if the EU-related amendments proposed in CDM 2015 were to be made without the current deregulatory proposals also included (such as this one, the removal of the CDM co-ordinator role).

77. Because of this, in sections E and F of this IA, we have calculated the costs of the EU-related amendments with the underlying assumption that the co-ordination function has *already* been amended as proposed in this section. Therefore, in the next paragraphs, we will only calculate costs savings to the approximately 70,000 non-domestic projects over £200,000.

Cost implications of the removal of CDM co-ordinator role and its replacement with a new role

78. Since the change analysed in this section leads to the largest impact on business out of all the proposed changes in CDM 2015, we undertook additional, focused work to sense-check and quality-assure our assumptions during and after the consultation period. A number of respondents to the public consultation made comments about the savings from the removal of the CDM co-ordinator role. Most were general comments, but a few had specific feedback about our assumptions. We also sought out feedback from organisations representing the parties who would be involved in the most relevant kind of projects (projects of around and over £200,000), and who might have different perspectives and interests in the change. This feedback took the form of individual discussions, which allowed us to dig deeper into the different assumptions. We have incorporated that feedback below.
79. The intent of the regulatory change is that the co-ordination function would be taken over by those who currently have a design function. In general, the function would remain as it is at the moment, albeit with less prescriptiveness. The costs of performing the duties required would be transferred from the co-ordinator to the designer. However, we expect having those two functions performed by the same party would generate efficiencies which would lead to significant savings, as described in the following paragraphs.
80. The CDM 2007 evaluation presents data on the additional costs to CDM co-ordinators and designers resulting from complying with CDM 2007 (tables 28 and 29). As the report explains: “Respondents were asked for information on the additional costs incurred in implementing CDM 2007 on a specific project. Respondents were asked to identify the additional costs incurred due to CDM 2007, either in terms of hours, days, or Pounds Sterling for each of the key duties that each group of duty holders had to undertake.” There were some 140 responses regarding the costs associated with the CDM co-ordinator role, and just over 50 regarding those associated with the designer role.
81. We analysed these different types of costs and identified a number that would be either reduced or eliminated if both functions were performed together, by the same party.

82. The evaluation reports a total median<sup>21</sup> cost to CDM co-ordinators of £3,150. Feedback from the stakeholders consulted was that they recognised this figure as the kind of fee that would be charged for CDM co-ordinator services in projects of the size we were discussing. Of those total costs, we identified the following categories as types of costs that would be reduced:
- ***Demonstrating competency and the adequacy of resources as part of the pre-qualification and bidding process: £205.*** Designers are already incurring a cost to do this (one of the categories of costs identified for designers relates to demonstrating competency, as well), and we would not expect they would have to do this twice. This cost would be eliminated, which stakeholders agreed is a reasonable assumption.
  - ***Cost of identifying, collecting and passing on pre-construction information - £610.*** A proportion of these costs is related to *interactions* of the CDM co-ordinator with the designer. In the consultation-stage IA we assumed they would be reduced by about a third, to £410. Stakeholders suggested that, though they agreed there would be a saving in this item, the presence of more than one designer in larger projects would mean that the principal designer would still have to interact with other designers. We have therefore reduced the total cost by a fifth instead, to £490.
  - ***Co-ordinating the health and safety aspects of the design work - £350.*** This aspect of the role would be easier for lead designers to perform, as it would involve information they hold themselves. In the consultation-stage IA we assumed that these costs would be reduced by half, to £175. Like in the previous item, however, stakeholders raised the possibility that in larger projects there would be more than one designer. Based on that feedback, a more realistic reduction is by a third, to £236.
  - Additionally, stakeholders identified a category of costs to CDM co-ordinators that they felt might be reduced, which we had not considered at pre-consultation stage. It is the item ***Liaising with the principal contractor regarding ongoing design - £408.*** The logic was that this activity would be easier for the principal designer to carry out, as they would be closer to the design team than a CDM co-ordinator. Being part of the team earlier than a CDM co-ordinator, they would tend to also be closer to the principal contractor as well. Based on that feedback, we have assumed that these costs would be reduced by a third, to £272.
83. We would therefore expect £578 in savings per average project for performing the co-ordination function, a saving of approximately 20%.

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<sup>21</sup> We also considered using the mean cost. Since we were taking into account all projects over £200k and tables 28 and 29 include information for all projects (including those under £200k), the mean cost might have been seen as an underestimate of the actual cost. However, the mean seemed to be highly affected by outliers who'd reported particularly high costs. Our analysis would have resulted in savings of £2,700 per project, which did not feel reasonable to experts in the sector. We therefore opted for the median as a better and more conservative representation of reality.

84. As mentioned, the evaluation also has a table detailing additional costs to designers: We identified several types of cost-generating activities that would not have to be undertaken any longer. However, the median reported cost for these activities was £0, so it appears that for the majority of designers, the cost of undertaking them is negligible. We will therefore not assume any cost savings for the designer function.
85. In total, therefore, the efficiencies described above would lead to average savings of £578 per project.
86. These savings would be felt in those projects which are compliant with the regulations. We have assumed 75% compliance, which stakeholders felt was reasonable. Projects of this size (over £200k) tend to be undertaken by relatively large companies, which tend to be broadly compliant with the regulations. 75% does not necessarily mean that the remaining 25% do not comply with requirements at all. Rather, it describes a situation where almost all companies broadly comply, but possibly not with all requirements. This assumption results in approximately 52 thousand projects experiencing savings.
87. As mentioned in paragraph 79, the intent of this change is that the co-ordination function would be taken over by a party (who would be a designer) who is already part of the project team. As this would generate savings, we assumed in the consultation-stage IA that all compliant projects would implement the new regime in such a way. The logic was that since clients would no longer have the obligation to hire an external party to discharge the co-ordination role and it would be more efficient to have a party already in the team discharge that role, this is what they would do. Given the conclusions of the CDM 2007 evaluation (see paragraph 70), we felt this was a reasonable assumption. However, our consultation with stakeholders revealed a widespread understanding that some projects would continue to contract out the co-ordination role to an external party, especially at first. The reasons given for this included lack of confidence or lack of interest of some designers in fulfilling the principal designer role.
88. Projects which continue to hire an external party to carry out the co-ordination role would not experience the savings calculated above. We have therefore reflected the feedback received by making assumptions about, for each year, what proportions of compliant projects would have the co-ordination function discharged by someone already in the team, and then applying those proportions to the savings figures. Based on our discussions with stakeholders, we have assumed that this proportion would be 60% for the first year, 70% for the second, and 80% after that. Part of the increase is expected to happen as designers become more comfortable with the new role, but also as HSE works with the industry in the next years to help them transition to the new regime and deliver the co-ordination function as was intended by this proposal.

