The Construction (Design and Management) Regulations 2007
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The new CDM regulations come into force on 6 April 2007. They replace the current regulations (i.e. the Construction (Design and Management) Regulations 1994), which no longer apply as from that date (subject to transitional provisions for projects already commenced).

They also replace the Construction (Health, Safety and Welfare) Regulations 1996, which are in effect incorporated into the new CDM regulations.

The regulations apply in Great Britain. Regulations in substantially the same form will separately be brought into force in Northern Ireland on a date to be confirmed.

The new regulations are in many ways more straightforward and coherent than the current CDM regulations.

As before, the regulations impose duties on certain participants in a construction project. They cover the same wide range of construction work as before, including cleaning, repairs and maintenance.

This note contains a summary of some of the duties, focusing on the general management and design duties. It does not contain a comprehensive statement of the duties and it does not address in any detail the duties relating to construction sites.

The standard applicable to compliance with a particular duty is often important and some wording is emphasised where it connotes this standard (this emphasis is not in the regulations themselves).

The duty holders

Clients, contractors and designers acting in the course or furtherance of a business are subject to CDM duties. ("Business" is defined, as before, to mean a trade, business or other undertaking (whether for profit or not)).

There are no special provisions in the new regulations for small projects or for work for domestic clients, an expression that is no longer used (though it is used in the new code of practice, potentially causing some confusion).

Thus, a resident owner of domestic premises who engages others to carry out work on the premises (or who does the work himself) will not be a client for the purposes of the CDM regulations, because, in so doing, he will not be acting in the course or furtherance of a business. However, any designer or contractor engaged by the house owner to do the work will be subject to CDM duties, assuming of course that they do the work in the course or furtherance of a business.

A landlord who lets property as part of his business will, when he engages others to carry out work on any of his properties or does the work himself, be a client for the purposes of CDM. However, someone who buys a property to let as a private investment probably would not be.

The other people bearing CDM duties on a project, if they have been appointed, are the CDM co-ordinator and the principal contractor. These people are specially appointed to carry out certain CDM duties, if the project is notifiable and if the project has a client (as defined by the regulations). Either of them may also be a client, designer or contractor on the project or involved in the project in some other role.

A project is notifiable if the construction phase is likely to involve more than 30 days or 500 person days of construction work. (This applies whether or not there is a client (as defined by the regulations),
but where there is no such client there is no provision in the regulations for how a project is to be notified – this seems to be an oversight).

Client’s duties

A client is a person who, in the course or furtherance of a business –

- seeks or accepts the services of another which may be used in the carrying out of a project for him; or
- carries out a project himself.

This is different from the definition in the existing regulations (a person for whom a project is carried out).

A client has a duty to take reasonable steps to ensure that the arrangements made for managing the project (including the allocation of sufficient time and other resources) by persons with a duty under the regulations (including the client himself) are suitable to ensure that the construction work can be carried out, so far as is reasonably practicable, without risk to the health and safety of any person.

The duty also extends to the design of any structure designed as a workplace.

It is worth noting the specific reference to the allocation of sufficient time and resources. A client who seeks to reduce costs may be in breach of its CDM duty if the result is a curtailment of time or resources for carrying out any of the work, be it design work or work on site.

A client also has a duty to provide all designers and contractors with all information in its possession or which is reasonably obtainable which may be relevant for each of them in ensuring health and safety (referred to as “pre-construction information”). This information must also be provided to the CDM co-ordinator, on projects where a CDM co-ordinator has to be appointed, together with any further information that may be relevant to that role.

This duty is strict, in the sense that there is no qualification by reference, for example, to what information the client reasonably believes is relevant and available. However, the client will be entitled to considerable assistance in discharging this duty from the CDM co-ordinator, where one is appointed (see below).

A client may also, knowingly or unknowingly, undertake the duties of designers (see below) of designs prepared or modified outside Great Britain.

Additional duties of clients where the project is notifiable

As with the previous duties, these additional duties only apply where there is a client as defined by the regulations.

The client must appoint a CDM co-ordinator and, after that, a principal contractor. If he does not do so, he will be deemed to have appointed himself to these positions and be subject to their duties (see below) (as well as being liable for not having made the appointments).

