



CDM Regulations 2015: What's New, What's Changing?



The Construction (Design and Management) Regulations 2015 are about to come into force. This will have an impact on all notifiable construction projects. What are the relevant changes, and how will these affect your projects?

CDM 2015

On April 6 2015, the Construction (Design and Management) Regulations 2007 will be replaced by the Construction (Design and Management) Regulations 2015 (the "2015 Regulations"). This follows on from a consultation run in 2014 by the UK Government, which once again raised concerns about an overly bureaucratic approach to implementation of the current CDM regime, underpinning the headline conclusion that the role of the CDM Co-ordinator should be replaced by a Principal Designer.

What's New and What's Changing?

There are a number of changes being brought in as part of the 2015 Regulations. The most notable of these are:

- Replacement of the CDM-C role with the new role of Principal Designer
- Changes to the role of the Principal Contractor
- Removal of the exemption from the CDM Regulations for domestic clients, consistent with a general increase in the extent of a client's responsibility for health and safety
- Changes to the notification requirements for projects
- Underpinned by detailed transitional arrangements

The Principal Designer

Perhaps the most significant of the changes is the replacement of the CDM-C with the Principal Designer – a new role intended to be held by one of the design team rather than a standalone party. "Designer" is widely defined as any party who in the course of business prepares or modifies a design, including specifications and bills of quantities, or instructs someone else to do so, relating to a structure or a mechanical or electrical system intended for a structure (amongst other things) – this could be an architect, engineer, quantity surveyor or a project manager. Various obligations are imposed on Designers generally in terms of Regulation 9 of the 2015 Regulations. A Designer may also be appointed as Principal Designer if they have "control over the pre-construction phase", so whilst the Principal Designer need not be the Lead Consultant on a project, in practice that seems likely to be the default position. Any designer taking on the role of Principal Designer will have additional responsibilities placed on them by the 2015 Regulations, some of them unfamiliar, and the requirements of Clause 8 of the Regulations mean they will need to be sure they have the capability to carry them out. Their duties include planning, managing and monitoring the pre-construction phase; ensuring risks are eliminated or controlled through design work; passing information to the Principal



Contractor; ensuring co-operation and co-ordination amongst all parties during the pre-construction phase; ensuring designers comply with their duties; assisting the Client in preparing pre-construction information, and preparing the Health & Safety File.

The Role of the Principal Contractor

The Principal Contractor's role is also changing, although to a less significant degree than the CDM-C/ Principal Designer changes. The Principal Contractor has to plan, manage and monitor the construction phase of a project, co-ordinating matters to ensure so far as reasonably practicable that construction work is carried out without risk to health and safety. The principle of prevention is highlighted as a key factor for the Principal Contractor to take into account (and the draft HSE Guidance currently available offers some useful information on what the principle of prevention means in practice) when fulfilling a range of obligations to ensure co-operation amongst contractors, implementation of legal requirements for health and safety and consultation and engagement with workers. The Principal Contractor must liaise with the Principal Designer for the duration of their appointment and share information with them relevant to the planning, management and monitoring of the pre-construction phase.

What About the Client?

The 2015 Regulations underline that the client has ongoing responsibility to make arrangements for managing a project, including health and safety aspects. Ensuring preparation of a construction phase plan and health and safety file are two examples of what this responsibility entails.

Where a project has more than one contractor, or it is foreseeable that more than one contractor will be working on a project at any time, a client **must** appoint a Principal Contractor and Principal Designer in writing. There is a clear incentive for a Client to meet this mandatory obligation, since they must fulfil the duties of the Principal Designer and Principal Contractor if they are not appointed. However, a client's role in relation to project health and safety does not end when these appointments are made. Clients should be mindful of their ongoing obligations to take reasonable steps to ensure the Principal Designer and Principal Contractor comply with their obligations in terms of Regulations 11 to 14.