89. We will assume that compliant projects which do not continue to hire external parties to deliver the co-ordination function would experience savings of £578 each. As mentioned in footnote 21, this is an average value for all sizes of projects, so for the largest projects (such as those in this segment), it could be even higher. However, to keep our estimates conservative, and because we have no basis for how much to increase the per-project value, we will use the £578 estimate. Additionally, to account for projects taking advantage of transitional provisions (see paragraph 39), we will subtract 5% of savings from the first year.
90. This results in **savings of £17 million in the first year, £21 million in the second and £23.9 million a year thereafter** for non-domestic projects of over £200,000. . The equivalent annual saving to businesses would be £23 million, with a 10-year present value of £196 million,
91. The savings calculated above would fall on the principal designer, the client, or a combination of the two, depending on what proportion of them the principal designer chooses to pass through as lower fees. These being non-domestic projects, all these parties would be considered business. Therefore, these savings are in scope of OITO.
92. In addition to its direct impacts, the removal of the CDM co-ordinator role would result in a loss of business to some of those individuals who specialise in that role (many will be qualified to take on the role of principal designer), and potentially increased business for designers. According to the OITO methodology<sup>22</sup>, these would be indirect impacts and therefore not in scope of OITO.

### **C) Removal of the explicit competence requirements**

93. Promoting competence within the construction industry remains a key priority and developing individual competence is crucial to reducing accidents and ill health. However, the requirements of Regulation 4 of CDM 2007 and the detailed framework of competence assessment supporting it at Appendix 4 of the ACOP has elicited an industry response which, in general, is costly and bureaucratic. This is supported by the conclusions of the CDM 2007 evaluation. The proliferation of commercial corporate health and safety assessment schemes and individual card schemes has diverted attention from the delivery of competent businesses and workers to the processes involved, rather than the outcomes. These schemes often provide a real barrier to small contractors and individuals competing for work, as large contractors often require their potential subcontractors to be assessed through a particular scheme of their liking, and the administrative requirements and costs imposed for accreditation can be both confusing and prohibitive.

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<sup>22</sup> Better Regulation Framework Manual: <https://www.gov.uk/government/publications/better-regulation-framework-manual>

94. HSE now believes that regulation 4 should be removed because competence is most effectively promoted by industry on a non regulatory basis and focused on adding value and not bureaucracy. The Regulation introduced the concepts of 'individual' and 'corporate' competence, the latter being a misleading term. Experience has shown that extending the language of competence to organisations has caused widespread confusion, and that competence as a concept has no legal minimum of compliance.
95. Regulation 4 has also allowed the proliferation of commercially-driven third party assessment schemes. Although these assessment schemes aim to comply with the core criteria in Appendix 4 of the ACOP, differences between the assessment requirements and the frequency of re-assessments between different schemes have resulted in the process becoming both bureaucratic and costly to construction organisations - particularly the smaller organisations - and thus partially discredited.
96. Furthermore, regulation 4 has not encouraged the correct balance of responsibilities between the employer, the employee, the self-employed, and third party competency card schemes, such as the Construction Skills Certification Scheme (CSCS) and others. An effective framework of card schemes and common standards needs to be industry-led in conjunction with various Sector Skills Councils, Awarding Bodies, colleges and nationally-recognised training providers. The removal of regulation 4 will facilitate these parties taking greater responsibility for working together, agreeing standards of assessment and co-ordinating training and achievement of competence in health and safety
97. The removal of regulation 4 would be significantly deregulatory because it removes the requirement for establishing competence at both organisational and individual level and shifts the balance of thought back to training and supervision, a requirement commensurate with similar health and safety legislation. In doing this, the implicit requirement for organisations to follow a protracted, costly and bureaucratic competence assessment process is removed.
98. In terms of cost implications, the removal of the explicit requirements for competence is unlikely to result in immediate changes of behaviour. Rather, we would expect it to be the initiator for change over the coming years. Initial contacts with industry indicate that the larger clients and contractors will maintain their requirements for their supply chains and workforce to undergo health and safety competence assessment. However, we expect that the health and safety competence assessment industry will rationalise and reduce over time as the clients and contractors increasingly rely on PAS 91 accreditation (a publicly available standard published by British Standards which sets standards for procurement of construction work) and the training and experience of their supply chain as demonstration of their ability and capability to undertake work for which they compete. A significant cost saving to the industry (especially small contractors) would be realised as suppliers will

no longer need to submit to a multitude of competence assessment schemes at both the individual and corporate level.

99. We intend to work with industry to achieve this objective, and we would expect at least a portion of such savings would materialise in the period over which this IA is appraising impacts (the first 10 years). However, the level of uncertainty inherent in predicting how and when behaviour would change in this area prevents us from being able to quantify these savings.
100. It may be seen by some sections of the industry that HSE is stepping away from its support for a competent industry workforce after several years of explicit support. CDM 2015 will, however, retain a general requirement that those appointed have appropriate training and knowledge to carry out their work safely. The material which is developed to support CDM 2015 following the removal of the detailed ACOP requirements will be explicit about what it sees as an appropriate and proportionate industry response to the challenge of ensuring a competent workforce. Based on this, we would not expect this change would result in adverse health and safety impacts.

#### **D) Tightening of the condition used to trigger notification of the construction project to the competent authority**

101. The Directive provides that for any construction site on which (1) work is scheduled to last for more than 30 working days with more than 20 workers occupied simultaneously, or (2) on which the volume of work is scheduled to exceed 500 person-days, specified particulars of the site must be notified to the national competent authority.
102. CDM 2007 transposed the specified particulars but it adopted a slightly different criterion for notification in that it omitted the requirement for more than 20 workers. The effect of weakening the condition in this way is that CDM 2007 requires notification of more projects than the Directive does, going somewhat beyond the strict requirement of the Directive. The notifications are usually made to HSE using an online form and provide a source of intelligence for HSE on construction activity and where larger construction sites are to be found. The value of this intelligence is lessened, however, by HSE increasing its regulatory effort on smaller sites many of which do not meet the criterion for notification, and by virtue of the fact that no projects for domestic clients are currently notifiable.
103. CDM 2015 will adopt the tighter criterion for notification given in the Directive.

#### Number of projects affected

104. Approximately 115,000 notifications are made to HSE every year. We have analysed a sample of those notifications to determine what

proportion of them would still require formal notification under the proposed changes. The conclusion of that analysis is that notifications would approximately halve, and that we would expect 60,000 fewer notifications every year.

