Draft Construction (Design and Management) Regulations 2015 now published - a closer look at some of the changes

The new draft Construction (Design and Management) Regulations 2015 (“CDM Regulations 2015”) and accompanying guidance were published on 9 January 2015 and are expected to come into force on 6 April 2015.

The draft CDM Regulations 2015 are part of an ongoing drive towards improved health and safety across all industries following Lord Young of Graffham's report, Common Sense, Common Safety published in 2010 and Professor Löfstedt’s subsequent review of health and safety legislation. Professor Löfstedt’s recommendations included review of the CDM Regulations 2007 and its accompanying Approved Code of Practice (“ACOP”).

The draft CDM Regulations 2015 follow public consultation last year and contain some significant changes to the current CDM Regulations 2007 (click here for our article reporting on the public consultation). The early publication of the draft Regulations and accompanying guidance aims to allow project participants to familiarise themselves with their changing obligations before the new Regulations come into force.

As the CDM Regulations 2015 will affect almost all construction projects in Great Britain and breach of the CDM Regulations can result in criminal sanction, it is essential that all project participants are clear as to their obligations to ensure compliance with the same when they come into force.

We take a look at some of the more significant changes introduced by the draft CDM Regulations 2015 for consultants.

**Principal Designer replacing CDM Co-ordinator role**

The CDM Co-ordinator role, replaced the previous Planning Supervisor role when the CDM Regulations 2007 came into force.

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**Key facts:**

- Likely to come into force on 6 April 2015
- Replaces CDM Co-ordinator role with new Principal Designer role
- New notification threshold
- Domestic client exemption removed
- Withdrawal of current ACOP

Please click here to read the HSE’s Draft Guidance on the Construction (Design and Management) Regulations 2015, including the draft Regulations.
This role is itself now being replaced under the draft Regulations. The new role is that of the Principal Designer.

A Principal Designer must be appointed where there is (or it is reasonably foreseeable that there will be) more than one contractor working on the project at the same time and will therefore be necessary on most projects. This varies the requirement to appoint a CDM Co-ordinator under the CDM Regulations 2007, where such appointment was only necessary where the project fulfilled the notification threshold (see below).

The Principal Designer will be the designer with control over the pre-construction phase. Therefore, the appointment will come from within the project team at the pre-construction stage rather than a third party specialist, as was often the case with the CDM Co-ordinator.

The Principal Designer manages and co-ordinates, during the pre-construction phase to ensure so far as is reasonably practicable that the project is carried out without risks to health and safety. Among the Principal Designer’s duties is a duty to ensure all designers comply with their duties, a duty to liaise with the Principal Contractor (draft Regulation 11), as well as to prepare the health and safety file (draft Regulation 4(5)(b)).

Where a designer is not also appointed as Principal Designer, the designer’s duties are not too dissimilar to those it already has. However, these duties have, in part, been extended to include for example, provision of information and co-ordination with others. It is advisable for all designers to familiarise themselves with the amendments to the regulations.

**Domestic client exemption removed and changes to notification requirements**

Domestic Clients were exempted from the definition of “Client” and therefore the vast application of the CDM Regulations 2007.

This exemption has now been removed and the draft CDM Regulations 2015 will apply to all construction projects in Great Britain.

However, to ease the burden on domestic clients, many of their duties under the draft CDM Regulations 2015 are to be carried out by other duty holders, and duty holders will need to be alert to this when carrying out projects for domestic clients (draft Regulation 7).

In addition, the notification requirements are more stringent and are expected to reduce the number of notifications by approximately half. Currently, projects on which the construction phase is likely to involve...
more than 30 days or 500 person days of construction work are notifiable. However, under the draft CDM Regulations 2015, the threshold is now where the construction work on a construction site is scheduled both to last longer than 30 working days and have more than 20 workers working simultaneously; or if it is to exceed 500 person days. This threshold is unlikely to be met as often.

Withdrawal of the Approved Code of Practice

The Guidance to the draft CDM Regulations 2015 notes that the current ACOP will be withdrawn. However, the Health and Safety Executive’s ("HSE") report on the outcome of the public consultation reported that only 33% of respondents were in favour of replacing the current ACOP with guidance. Nevertheless, the HSE felt that “a case had been made to develop a new, shorter signposting ACOP, complemented by the HSE and joint HSE-industry guidance”.

Whilst the Guidance does provide some context to the Regulations, it is not an ACOP, and it is not yet known whether a new ACOP will be published.

In conjunction with the guidance provided to the Regulations, the HSE also advertises the draft industry guides published by the Construction Industry Advisory Committee (CONIAC) aimed at the various duty holders under the draft CDM Regulations 2015 and duty holders are advised to familiarise themselves with these (here).

Given the significant number of changes the introduction of the CDM Regulations 2015 will bring, duty holders will need to get up to speed with their new obligations ahead of 6 April 2015.

Beale and Company is hosting a webinar on the draft CDM Regulations 2015, exploring the changes and what these mean for consultants. To join us on Wednesday 25th February at 12.30pm GMT for this webinar, please click here to sign up.

January 2015

For further information please contact
Sheena Sood
Partner
T: +44 (0) 20 7469 0402
E: s.sood@beale-law.com