The 2015 Regulations and Domestic Clients

In contrast to the position under CDM 1994 and 2007, the 2015 Regulations now apply to domestic clients "for whom a project is being carried out which is not in the course or furtherance of a business of that client." To a significant degree, however, Regulation 7 of the 2015 Regulations passes domestic clients' obligations on to other parties. The default position is that the obligations of a client in terms of much of Regulation 4 and Regulation 6 (Notification Requirements) must be carried out by the contractor for a project where there is only one contractor, the Principal Contractor where there is more than one contractor, or the Principal Designer where there is a written agreement that the Principal Designer will fulfil these duties. If a domestic client fails to appoint a Principal Designer and Principal Contractor under Regulation 5, the designer in control of the pre-construction phase will be the Principal Designer, and the contractor in control of the construction phase will be the Principal Contractor.

General Competence Requirements

Regulation 8 stipulates that a designer or contractor working on a project must have the skills, knowledge and experience necessary to fulfil their role in a manner that secures the health and safety of any person affected by the project, and should not accept an appointment unless they satisfy the relevant criteria. However, any party appointing a designer or contractor must also take reasonable steps to satisfy themselves that they satisfy the relevant capability criteria.

Project Notification Requirements

Notification thresholds are changing – projects will now be notifiable if they are scheduled to last longer than 30 working days with more than 20 workers working simultaneously, or if the project exceeds 500 person days. Where notification is required, the Client has the obligation to notify HSE as soon as practicable before construction starts.

Transitional Arrangements

Detailed transitional arrangements have been put in place for projects which have begun before 6 April. A project will have begun for the purposes of these provisions even if the construction phase has not started.

If a project involves more than one contractor and the client has not appointed a CDM-C, a client must appoint a Principal Designer as soon as practicable if the



construction phase has not started; and if it has started, the client may appoint a Principal Designer, but does not have to. If no Principal Designer is appointed, the Principal Contractor must prepare the health and safety file. A Principal Contractor must be appointed as soon as practicable after 6 April 2015.

Where there is more than one contractor involved and a CDM-C has already been appointed, a Principal Designer must be appointed by 6 October 2015 unless the project comes to an end before that date. The CDM-C appointment will continue to have effect until the Principal Designer is appointed or the project comes to an end.

The duties of a CDM-C during the transitional period are set out in some detail in Schedule 4, para 5 of the 2015 Regulations. These include liaising with the Principal Contractor about the health and safety file, preparation of the construction phase plan, and design development which may affect planning and management of the construction work. However, the transitional arrangements specifically disapply various provisions of the 2015 Regulations, including Regulation 5(1)(a) and

the obligation to appoint "a designer with control over the pre-construction phase". This is a key aspect of the role of a Principal Designer, so this exclusion highlights the changes being made to the old CDM-C role.

Navigating the 2015 Regulations - New HSE Guidance

The 2015 Regulations introduce a number of changes which parties to a relevant construction project will need to familiarise themselves with, and the transition period will only last for 6 months. However, whilst the approved Code of Practice produced for CDM 2007 is being withdrawn, HSE are producing detailed guidelines on the operation of the 2015 Regulations. Pending them coming into force, that guidance has been issued in draft, with a view to it being finalised once the 2015 Regulations come into effect, with detailed commentary on the role of individual parties with obligations under the 2015 Regulations, including clients and domestic clients, designers and Principal Designers, Principal Contractors and contractors and workers. A link to the draft guidance can be found at:

<http://www.hse.gov.uk/pubns/books/l153.htm>

If you would like to discuss any of the issues in this article, please get in touch with your usual Shepherd and Wedderburn contact.



Euan McLeod

Partner

T +44 (0)131 473 5469

M +44 (0)779 560 0477

E euan.mcleod@shepwedd.co.uk



Colin Archibald

Partner

T +44 (0)131 473 5471

M +44 (0)791 240 6050

E colin.archibald@shepwedd.co.uk