Cost implications of the tightening of the condition used to trigger notification of the construction project to the competent authority

105. The nature of the current notification requirements is that the projects involved are large ones, i.e. those in which we would expect clients to keep up-to-date with the requirements. We will therefore assume that annual notifications would, indeed, be reduced by 60,000 a year.
106. Table 28 of the CDM 2007 evaluation, which provides estimates of different costs experienced by CDM co-ordinators, has a specific estimate of the cost of “Notifying this project to HSE as required in CDM 2007”. The median of the costs reported is £51. Very few comments were received from stakeholders on this, and the views were mixed. Some argued that when notifying projects electronically the costs were lower than that, whereas others said that £51 felt low, as notifying the project required more than just filling in a form (e.g. gathering the necessary information, getting it cleared). We believe the estimate in the evaluation is the most robust number that we can use for this cost, and we will therefore not change it.
107. Applying that cost, assuming 60,000 fewer notifications a year and accounting for transitional provisions in the first year, savings due to not having to notify projects to HSE would be of **£2.9 million in the first year and £3 million a year after that**, with a 10-year present value of £26 million. These savings are in scope for OITO.
108. The principal concern regarding this proposed change raised by industry in the consultation, particularly by those representing small contractors, is that the change of threshold will result in a loss of intelligence to HSE. HSE makes use of a wide variety of intelligence in targeting its work in the construction industry, of which notification data is a part. We have considered internally the significance of the reduction in the number of notifications, and we do not think this would have an impact on our enforcement.

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109. The following two proposed changes arise from different policy considerations than those presented earlier. HSE has become aware that the current transposition of the Directive is insufficient in two areas; the changes analysed below address these two areas and align the Regulations with the Directive, ensuring the latter is transposed correctly.

**E) Changes in thresholds for additional duties**

110. The Directive imposes a number of additional duties where a construction site has more than one contractor present. The main additional duties are for the client (or a person acting on their behalf) to appoint safety and health co-ordinators for the pre-construction and construction stages of the project, and for the co-ordinators to co-ordinate health and safety and collate a health and safety file of information likely to be useful to those carrying out subsequent works after the completion of the project, such as cleaning, decommissioning or demolition. Additionally, whatever the size of the project, the principal contractor or contractor is required draw up a health and safety plan for the construction phase.
111. CDM 2007 transposed the additional duties but it adopted a different trigger. It used a measure of the duration of the project expressed as more than 30 days or more than 500 person-days of construction work instead of plurality of contractors (or, in the case of health and safety plans, instead of not requiring a trigger). This was done to simplify the Regulations by using the same condition for triggering the additional duties as for triggering notification of the project to the competent authority. However, the approach under CDM 2007 differs from the Directive and CDM 2015 seeks to align them.
112. CDM 2015 will change the additional duties triggers in line with the Directive. The threshold will change from project duration to contractor plurality for most of the duties, and construction-phase health and safety plans, proportionate to the risks involved, will be required for all projects. The impact of the change will be to increase the number of projects that attract the additional duties, but with the benefit of significantly simplifying the structure of the Regulations. The great majority of such projects brought within scope of this requirement will be small projects, and the planned supporting guidance to the Regulations will demonstrate how the additional duties arising on such projects can be discharged in a practical and proportionate way, with minimal extra cost.
113. The change in threshold will affect both non-domestic projects and, due to the proposed removal of the exemption from client duties for domestic clients, domestic projects as well. The impact on non-domestic projects is analysed in this section, while the impact on domestic projects will be analysed and the new duties arising will be considered in the subsequent one.

Number of non-domestic projects affected:

114. Projects over 30 days or 500 person days are likely to already involve more than one contractor and so would not be affected by the change in threshold. However, there will be a number of shorter-duration projects which would also require more than one contractor and so would become subject to formal appointments and documents if the threshold is amended.

115. It is not straightforward to obtain an estimate for the total number of non-domestic construction projects undertaken each year. In the latest Construction Statistics that includes data by value of project<sup>23</sup> the Office for National Statistics (ONS) publishes an estimate of approximately 37 thousand projects of value greater than £100,000, based on their quarterly survey. The ONS has also provided us with their estimate (based on the same source) for projects of value below £100,000, and that is approximately 120,000 projects. In total, therefore, the ONS estimate some 160,000 non-domestic construction projects a year.
116. However, this number does not sit well with information held by HSE, or with HSE sector experts' knowledge of the construction industry. As mentioned in paragraph 69, CDM 2007 contains a duty to notify HSE of any non-domestic projects with a duration of more than 30 days or more than 500 person-days of construction work. Currently, some 115 thousand notifications are made to HSE every year. If we subtracted this from the ONS estimate, it would mean that there would be only 45 thousand projects of under 30 days or 500 person-days of construction work (or even fewer if we assumed that HSE is not receiving 100% of the notifications that should be made).
117. It seems doubtful to HSE sector experts that the number of projects below that threshold would be only about a third of the number of projects above it. It seemed more likely that there would be at least as many. **We will use an estimate of a total of 250,000 non-domestic projects a year.** We explored the possibility of finding a different source since the consultation-stage IA was published, but found no better estimate. Feedback from stakeholders was that this sounded reasonable.
118. ONS data for proportions of new orders by value range do not include the smallest projects, and group data differently in different years. Using data from the last 3 available years, as well as using our own assumptions about the distribution at the lowest end of the market, we have arrived at the following distribution:

**Table 1. Distribution of non-domestic construction projects, by value**

Value of project	Number	Proportion
£0 - £50k	81,000	32%
£50k - £100k	54,000	22%
£100k - £200k	46,000	18%
£200k - £500k	34,500	14%
£500k - £750k	11,500	5%
£750k - £1,000k	6,000	2%
Over £1,000k	17,000	7%

<sup>23</sup> See: ONS, Construction Statistics No. 13 – 2012 - <http://www.ons.gov.uk/ons/rel/construction/construction-statistics/no--13--2012-edition/art-construction-statistics-annual--2012.html>

119. Based on HSE's knowledge of the sector, we estimate that the great majority of those projects under £200,000 would not meet the notification criteria for CDM 2007, as they would most likely not be of sufficient length. However, some of these approximately 180,000 under £200,000 would require more than one contractor on site, even if they require fewer than 30 days or 500 person days. Therefore, following amendment of the Regulations, they would become subject to formal appointments and documents, which they would not have been before.
120. Based on the experience of HSE's Construction Division it has been estimated that, for non-domestic projects, there are two single contractor jobs for every multi-contractor job. So, we estimate that of the 180,000 potential additional non-domestic projects, one-third or approximately 60,000 projects will require more than one contractor and so require formal appointments and documents (including a proportionate health and safety plan) when they would not have before the change in threshold.
121. The remaining 120,000 projects under £200,000 (those which require a single contractor) would only require a health and safety plan out of all the new requirements.
122. HSE considers it unlikely that many projects of over 30 days or 500 person days would have fewer than two contractors on site, so we will assume that no projects currently subject to formal appointments and documents would become free of those requirements due to the change in threshold.

Additional costs for non-domestic projects<sup>24</sup> due to the changes in threshold:

123. The estimated 60,000 that were under the threshold for formal appointments and documents in CDM 2007, but would be over the threshold in CDM 2015, would now have new duties placed on them by the Regulations. The client should then appoint the principal contractor and ensure they draw up the health and safety plan. The remaining 120,000 that are still under the threshold for formal appointments will require a health and safety plan.
124. HSE guidance will make it very clear that all these duties should be discharged in a proportionate, common sense way, especially for small projects (which we will define, for the purposes of this IA, as those under £50 thousand). Such projects might include, for example, minor shopfitting, a small extension or minor commercial repairs or refurbishment.

