A look into some of the possible effects of the proposed revisions to the CDM Regulations 2007 for designers

Following the Health and Safety Executive’s (“HSE”) recent report on the public consultation into proposed amendments to the Construction (Design and Management) Regulations 2007 (“CDM Regulations 2007”), we take a look into some of the possible consequences of the amendments for designers.

The HSE has recently reported on the public consultation into its proposals for the revision of the CDM Regulations 2007, including the proposed new draft of the CDM Regulations annexed to the consultation. The HSE is proposing that new CDM Regulations 2015 come into force in April 2015.

The designer’s role under the current CDM Regulations 2007 has the potential to encompass a range of project participants; ‘designer’ is defined as:

“any person .... who in the course or furtherance of a business –

(a) prepares or modifies a design; or

(b) arranges for or instructs any person under his control to do so,

relating to a structure or to a product or mechanical or electrical system intended for a particular structure, and a person is deemed to prepare a design where a design is prepared by a person under his control”.

A designer has duties (among others) to:

Key outcomes of proposed CDM Regs amendments for designers

Following consultation, the HSE report recommends the introduction of the “principal designer” role in place of the “CDM co-ordinator”.

The HSE expects the default position to be appointment of the principal designer from within the existing project team.

However, industry concerns include whether the designer will be able to carry out this role without recourse to third party advice.
• avoid foreseeable risks to the health and safety of persons; and
• eliminate hazards which may give rise to risks and reduce risks from any remaining hazards;

in preparing or modifying a design which may be used in construction work in Great Britain.

However, one of the most significant changes under the proposed CDM Regulations 2015 is the introduction of the “principal designer” role in place of the “CDM co-ordinator”.

In the HSE’s consultation document, the HSE explains that under the proposed new regulations the default position would be that the responsibility for discharging the function of the principal designer would be within the existing project team and that one of the fundamental differences between the current CDM co-ordinator role and the new principal designer role would be the element of control and influence over the design. The original impact assessment attached to the consultation (to be revised following consultation) notes that "...in many cases the CDM co-ordinator has been claimed to add significant cost but no value...[o]ften co-ordinators are appointed so late in the project that there is little role for them".

The HSE draws a parallel between the proposed principal designer’s role pre-construction and that of the Principal Contractor in the construction phrase.

The consultative draft of the new proposed CDM Regulations provides for the principal designer’s role in part as follows:

“A principal designer must plan, manage, monitor and coordinate the pre-construction phase of a project...”.

Under the new proposed regulations, a principal designer would be appointed by the client where there is more than one contractor or if it reasonably foreseeable that more than one contractor will be working...
on a project at any time. If no such appointment is made, the client must fulfil this role. Designers will need to consider this provision where working on such a project.

Duties of the principal designer proposed under regulation 9 include ensuring:

- so far as is reasonably practicable, the project is carried out without risks to health or safety;
- assistance is provided to the client in the preparation of the pre-construction information required;
- the identification, elimination or control, so far as is reasonably practicable, of foreseeable risks to the health or safety of persons;
- the co-operation of all persons working on the project;
- the compliance of designers with their duties;
- the preparation and subsequent appropriate revision from time to time of a health and safety file which must contain information relating to the project which is likely to be needed during any subsequent construction work to ensure the health and safety of any person;
- the prompt provision of pre-construction information in a convenient form; and
- liaison with the principal contractor as appropriate for the duration of the project and in particular regarding any information which the principal contractor may need to prepare the construction phase plan or which may affect the planning and management of the construction work.

The duties of the designer, where the designer is not also fulfilling the principal designer role, remain largely recognisable although are more extensive and include provision of information to the principal designer in the event of remaining risks and also provision to ensure that appropriate information is included in the health and safety file. The designer must also take into account the general principles of prevention and any pre-construction information when preparing or modifying a design.
The report records that 52 percent of respondents supported the proposal to embed the pre-construction co-ordination function within the existing project team – i.e. in essence the replacement of the CDM co-ordinator role with that of the principal designer. The Royal Institute of British Architects (RIBA) is reported to be generally supportive of the principle; however, it raised the concern of the ability of designers to carry out the principal designer role without the need to seek third party advice.

We will wait to see how the HSE progresses the proposed new regulations following the report on its consultation. However, the principal designer role is likely to remain in the new CDM Regulations, and the HSE is recommending the new regulations come into force in April 2015. Designers will need to consider whether they are able to fulfil the function if required and any additional costs that may be incurred from seeking third party advice in fulfilment of the role.

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