The client shall ensure that the construction phase does not start unless the principal contractor has prepared a construction plan that complies with the regulations and he is satisfied that the requirements in the regulations relating to the provision of welfare facilities will be complied with during construction.
The client shall ensure that the CDM co-ordinator is provided with all the health and safety information in its possession (or which is reasonably obtainable) which is likely to be needed for inclusion in the health and safety file.

The client also has duties in relation to the health and safety file after construction for keeping it available for others who may need it and for keeping it revised with relevant new information.

**Duties of designers**

A designer is any person who prepares or modifies a design, in the course or furtherance of a business. This can include a client or a contractor or a consultant or anyone else. A design, as before, has a wide definition and includes specifications and bills of quantities (including specification of articles or substances) and also includes design calculations.

Every designer has a duty in preparing or modifying a design which may be used in construction work in Great Britain to avoid foreseeable risks to the health and safety of any person carrying out construction work, or liable to be affected by construction work, or carrying out cleaning or maintenance work, or using a structure designed as a workplace.

In discharging this duty, the designer must eliminate hazards which may give rise to risks and must reduce risks from any remaining hazards, and in doing so must give collective measures priority over individual measures.

These duties shall be performed so far as is reasonably practicable, taking due account of other relevant design considerations.

The extension of the regulations to cover the design of workplaces is significant. Previously, the regulations were concerned with the safety of operations, be they the actual construction of the project or its maintenance and repair at a later date. Now they are also concerned, to some extent, with the safety of the permanent works.

Designers also have to take all reasonable steps to provide with their designs sufficient information to enable others to comply with their duties under the regulations.

**Duties of contractors**

A contractor is any person who carries out or manages construction work, in the course or furtherance of a business. This can include a client or a contractor or anyone else.

Every contractor has a duty to plan, manage and monitor construction work carried out by him or under his control in a way which ensures that, so far as is reasonably practicable, it is carried out without risks to health and safety.

Every contractor has many other more specific duties, including duties in relation to contractors appointed or engaged by him and workers carrying out construction work under his control (whether or not they are his employees).

One such duty is to ensure that any contractor whom he in turn appoints or engages is informed of the minimum amount of time which will be allowed to him for planning and preparation before he begins construction work.

There are extensive and specific duties on every contractor relating to health and safety and the welfare of workers on construction sites.
Duty on both designers and contractors

A designer shall not commence work and a contractor shall not carry out construction work unless any client for the project (i.e. where there is a client as defined by the regulations) is aware of his duties under the regulations.

This applies whether or not the project is notifiable (but not if there is no client as defined by the regulations).

Where the project is notifiable and there is a client as defined by the regulations, a designer shall not commence work, other than initial design work, unless a CDM co-ordinator has been appointed for the project, and a contractor shall not commence construction work unless, among other things, he has been provided with the names of the CDM co-ordinator and principal contractor.

Duties of the CDM co-ordinator

A CDM co-ordinator must be appointed (by the client) where the project is notifiable and where there is a client as defined by the regulations.

This new role of CDM co-ordinator in effect replaces that of the planning supervisor.

The CDM co-ordinator has to notify the project to the Health and Safety Executive, by providing it with the particulars specified in the regulations.

The CDM co-ordinator must give suitable and sufficient advice to the client on undertaking the measures he needs to take to comply with the regulations. It is also his duty to take all reasonable steps to identify and collect the pre-construction information and provide to every designer such of the information as is relevant to him. He is also required to do the equivalent for every contractor but only if they are appointed by the client.

The CDM co-ordinator has a duty to ensure that suitable arrangements are made and implemented for the co-ordination of health and safety measures during planning and preparation of the construction phase.

He must take all reasonable steps to ensure that designers comply with their duties.

He must prepare, where none exists, and review and update the health and safety file. This file contains the information relating to the project likely to be needed during any subsequent construction work to ensure the health and safety of any person. He passes the health and safety file to the client at the end of the construction phase.