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<sup>24</sup> As mentioned, the change in threshold affects all projects, but costs to domestic projects will be calculated in the next section.

125. HSE plans to provide template health and safety plans for the most common types of small projects and make clear what exactly they need to do. In effect, for these small projects of value under £50,000, complying with the new duties would mean downloading the relevant sample plan from the HSE website and, for multi-contractor projects, having a discussion about appointments (regarding who will be considered the principal contractor, etc). We originally estimated appointments and documents would take 1 hour at most, counting the time of everyone involved (which will, most times, be 2 contractors).
126. However, before finalising the consultation-stage IA, we discussed a number of assumptions with the Federation of Master Builders (FMB)<sup>25</sup>, a trade association which has a high representation of members amongst the smallest building firms (which would be those who would undertake the type of work under discussion here). A number of FMB members were consulted and asked to provide a “sense-check” for relevant assumptions. We asked them specifically about how long it might take to carry out the activities described in the previous paragraph, and there was general agreement that our original assumption was on the low side. We will therefore assume it will take twice as long to discharge the duties regarding appointments and documents for multicontractor projects: 2 hours, which is consistent with the feedback received. For single contractor projects, we will assume that the health and safety plan will take half that time: 1 hour.
127. Out of the 180,000 projects attracting new duties, we estimate that just under half (81,000) would be of value below £50,000. These types of projects will generally be small and be undertaken by very small contractors including the self employed, and will not involve separate designers, all factors which would lead us to expect lower compliance with the new duties, approximately half of what we estimated for contractors as a whole in section A: 25%. We consulted FMB members about this estimate, and reaction was split. However, those who disagreed with our estimate and provided comments thought it might be even lower. We will be conservative and continue to use the 25% estimate.
128. Assuming, as earlier, a full economic cost of £15 per hour for a contractor’s time, this would result in **annual costs of approximately £400,000 a year**. To account for projects taking advantage of transitional provisions (see paragraph 39), we will subtract 5% of savings from the first year. Over 10 years, this would represent a present value of £3.5 million.
129. Larger projects (value over £50,000) will tend to be projects with more complexity. We have considered that, if contractors undertaking such projects are seeking to comply with the changed regulations, this implies that theirs are responsibly-run projects. Responsibly-run projects of that

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<sup>25</sup> See: <http://www.fmb.org.uk/about/>

size would, inevitably, already be doing all the additional things required by the regulations. To comply with already existing health and safety duties, they would already require someone being, in effect, in charge, and a plan of some sort to ensure the site is safe. We therefore do not expect the new requirements to place any costs on business for these types of projects. We sought opinions on this assumption from FMB members, and most of those who answered the question agreed that it was a reasonable assumption.

130. The costs to business from the change in threshold are not in scope for OITO, as the change arises directly from an EU measure, and the implementation does not go beyond what is strictly required and there are no available derogations that would reduce costs to business<sup>26</sup>.

## **F) Removal of the exemption for domestic clients**

131. CDM 2007 places duties on construction clients. A client is person or body corporate who procures construction work. These duties are largely administrative and, in summary, are to ensure that management arrangements for the project are sufficient, to provide relevant information to other duty holders, appoint co-ordinators for health and safety (in those projects where the trigger condition for such appointments is met), and ensure that the principal contractor has drawn up a health and safety plan before work commences on site.
132. Both CDM 2007 and its predecessor 1994 Regulations ensured that “domestic clients” (persons having construction work done on their own homes) were protected from the client duties described above. This was on the basis that, in view of the nature of domestic construction projects, it was reasonable to shelter such clients from the criminal liability inherent in these duties. In practical terms, in the vast majority of small projects for domestic clients, the householder is not in a position to exercise control over how the work is managed or sequenced in the way that a more informed commercial client would be. Furthermore, the informal arrangements in place in such projects do not lend themselves easily to the structured approach to client duties which the Directive would indicate.
133. It is important to note, however, that regardless of whether a project is carried out for a domestic or commercial client, the same legal responsibilities fall on the contractor to ensure that appropriate precautions are in place to ensure the safety of workers. This approach is consistent with HSE’s primary legal locus being those engaged in work activities, not private individuals. The Regulations similarly did not exempt other dutyholders such as designers from their duties in domestic projects.

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<sup>26</sup> See: OIOO guidance (OITO guidance is still not published, but this element is not expected to change): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31616/11-671-one-in-one-out-methodology.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31616/11-671-one-in-one-out-methodology.pdf)

134. The Directive's definition of client is very broad and cannot be regarded as excluding domestic clients. It imposes client duties on all clients as defined with no derogations.
135. CDM 2015 therefore seeks to align the Regulations with the requirements in the Directive, while providing a level of relief to domestic clients. It does this by amending the definition of client to include all clients but then, in the case of domestic clients only, providing that the contractor(s) for the project shall by default carry out the client's duties without further client intervention (the Directive allows for the principle that the client's duties can be carried out by another person). We will refer to this as the 'deeming' approach.
136. The effect of the change will be to greatly increase the number of clients who come within the scope of the Regulations, but to simultaneously ensure that, in most cases, these new clients are not significantly affected by the change. Where small domestic clients come within scope of CDM 2015, HSE will stress the need for a proportionate approach, and will seek to offer every assistance to such clients in discharging these limited responsibilities through the use of, for example, template health and safety plans for small domestic projects.
137. The requirements on contractors for the physical control of health and safety risks will remain essentially unchanged from the existing Regulations. The proposed changes to the client definition will have the effect of formalising the management arrangements for domestic construction projects, but through the deeming approach will do so in a pragmatic way which minimises costs and retains existing standards of worker protection.
138. Few respondents to the consultation commented on the specifics of our assumptions regarding the impact on domestic clients, but we have incorporated the feedback received below.

