Construction (Design and Management) Regulations 2015 now fully in force – some of the key changes for designers.

The Construction (Design and Management) Regulations 2015 (“CDM Regulations 2015”) came into force on 6 April 2015, having a significant impact on how health and safety risks must be managed in design, introducing a new Principal Designer role. The transitional deadline of 6 October 2015 for appointing a Principal Designer if a CDM Co-ordinator was in place has now passed.

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

The new regulations contain some significant changes to the current CDM Regulations 2007 and take on board feedback from the recent public consultation (details here). As they will affect almost all construction projects in Great Britain and breach can result in criminal sanction, all consultants should familiarise themselves with the new regulations.

Designer’s Duties

A designer’s duties under the CDM Regulations 2015 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, including the Principal Designer (see below). Designers who will not be appointed as Principal Designer on a project should request details of who will carry on the role at the outset.
Principal Designer replacing CDM Co-ordinator role

Under the CDM Regulations 2015 the CDM Co-ordinator role is replaced with a new role of Principal Designer. Transitional arrangements provided that a Principal Designer did not have to be appointed until 6 October 2015 if a CDM Co-ordinator was already in place, but this date has now passed.

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. As contractor is defined widely to include sub-contractors, for example, a Principal Designer will be necessary on most projects. Under the CDM Regulations 2007 a CDM Co-ordinator was only necessary if the project fulfilled the notification threshold (see below), so a Principal Designer will be required on more projects than a CDM Co-ordinator.

The Principal Designer must be a 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.

The Principal Designer’s duties in the new regulations include potentially onerous obligations which are not clearly qualified, such as to ensure that all designers comply with their duties (Regulation 11(4)). Criminal liability in relation to these duties cannot be qualified. However, given the onerous nature of the duties, those carrying out the Principal Designer role should limit any civil liability arising under their appointment. One possible way of doing so is to produce a standard form of appointment for use when acting as Principal Designer.

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 CDM Regulations 2015 apply to all construction projects in Great Britain.

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

The Regulations introduce significant changes to the way in which health and safety is managed on construction projects. Designers should understand the increased responsibilities and check contractual and insurance arrangements.

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out projects for domestic clients.

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. Under the CDM Regulations 2015, the threshold is now that 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 current ACOP has now been withdrawn. Whilst the HSE has published guidance which 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 industry guides published by the Construction Industry Advisory Committee (CONIAC) aimed at the various duty holders under the CDM Regulations 2015 and consultants are advised to familiarise themselves with these (Click here for details).

CDM Advisers

A number of Principal Designers are appointing third party CDM Advisers to assist them with the role. The CITB have published Q&As from the HSE here in relation to the CDM advisor role (Q&A 5).

This HSE guidance emphasises that the new regulations do not prevent a Principal Designer from bringing in the services of specialists to ensure their organisation has the necessary skills knowledge and experience to undertake the role. However, a Principal Designer cannot delegate their responsibilities under CDM 2015, so the appointment of a CDM adviser needs to be managed very carefully.

Webinar

Those interested in finding out more about CDM 2015 can view this webinar held by Beale & Company.

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Please click here to see the HSE’s Guidance on the Construction (Design and Management) Regulations 2015.

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