Draft Construction (Design and Management) Regulations 2015

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Introductions

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Webinar outline

+ Context
+ Overview of the key changes
+ Implementation, application and transitional provisions
+ Notification requirements
+ Duty Holders
+ Impact on Appointments, and the Procurement process
+ Practical Issues
+ Useful Links
+ Questions
Some Context

+ Professor Lofstedt report – November 2011: Reclaiming health and safety for all: An independent review of health and safety legislation
  – clearer expression of duties
  – reduction of bureaucracy
  – appropriate guidance for small projects
+ Temporary or Mobile Construction Sites Directive (Directive 92/57/ECC)
+ HSE consultation on proposals to revise the CDM Regulations 2007
+ Draft CDM Regulations 2015 published in January
Non-compliance with the Regulations

- Enforcement under the HSAW Act 1974
- Magistrates Court – maximum £20,000 fine and/or 12 months imprisonment
- Crown Court – unlimited fine and/or 2 years imprisonment
- Disqualification, publicity orders
- Other consequences
Overview of key changes

+ Application of Regulations to all construction projects in GB
+ Notification requirements
+ Duty Holders now include Domestic Clients
+ New role – Principal Designer
+ Competence requirements have changed
+ Withdrawal of ACOP and introduction of Guidance
Application

+ All building, construction and engineering work in Great Britain
+ Small projects
+ Domestic projects
+ Construction work within territorial seas
+ Renewable energy projects
+ Design work undertaken outside GB for a project in GB
+ Any person, business or undertaking that commissions construction work
+ Only exemption – certain mining activities
Transitional provisions

+ Six month transitional period: 6 April 2015 to 6 October 2015
+ Transitional provisions to cover projects that began before 6 April 2015
+ Client **has not** appointed a CDM co-ordinator, the client **must** appoint a principal designer if construction phase **has not** started
+ Client **has not** appointed a CDM co-ordinator, the client is not required to appoint a principal designer if construction phase **has** started. Note the principal contractor takes on responsibility
+ Client **has** appointed a CDM co-ordinator, must appoint a principal designer within six months (i.e. by 6 October 2015)
+ Schedule 4, CDM 2015 lists duties of CDM Co-ordinator during transitional period
Transitional provisions

+ Pre-construction information, construction phase plan or health and safety file provided under CDM 2007 considered as meeting requirements under CDM 2015

+ Notification under CDM 2007 will be considered as a notification under CDM 2015

+ Principal contractor under CDM 2007 will be considered as principal contractor under CDM 2015
Notification requirements

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<td>Projects on which the construction phase likely to involve:</td>
<td>Projects where the construction work on the construction site is scheduled to last:</td>
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<td>– More than 30 days; or</td>
<td>– More than 30 working days and have more than 20 workers working at the same time; or</td>
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<td>– More than 500 person days of construction work</td>
<td>– If it is to exceed 500 person days</td>
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- See Schedule 1 of CDM 2015
- F10 Notification Form
Duty Holders

+ Clients
+ Domestic Clients
+ Principal Designer*
+ Designers*
+ Principal Contractor
+ Contractors
+ Workers
Principal Designer

+ When?
  - Is (or reasonably foreseeable that there will be) more than one contractor working on a project at any one time
  - As soon as practicable and before construction phase begins
  - Appointment in writing

+ Who?
  - Designer with control over the pre-construction phase of the project
  - Skills, knowledge, experience and organisational capability
Principal Designer: Regulation 11 duties

+ Plan, manage, monitor and co-ordinate in the pre-construction phase
+ Take into account the general principles of prevention and any CPR and H&S file
+ Identify, eliminate, control foreseeable risks
+ Ensure designers carry out their duties
+ Ensure co-operation
+ Prepare pre-construction information
+ Provide information for construction phase plan
+ Prepare health and safety file
Designers: Regulation 9 duties

+ Ensure Client aware of its duties before commencing work
+ In preparing modifying design, take account of the general principles of prevention and the pre-construction information (so far as reasonably practicable) to:
  – eliminate foreseeable risks;
  – take reasonably practicable steps to reduce and/or control risk through the design process
+ Take all reasonable steps to provide information about remaining risks and sufficient information about the design to enable others to fulfil their duties.
Documents required under CDM 2015

- **Pre-construction information** for all projects – provide as soon as practicable to each designer and contractor
- **Construction phase plan** for all projects – before construction phase begins
- **Health and safety file** for projects involving more than one contractor – during and at the end of the project
How will the 2015 Regulations impact Appointments?