#### Number of domestic projects affected

139. We considered using the ONS Construction Statistics Annual as a source of data. However, this source focuses on the overall competitiveness of the industry, tending to discount some of the small contractors and not considering any projects of less than £25,000 in value. Given that the majority of domestic clients are likely to fall into the less than £25,000 value category, significant adjustments would be required to the Construction Statistics Annual data before it could be used, which would only serve to increase the uncertainty within these estimations. Thus, an alternative method of estimating project numbers has been derived as follows:

140. According to the latest census figures<sup>27</sup>, there are 23.4 million households in England and Wales and 2.4 million households in Scotland. Non-owner occupied property should be excluded from this total figure as any construction work will be the responsibility of the landlords, who are not classed as domestic clients and are already clients as defined. Census data indicate that 64% of households in England and Wales and 62% in Scotland are owner occupied premises, i.e. 16.4 million in total for Great Britain as a whole.
141. In 2012, HSE commissioned a project to improve its knowledge of domestic construction activity. The first stage of it involved conducting a telephone survey of a nationally representative sample of 800 homeowners to gather information on the types of improvements and renovations that they had undertaken in their homes, as well as to gain information on their perceptions on what they considered as 'construction' work.
142. Approximately 20% of respondents reported having construction work<sup>28</sup> done in the previous year<sup>29</sup>. Based on this, it is estimated that there will be **3.3 million domestic construction projects per annum**.
143. As explained in the previous section, different duties will apply to projects which have only one contractor on site from those which have more than one contractor on site. The survey inquired of respondents how many different businesses / contractors had worked on site during the latest project they had reported. 30% of them reported having more than one contractor on site<sup>30</sup>.
144. This results in estimates of **1 million multi-contractor and 2.3 million single contractor projects a year**<sup>31</sup>.

#### Costs of the removal of the exemption for domestic clients

145. We discussed several of the assumptions in this section with representatives from the HomeOwners Alliance (HOA)<sup>32</sup>, a group set up to represent the interests of homeowners and homebuyers, as well as with FMB members. We also received some comments during the public consultation. This feedback is presented throughout the analysis.

#### i) FAMILIARISATION COSTS

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<sup>27</sup> Figures from the 2011 Census.

<sup>28</sup> According to the definition we provided, which, as explained later in this section, is wider than many respondents' own definition.

<sup>29</sup> This is in line with the results obtained through its own survey by another member state, with similar housing and construction markets as the UK.

<sup>30</sup> The survey asked respondents to report on projects undertaken in the previous 5 years. The 30% proportion was the same for those who reported construction work in the previous year, and those who had not had work done in the previous year, but had 2 to 5 years earlier, which adds to the robustness of the estimate.

<sup>31</sup> Numbers do not add up exactly due to rounding up.

<sup>32</sup> See: <http://hoa.org.uk/>

146. Familiarisation costs for domestic clients would be a multiple of (a) the number of clients ; (b) the length of time taken for familiarisation; (c) the opportunity cost of the client's time; and (d) the expected level of compliance.
147. The number of domestic clients (a) has been estimated as approximately equal to the number of projects: 3.3 million per year. We will assume that clients will have to understand what their duties are every time they require a construction project, even if they have done so some years previously. This would make familiarisation costs annual ones, in this case. We consider this to be a plausible assumption, given that these are domestic clients, for whom construction projects are sporadic, with an average interval between projects of 5 years (see paragraph 142).
148. The length of time taken for familiarisation (b) would be very low, as the only information domestic clients will have to understand is that they do not need to do anything at all in response to the amendment of the Regulations, and that they can proceed as usual. Information on the HSE website will be written in very clear language, to ensure there is no confusion. We will assume that accessing and understanding this information would take approximately 15 minutes, which was felt to be reasonable by HOA representatives when we discussed it.
149. The opportunity cost for clients (c) of familiarisation depends on the value of the next best alternative to which they could put their time. Although this will vary between individuals, for those who are in paid employment it can be assumed that the next best alternative to familiarisation would be to work<sup>33</sup>. The average wage rate has therefore been used to calculate the utility foregone for clients as a result of familiarisation<sup>34</sup>.
150. We expect a low level of compliance (d) for domestic clients, for a number of reasons. Not being involved in construction circles, it is likely many of them may not be aware of any changes in the law, and so would simply behave as they do now (although this might depend on how much press coverage of the change there is). In the survey referred to earlier in this section, one of the questions was whether the respondent had sought information at any point in the project regarding a number of issues. These included health and safety amongst a number of others, such as building control and planning permissions. Fewer than

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<sup>33</sup> The majority of domestic clients who are able to afford construction work to their properties are likely to be in paid employment. While there will be a smaller proportion of retired domestic clients, there will still be an opportunity cost of familiarisation time including worry and stress, and the average wage rate is assumed to be a reasonable proxy for this time also.

<sup>34</sup> We have also looked into using a methodology proposed by HMT's Green Book team for valuing time spent by private citizens on state activities. This uses the average wage rate, uprated by 30% to account for non-wage costs, to estimate the value of their own time to the proportion of individuals who are in work, and the Effective Return to Labour of Household Activities, from the ONS's Household Satellite Account to estimate the value of their own time to the proportion of individuals who are not in work. However, the results of applying both methodologies end up being very similar.

10% reported having considered the issue of health and safety at all, even though they had been told the survey was being carried out on behalf of a government department, which might have led them to report having considered it even if, in reality, they had not.

151. Even for those who would be aware of the changes, and who would know they are subject to new duties if they hire someone to carry out construction work on their property, many may not even realise that the work they have commissioned would be classed as construction work. In the survey, respondents were given a list of activities done in the home and asked whether they thought they qualified as “construction”. There was a large variability in the responses. Over three quarters of respondents recognised that having someone repairing their roof or do a loft conversion was construction work, while 60% and 40% respectively thought installing new windows and plastering was construction. For some maintenance tasks, such as painting a front door, only 20% recognised this as construction. All of these would technically fall within the definition under the Directive and Regulations.

152. The survey found that about 30% of the projects carried out were Construction (such as construction of a home from scratch, home renovation and building a conservatory or other extension work), 15% were improvements (which include the installation of new central heating systems, plumbing or electrical systems, loft conversions, interiors or garages and replacing windows) and the majority, 55%, were repairs, maintenance and redecoration (which includes cosmetic redecoration, repairs to windows and central heating, plumbing or electrical systems, as well as structural repairs). Based on the responses reported in paragraphs 150 and 151, it is likely that for many of the projects in the latter (and largest) group, domestic clients would not realise they are commissioning construction work.

153. Taking into consideration the evidence presented in the previous paragraphs, we will assume that 10% of domestic clients would spend time understanding their obligations. This assumption was discussed both with HOA and FMB, who felt that it was reasonable, and that the real figure might even be lower. Comments in the public consultation also supported an assumption of low compliance around domestic client duties.

154. Based on these assumptions, the **annual familiarisation cost to domestic clients would be £1.2 million**, which would result in costs with a 10-year present value of £10.5 million.

## ii) COSTS OF NEW DUTIES

155. Domestic clients would not have to do anything different from what they are doing at the moment, so they would incur no additional costs.

