

Beale & Company

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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

+ **Old Notification Requirements (2007)**

- + Projects on which the construction phase likely to involve:
 - More than 30 days; or
 - More than 500 person days of construction work

+ **New Notification Requirements (2015)**

- + Projects where the construction work on the construction site is scheduled to last:
 - More than 30 working days and have more than 20 workers working at the same time; or
 - If it is to exceed 500 person days

- + 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 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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