During construction, the CDM co-ordinator must take all reasonable steps to ensure co-operation between designers and the principal contractor in relation to any design or change to a design.

Duties of the principal contractor

A principal contractor must be appointed (by the client) where the project is notifiable and where there is a client as defined by the regulations.

The principal contractor shall plan, manage and monitor the construction phase in a way which ensures that, so far as is reasonably practicable, it is carried out without risks to health or safety.

The principal contractor has many other more specific duties, including duties in relation to other contractors, the construction phase plan, which he must prepare, and the welfare of workers engaged in the construction work.
One such duty is to ensure that every contractor is informed of the minimum amount of time which will be allowed for him for planning and preparation before he begins construction work. The construction phase plan replaces (in effect) what is called under the existing regulations the health and safety plan. As the new title makes clear, the plan relates only to construction work, and its preparation is now the exclusive responsibility of the principal contractor.

**Duties of all duty holders: checking competence**

There are some duties common to all duty holders.

Any person under a CDM duty must take reasonable steps to ensure that any CDM co-ordinator, designer, principal contractor or contractor appointed or engaged by him is competent.

Thus this duty will only apply now to persons who are duty holders in other respects, and they only have to check the competence of persons they actually appoint or engage.

“Competence” refers only to being competent to comply with these regulations and the other relevant statutory provisions.

Any person under a CDM duty shall not arrange for or instruct a worker to carry out or manage design or construction work unless the worker is competent or under the supervision of a competent person. This duty is strict— unlike the previous duty, taking reasonable steps may not be sufficient.

There is no specific duty under the new regulations to check that appointees are adequately resourced.

**Duties of all duty holders: co-operation and co-ordination**

All duty holders will be under a duty to seek the co-operation of and to co-operate with any other person working at the same or an adjoining site so far as is necessary to enable himself or that other person to comply with the regulations.

All duty holders will have a duty to co-ordinate their activities with other duty holders to ensure, so far as is reasonably practicable, the health and safety of persons carrying out construction work and persons affected by construction work.

**Duties of all duty holders: the general principles of prevention**

The general principles of prevention are set out in Schedule 1 to the Management of Health and Safety at Work Regulations 1999.

All people with a duty in relation to design, planning and preparation of a project shall take the general principles of prevention into account in the performance of those duties.

All people with a duty in relation to the construction phase shall ensure so far as is reasonably practicable that the general principles of prevention are applied in the carrying out of the construction work.

**Duties on others**

There are a few duties in the regulations imposed on other people.
The duties on contractors relating to health and safety on construction sites also apply to any person who controls the way in which any construction work is carried out, insofar as they relate to matters which are within his control. This could apply to a resident home owner or other person who is not a client for the purpose of the regulations but who could in this way acquire the duties of a contractor.

A person who is working under the control of another person shall report to that person anything which he is aware is likely to endanger the health or safety of himself or others.

A person at work on construction work under the control of another person shall report to that person any defect which he is aware may endanger the health and safety of himself or another person.

**Civil liability**

The general position under the Health and Safety at Work Act 1974 is that breach of any health and safety regulations may give rise to civil liability unless the regulations state otherwise. Such liability will normally be restricted to liability for personal injury.

Under the existing CDM regulations, breach of a duty, except in two instances, cannot give rise to civil liability, whereas under the existing Construction (Health, Safety and Welfare) Regulations, any breach may give rise to civil liability.

The new Regulations retain, substantially unaltered, the civil liability provisions that existed under the previous Regulations (both CDM and Health, Safety and Welfare Regulations). In addition, there is potential liability to employees (but not to others) arising from breach of the regulations. In practice, this new civil liability may not add much to the liability any employer would already face in negligence.

**Criminal Liability**

Breach of the regulations is a criminal offence. The penalties for breach remain unchanged from the existing regulations and are:

- Magistrate’s Court: fine up to £5,000
- Crown Court: unlimited fine.

**New Code of Practice**

There is also a new approved code of practice, which, like its forerunners, is stated to have a special legal status. It gives practical advice on how to comply with the law. If you follow the advice, you will be doing enough to comply with the law in respect of those specific matters on which the Code gives advice.

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