156. The new duties would fall on contractors and designers working on domestic projects. Based on data from our homeowners' survey, we estimate that 85% of all domestic projects would be under £10,000, and the majority of these would be under £5,000.
157. For these types and sizes of projects, we would expect that the majority of contractors would be very small, with many works being carried out by the self-employed. We know from evidence presented by stakeholders in previous consultations (see paragraph 56) that it is mainly large contractors who keep themselves up-to-date with regulatory requirements, with smaller contractors mainly learning about requirements through working on larger sites, by example. This would be relatively straightforward for learning what health and safety standards should be on a well-run site, but less straightforward for learning about discharging client duties, which are to do with administrative arrangements. Furthermore, many small contractors may specialise in small domestic projects, and not work on larger sites very often. Additionally, even if contractors knew about client duties, the feedback we have received is that many would find them disproportionate and excessively bureaucratic for the smallest projects, which are the majority of those which take place.
158. It is for this reason that we would expect that compliance with these new, additional requirements would be low. Based on estimates made in previous construction-related IAs<sup>35</sup> we have estimated a compliance rate of 10% for single-contractor projects and for multi-contractor projects under £10,000. For larger projects multi-contractor projects, which, as mentioned, are more likely to include a designer, we would expect higher compliance, and will assume a rate of 20%. We discussed these assumptions with the FMB, and responses were mixed, leaning more towards agreement (although there was some confusion amongst some who disagreed about which obligations we were talking about here). Compliance was expected to be low, possibly even lower than our 10% and 20% assumptions, which were still felt to be reasonable. Comments in the formal consultation also supported our assumption of very low compliance.
159. For projects with a single contractor, the only additional duty would be to have a health and safety plan, as the contractor would already have a duty under the current Regulations to protect their own health and safety, and co-ordination and appointments would not be necessary.
160. As explained in the previous section (see paragraphs 125 and 126), HSE will be providing sample health and safety plans for the most common types of projects, and we estimate it will take an average of approximately 1 hour to discharge this duty.

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<sup>35</sup> See the IAs for the revocations of the Construction (Head Protection) 1989 and Notification of Conventional Tower Cranes 2010 Regulations - <http://www.legislation.gov.uk/uksi/2013/448/impacts>

161. These assumptions result in **annual costs to business of £3.5 million** for single-contractor projects. Over the first 10 years, this would represent costs with a present value of £29.9 million.
162. In multi-contractor projects, contractors would now have the same duties of formal appointments and documents described in the previous section in paragraph 110 (drawing up the health and safety plan, making the formal appointments, co-ordinating who will do what and in what order).
163. We have taken a pragmatic approach to assigning which contractor assumes these responsibilities in lieu of the domestic client, in that the first contractor engaged by the householder will have to discharge the duties. This is in line with the natural position of authority which will be adopted by a contractor who wishes to sub-contract work to a second party. By way of an example, if a householder engages a plumber to re-fit a bathroom, the plumber will usually sub-contract some elements of the work – for example, electrical or joinery work – to other persons. The plumber, as the first-appointed contractor would be responsible for the ‘deemed’ client duties.
164. For the smallest projects, which we will define for the purpose of this IA as those under £10,000 (this would include projects such as the refitting of a typical bathroom), we would expect it would take contractors 2 hours to carry out these duties (template plans for the most common domestic projects would be provided by HSE, as explained in paragraph 125).
165. For projects of over £10,000 (projects such as the construction of a typical domestic extension), we would expect it would take 4 hours, with 3 of those hours being spent by contractors, and 1 of them by a designer. These projects will be more complex than those under £10,000, and more co-ordination will be required as they proceed.
166. Based on these estimates and the hourly rates described in paragraph 59 for contractors and designers, the new duties would generate **annual costs of £5.1 million** for multicontractor projects. Over the first 10 years, this would represent costs with a present value of £40 million.
167. These costs would fall on contractors and designers, in the first instance. What proportion of them will be passed on will depend on something called in economics the “price elasticity of demand” of the different subsectors of domestic projects. That is, how demand for a particular product or service (e.g. construction, or improvements) reacts to changes in its price.
168. We would expect that the demand for urgent, necessary jobs (such as, for instance, repair of a heating system that has failed during winter) would be relatively inelastic. That is, the domestic client would undertake the project even if the price increased. For that type of project, then, contractors and designers would probably be able to pass on most of the extra costs to clients, by increasing their prices.

169. On the other hand, demand for minor and merely aesthetic projects, would probably be quite elastic. If the price goes up, clients might just decide they do not need to undertake the project, or that they can do it themselves. In such cases, contractors and designers would probably have to absorb the majority of the extra costs if they wanted the work, and would not be able to pass them on to clients.
170. Without significant expense to research this issue, however, we are not able to provide estimates of the potential rate of cost pass-through.
171. In total, familiarisation and discharging the new requirements would result in a maximum total annual cost of £9.4 million to society (homeowners and contractors), with a cost of £83.8 million over the first 10 years. We have assumed a negligible number of domestic projects would take advantage of the transitional provisions (as they tend to be much smaller and last for shorter periods than commercial projects), and in any case, would not have an existing CDM co-ordinator, so we have not subtracted 5% from the first-year costs.

## REGULATION AND HEALTH AND SAFETY OUTCOMES

172. The removal of the exemption for domestic clients in Option 2 is analysed with the underlying assumption that HSE would continue to apply its current enforcement policy<sup>36</sup>. Two principles of the enforcement policy are that regulation should be both proportionate and targeted based on risk. Legal duties already exist under other health and safety legislation for health and safety standards on domestic construction projects (e.g. for working at height) and those would continue to be enforced as they are currently.
173. Regulation on domestic construction projects will continue in line with HSE's Enforcement Policy Statement 35 and the focus of this will be where workers and members of the public are put at risk. Typically this will result in both a proactive and reactive approach to regulation of the existing legal requirements for the provision of physical safeguards and less emphasis on the new, largely administrative requirements, but the two would be considered together. It is in this context that we expect compliance with the new duties to be low.
174. In the great majority of domestic construction projects (most of which are very small in cost and scale<sup>37</sup>) we would expect that discharging the new client duties, which relate only to the management of the project would not lead to improved health and safety outcomes, i.e. result in fewer deaths, injuries or cases of ill health over and above those that would

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<sup>36</sup> HSE's Enforcement Policy Statement can be found here: <http://www.hse.gov.uk/pubns/hse41.pdf>

<sup>37</sup> A third of domestic projects are under £1k. 70% are under £5k and 85% under £10k.

occur by achieving compliance with the extant health and safety standards. In projects that are already well-run, it would merely be a formalisation of processes that would already be taking place – the day-to-day interaction between contractors which is required to deliver a project - and therefore not bring about any additional benefits. We would expect most projects in which client duties were discharged to be in this category, as clients who seek to comply with these new regulatory requirements are probably those who comply with requirements regarding health and safety standards. In projects that are not already well-run, discharging the new client duties in isolation is not expected to lead to much improvement, as such sites would probably display other health and safety breaches.