- Principal Designer must be “appointed in writing”.
- Draft guidance for Designers and “L series” emphasise importance of clearly defining scope of all designers and the principal designers.
- Update scope of services – duties of the designer may be extended, particularly if they are the principal designer.
- Fee proposals may include an additional fee for being the “principal designer”.
- Bespoke appointments often included obligations to comply with the CDM Regulations 2007, likely to do so in relation to 2015 regulations……
- ……difficult to argue against, but there is not necessarily civil liability under the CDM Regulations.
Impact on Procurement Process

+ Designers must be satisfied the Client is aware of its duties before carrying out work. Clear advice should be given which is documented.

+ Designers and contractors must not accept appointments unless they have knowledge and experience to fulfil their role and secure health and safety.

+ Person appointing designer or contractor must take reasonable steps to satisfy themselves they have sufficient experience.

+ Need to highlight issues with the Brief and help the Client develop this.

+ If domestic project request that a principal designer is appointed.

+ Increase ECI?

+ Applies to design carried out overseas for projects subject to the Regulations.
Practical Issues – Buildability?

+ At common law, designer not generally liable simply because a design is not “buildable”, provided it has exercised reasonable skill and care.

+ Regs 9(2) and 11(3) require the principal designer to “so far as is reasonably practicable” “take into account” or “eliminate” foreseeable risks to those:
  – carrying out the works,
  – maintaining a structure; or
  – using it as a workplace.

+ Designer must take into account H&S risks of building, maintaining and working in structure.

+ Any “unusual risks” arising from a design should be highlighted on drawings.

+ Not quite the same a “buildability”, but designers clearly need to take into account how any design will be constructed.
Practical Issues - Site Role/Temporary Works

+ Obligation to cooperate with any other person to enable them to fulfill their duty (Reg 8 (4)).
+ Include assisting contractors and principal contractors in complying with its duties.
+ Temporary works a common area where responsibilities can blur.
+ CDM Regulations will allocate duties to parties based on what they are doing not their role description.
+ If Principal Designer important to ensure that the design of any temporary works is being carried out with regard to the CDM Regulations 2015.
Practical Issues – Guidance and Internal Procedures

+ ACOP key as to how 2007 Regulations were applied.
+ HSE has issued draft industry guidance for each role and “L series” guidance.
+ Guidance for designers and principal designers and “L series” should be considered carefully by all consultants.
+ Final guidance and the 2015 Regulations should be embedded into your training and procedures.
+ Third party certification will assist in showing competence.
+ “L series” and industry guidance both suggest the use of BIM as good practice.
+ Discuss with your PI insurers the impact of the 2015 regulations, particularly if considering carrying out the Principal Designer role.
Relevant Links

+ Draft “L” series guidance – including draft CDM Regulations 2015 - [here](#)

+ Draft Industry Guidance on each role - [here](#)

+ Look out for the final guidance documents!

+ Article on CDM Regulations 2015 – [here](#)

+ Beale and Company Flow Chart and Table to be circulated.
The general principles of prevention (Appendix 1 – CDM Regulations 2015)

+ avoid risks;
+ evaluate the risks which cannot be avoided;
+ combat the risks at source;
+ adapt the work to the individual, especially as regards to the design of workplaces, the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health;
+ adapt to technical progress;
+ replace the dangerous by the non-dangerous or the less dangerous;
+ develop a coherent overall prevention policy which covers technology, organisation of work, working conditions, social relationships, and the influence of factors relating to the working environment;
+ give collective protective measures priority over individual protective measures; and
+ give appropriate instructions to employees
Questions?
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