175. We would expect any improvements to health and safety outcomes due to the discharging of the new client duties to take place in the very small minority of large, complex domestic projects where a greater degree of formalisation of roles and of co-ordination of health and safety information may have benefits. This could include, for example, major architectural remodelling involving significant structural works, or projects involving civil engineering works such as basement excavation. It is reasonable to assume that for the majority of those projects where those responsible would familiarise themselves with the new duties and discharge them, the projects would be well-enough run that the processes underlying these duties would already be taking place in some form. However, it is conceivable that adding a degree of formality to them might lead to improvements in areas such as co-ordination and planning, and potentially to improved health and safety outcomes.
176. Additionally, a very small number of those projects would be large enough that they would have to be notified to HSE<sup>38</sup> (currently no projects for domestic clients are notifiable, regardless of their size or duration), and the potential for inspections could lead to improvements in health and safety outcomes.
177. We are not able to quantify these potential improvements, or even predict with any level of certainty that they will happen, so we are only raising this as a possibility. We do know that the number of domestic projects which fulfil the conditions described in paragraphs 175 and 176 will be very small, so any benefits from this change would be limited.

#### Enforcement approach

178. We have considered what would happen if we took the previous option as a starting point but focused more HSE resources on improving compliance with the new duties which arise in construction projects for domestic clients

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<sup>38</sup> See Section D. these are projects on which (1) work is scheduled to last for more than 30 working days with more than 20 workers occupied simultaneously, or (2) on which the volume of work is scheduled to exceed 500 person-days.

179. We have explored in earlier sections the factors which we believe would result in low compliance levels with the new duties (see paragraphs 150 - 152 and 157 - 158). Overcoming them would require actions in two areas: communications and enforcement.
180. Improving compliance as much as possible would require ensuring that householders and contractors respectively are aware of the new duties. Each group would present slightly different challenges. Owner-residents who might have construction work done in their own homes are a large and diverse group: as mentioned in paragraphs 140 to 143, there are over 16 million owner-occupied households in the UK, all of which could potentially have construction work done in their homes. Reaching a significant proportion of them would require an extensive, expensive communications campaign. Additionally, for most households there would be an interval of years between projects, so a successful campaign would have to be an ongoing one, which would increase its cost significantly. As for contractors, as stated earlier, those who would carry out the bulk of domestic construction projects will tend to be small businesses, often self-employed individuals. Many of them will not work in larger sites, belong to business associations, or voluntarily engage with HSE. We know from current activities that reaching them is difficult.
181. But even for householders and contractors who have been made aware of the new duties, we would not expect this to be enough to change behaviour in a large number of cases. While we consider the client duties in the Directive to be appropriate and proportionate for commercial projects and some of the largest, more complex domestic projects, they will in the main be perceived as disproportionate for the types of projects which will comprise the majority of domestic projects (for example the installation of a conservatory or the re-fitting of a kitchen or bathroom). As we explained in the previous section (see paragraphs 174 to 177), for the majority of projects we would not expect fulfilling the new client duties to result in improvements in health and safety outcomes, and this will probably be evident to contractors and householders.
182. Because of this, we would expect that achieving a high level of compliance with the new client duties would require substantial proactive regulatory activity on the part of HSE. At the time of preparation of this Impact Assessment, HSE employed some 130 full time-equivalent operational construction inspectors of the grades that would normally undertake inspections, who undertake some 11,000 inspections a year. Even if HSE were to divert all of their resource from their current duties to enforce the new domestic client duties, they would only be able to visit around 1% of the approximately 1 million multi-contractor domestic projects which take place every year. Additionally, while contractors working in the commercial sector will often subcontract on larger sites and be influenced through the contracting supply chain in that way, this happens to a much lesser extent in the domestic sector. Because of this,

we could not expect the sort of “multiplier effect” on behaviours which can occur in the commercial sector through local inspection initiatives.

183. There would also be significant practical difficulties in identifying domestic construction projects for HSE inspectors to visit. HSE would be required to be notified of the details of some of the larger, more complex projects (see paragraph 176), but those where a notification is submitted would inherently demonstrate a degree of compliance with new and existing duties. A great majority of such projects would not require planning permission or formal intervention by Building Control officers, so there would be little scope to work through other regulatory regimes to identify projects. As stated before in this IA, the bulk of the projects we are discussing are small-scale (costing under £5,000) and of short-duration (many lasting only a day or two). It would be difficult, if not impossible, for HSE inspectors to know when and where they are taking place, and clients and contractors would know this. Acquiring information about such projects would require the development of an intelligence-gathering infrastructure that would almost certainly infringe domestic privacy in ways that would not be acceptable. It would also conceivably require further regulatory change that would go beyond what is set out in the Directive, thereby constituting gold-plating.
184. Thus if HSE were to focus all of its construction inspectors on enforcing the new domestic client duties, we could not expect compliance rates to rise to very high levels. They would rise to a certain extent, however, and this could have some effects on health and safety in the Construction sector.
185. The hypothesised change of focus of HSE’s Construction inspectors would mean that they would concentrate more on the domestic construction sector, and less on the commercial sector. We would therefore expect a lowering of standards in commercial projects and improvements in domestic projects. The latter, however, would mainly not be due to the new client duties being discharged (see paragraphs 174 to 176), but due to inspections leading to improved compliance with the (already existing) health and safety standards required.
186. We are not able to provide estimates of the exact extent of these health and safety effects, but have a good idea of what the net effect would be. As we have mentioned, HSE’s current enforcement strategy is risk-based. It is informed by evidence and focused where our activities are expected to lead to the most benefit. HSE Construction resource is therefore focused on high-risk activities which typically include small to medium-sized commercial construction work, asbestos removal, refurbishment, roof work and work at height generally. Enforcing the proposed domestic client duties more vigorously on small domestic maintenance and minor construction projects would represent a significant net diversion of resource from high to low-risk activities. Any benefits arising from inspecting lower-risk projects would largely be based on improved compliance with already-existing requirements, not

the new client duties. HSE could already choose to target such sites but does not, on the basis of targeting risk effectively and proportionately.

187. For these reasons, we would expect the net effect of focusing on domestic client duties would be a lowering of health and safety standards overall in the construction industry. Therefore, we do not intend to make changes to HSE's current enforcement strategy as a result of removing the exemption from client duties for domestic clients.

## **G) Summary of costs and savings and position under OITO**

188. Option 1 is the "do nothing" option, and would lead to no additional costs to society.

189. Under option 2 (amendments to the Regulations, using the 'deeming' approach for removing the exemption on domestic clients) there would be average annual net savings to society (including business) of £14 million, with a 10-year net present value of £121 million (also a saving).

190. The costs and savings analysed in sections A to D are in scope of OITO, but those in sections E and F are not, as they arise directly from EU requirements.

191. The approach taken for the removal of the exemption of domestic clients from client duties (section F) provides for a slight elaboration of copy-out in order to provide relief to homeowners and limit the total additional costs of the measure (as shown in the consultation-stage IA, total costs to society as a whole, which includes costs on business, from applying straight copy-out were much larger than those incurred by using the "deeming" approach). HSE has considered whether this approach could constitute 'gold-plating' of the Directive. Having assessed the Directive requirements and guidance on gold plating it is clear to us that it does not constitute gold-plating. The Directive itself provides that either a client or another person, defined as the "project supervisor" can discharge the relevant duties. By 'deeming' the duties on another party, we are taking advantage of the flexibility in the Directive to avoid placing duties (and disproportionate costs) on inexperienced domestic clients. The scope of the duties under the Directive has not been extended and the duties will be carried out in a way which was envisaged by the Directive and recognised by the Commission's non-binding guidance. On this basis, we are content that this option does not constitute gold plating and that Option 2 is also out of scope of OITO.

192. We have consulted the Better Regulation Executive, BIS Ministers (BRE) and the Regulatory Framework Group on this issue, and they have confirmed that they agree with our interpretation. This position is also consistent with legal advice on gold plating from Treasury Solicitor's Office.

193. Option 2 is the preferred option, as, in summary, it results in significant savings to business and society as a whole, and brings the regulations in line with the Directive.
194. Option 2 results in an Equivalent Annual Net Cost to Business (EANCB) of -£19.6 million under OITO (an 'Out') expressed, as required, in 2009 prices.
195. To support balanced reporting of overall EU burdens in the Statement of New Regulation, we also provide an EANCB (also in 2009 prices) for the proposal as a whole. This overall EANCB considers all direct costs to business, whether they are in scope of OITO or not. As can be seen in the table below and detailed in paragraphs 190 to 192, some elements of the proposal ("E – Change in thresholds for commercial projects" and "F – Domestic projects – compliance") arise directly from EU requirements and are not considered goldplating, so they are out of scope of OITO. These are both net costs, and therefore the overall EANCB figure shows lower net direct savings to business. This overall EANCB figure is -£12.4 million. We further note that the costs calculated in "F – domestic project – familiarisation" are costs to members of the public (homeowners), so they are not counted as EANCB at all (and neither are they in scope of OITO).

#### Summary costs and benefits for Option 2 (all costs in millions of £)

'DEEMING' APPROACH FOR DOMESTIC CLIENTS	1st-year cost	Average annual cost	Present value over 10 years	In scope of OITO?	EANCB in 2009 prices
A - Familiarisation for existing businesses	17	2	17	Yes	1.6
A - Familiarisation savings for new businesses	-0.5	-0.5	-4	Yes	-0.4
B - Removal of CDM-C role	-17	-23	-196	Yes	-18.4
C - Removal of competence requirement	-	-	-	Yes	-
D - Change in notification requirements	-3	-3	-26	Yes	-2.5
E - Change in thresholds for commercial projects	0.4	0.4	3	No	0.3
F - Domestic projects - familiarisation	1	1	11	No	N/A
F - Domestic projects - compliance	9	9	73	No	6.9
<b>Total COSTS</b>	<b>7</b>	<b>-14</b>	<b>-121</b>	<b>'Out' of</b>	<b>-19.6</b>
				<b>Overall EANCB</b>	<b>-12.4</b>

#### H) Effects on health and safety

196. A detailed assessment of the health and safety impacts of the removal of the domestic client exemption is presented in section F above. This section summarises the situation for the remaining changes proposed.

197. The impacts of the proposed measures on health and safety are difficult to quantify. As explained in each of the previous sections, we do not expect any of the changes to requirements to have a negative effect on the standards of health and safety that will be required by CDM 2015. There will be no amendment to Part 4 of CDM 2007, which provides duties relating to physical health and safety precautions on construction sites (the changes proposed in CDM 2015 all relate to the management of health and safety, not the standards required). In fact, through the significant simplification proposed, and the production of sector-specific guidance aimed at small contractors, we expect the measures would lead to improved health and safety in the sector.
198. Implications for larger projects will be limited, as behaviours on such projects are typically compliant with the existing regulations. It is among small contractors that the greatest benefits are likely to be seen. Small construction projects are disproportionately represented in serious and fatal accident statistics, with around two thirds of fatal injuries in construction arising on sites with fewer than 15 workers. HSE's experience is that non-compliance with regulatory requirements is commonplace. Whilst some businesses undoubtedly avoid complying with requirements for commercial benefit, many are simply unaware of their responsibilities. We expect that by a significant refocusing of the regulations and supporting guidance to support small contractors, a proportion of them will be able to improve compliance with the new requirements.

### **Small and micro business assessment (SMBA)<sup>39</sup>**

199. Because CDM 2015 implements an EU Directive, full or partial exemptions for small and micro businesses are not a possibility, and we have very little flexibility regarding what requirements are imposed on them.
200. However, many of the changes proposed are intended to provide a regulatory framework that is substantially simpler and more accessible for the smallest businesses in the sector, and some of these changes could generate substantial savings to them.
201. The evaluation found that CDM 2007 remains a difficult text, with a complicated structure, and that for small businesses that want to comply this might lead to unnecessary bureaucracy. Additionally, the current ACOP is seen as too long and not well-suited to the characteristics and needs of small and micro businesses, who perceive it as inaccessible and irrelevant.
202. In CDM 2015, the Regulations have been restructured significantly, to make them simpler and more easily understandable, especially to small businesses. The ACOP will be withdrawn, to be substituted by a suite of

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<sup>39</sup> An SMBA is not formally required, but we feel it provides valuable analysis.

guidance, which will be specifically designed to be clear to small businesses and to focus on what proportionate compliance with the regulations looks like in practice.

203. This guidance will be key in ameliorating the impacts on small and micro businesses of the two changes required to bring the regulations in line with the Directive. The change in threshold for formal appointments analysed in Section E will have costs to small and micro businesses, as many small-scale projects will require more than one contractor. We would expect smaller businesses to be involved in smaller and often less complex projects, and our guidance and informational materials will seek to help them comply with the new (and existing) requirements proportionately. HSE will, for instance, provide sample health and safety plans for the most common types of projects that will be undertaken.
204. The removal of the exemption for domestic clients analysed in Section F will bring into scope of the regulations projects which will almost exclusively be undertaken by small and micro businesses. The new guidance and information materials described in the previous paragraph will be relevant for these as well...
205. We would expect the remaining key changes to be either beneficial or neutral to small and micro businesses.
206. The CDM 2007 evaluation showed that the explicit competence requirements in the regulation (the removal of which is analysed in Section C) disproportionately affect smaller contractors. The administrative requirements for accreditation are confusing to them and the costs proportionately higher, as small contractors will often subcontract with a number of larger contractors, and these may require them to be assessed through particular schemes of their liking. As mentioned in Section C, we have been unable to quantify the potential benefits, but this change will enable HSE to work with the industry to simplify the situation.
207. The removal of the CDM co-ordinator role and its replacement with a new role (Section B) will generate significant savings to business. However, we have estimated that this will affect projects of over £200,000. Therefore, these savings will mainly accrue to larger businesses.
208. Finally, the tightening of the condition used to trigger notification of construction projects to the competent authority (Section D) is expected to affect mainly large projects, so we would not expect many small and micro businesses to benefit from the ensuing savings.