



CONSTRUCTION AND ENGINEERING ALERT

February 2015

CDM 2015 - THE BIGGEST HEALTH AND SAFETY CHANGE FOR CONSTRUCTION IN A DECADE

The Construction (Design and Management) Regulations 2015 have finally been laid before Parliament and will come into force on Easter Monday 6 April.

The new regulations ("**CDM 2015**") need to be on your radar if you are in any way involved in construction projects, even small projects not previously caught by the regime.

WHO NEEDS TO KNOW?

CDM 2015 concerns and affects not just those who design, build and manage the process on site but also those who employ others to undertake construction work on their behalf whether owners of a building, developers, landlords carrying out works, tenants who fit out or alter and funders exercising step-in rights. Each of these must acquaint themselves with the new rules.

WHAT'S NEW?

New regulations, laid before Parliament at the end of January, were made available on 2 February: [CDM Regulations 2015](#).

Earlier last month, the Health and Safety Executive published draft accompanying [Guidance on CDM 2015](#). This Guidance (which will replace the current Approved Code of Practice ("**ACoP**") entirely) will be available in final form before Easter Monday, 6 April which is when the new regime comes into force.

When CDM 2015 comes into force in April (it will completely replace the current CDM Regulations 2007), transitional arrangements will run for six months until October 2015.

WHY THE CHANGE?

The UK construction industry employs more than two million people, more than 6% of the UK workforce. However, despite considerable improvements in culture, processes and risk controls, it still remains one of the most dangerous industries to work in with on average 40-50 deaths on construction sites each year.

Three developments underpin the need for CDM 2015

- The original CDM (in 1994) did not transpose the European Directive accurately. The Government's commitment is for EU Directives to be implemented properly. Some re-alignment is therefore required.
- The Government's keenness for de-regulation - reflected in initiatives such as *Your Freedom* and *The Red Tape Challenge*.
- Finally, the balance of where serious and fatal injuries occur has shifted dramatically in the past 10-15 years. Two thirds or more of fatalities now occur on small sites – sites where fewer than 15 people work – which is the reverse of the historical picture. Accordingly, the new regulations will apply to smaller construction sites and be more relevant to their needs.

IN DETAIL ...

A simpler layout

The layout has been revised to make CDM 2015 more accessible generally and, in particular, to SMEs.

The ACoP is to be abolished and replaced with new guidance

CDM 2015 will apply to all "clients" namely "any person" for whom a construction project is carried out.

This means domestic clients will be subject to CDM. A domestic client is one for whom a construction project is carried out which is not done in connection with a business or for commercial purposes. That said, domestic clients will be able to delegate the majority of their duties to a principal designer (see below) or principal contractor.

Notification

The notification threshold has changed. Going forward, the HSE will need to be notified about projects exceeding 500 person days or "longer than 30 working days" with "more than 20 workers working simultaneously". This should reduce the number of notifiable projects.

Notification no longer triggers additional duties

The notification threshold no longer triggers additional duties to appoint a CDM co-ordinator and principal contractor.

Instead, under the new rules, the duties to appoint a principal designer and principal contractor will apply whenever there is more than one "contractor".

So, for example, a principal contractor must be appointed where there is more than one contractor on a project (as opposed to when the project is "notifiable").

Application to smaller sites

It follows from the above that, as CDM 2015 requires the key health and safety co-ordinators (principal designer and principal contractor) to be appointed whenever there is more than one contractor on site, CDM will begin to extend to and catch smaller projects on smaller sites.

Replacing the CDM Co-ordinator with a Principal Designer

A major change is the removal of the CDM co-ordinator role and introduction of the "principal designer" role. The number of contractors (more than one) triggers the appointment of the principal designer and new Regulation 11 sets out his duties.

The principal designer must be appointed by the client in writing and is the designer with control over the pre-construction phase of the project.

New Regulation 5(1) specifies that the principal designer must be "a designer with control over the pre-construction phase". In CDM 2015, "designer" is defined to include any person who arranges for or instructs another person under its control to prepare or modify design (for the project). Reading the two parts together ("designer" and "control over the pre-construction phase"), it must be the case that, going forward, only existing CDM co-ordinators that are either lead designers (such as architects) or D&B contractors on projects would be able to fulfil the criteria for being the new principal designer.

It will be interesting to see how this works in practice and what effect it has on the costs of engaging a designer who is also the "principal" designer.

A move away from the competence bureaucracy

The draft regulations take a new approach to "competence". CDM 2015 removes the explicit competence requirements in CDM 2007 and replaces them with a requirement for the appropriate skills, knowledge and experience. The HSE makes clear that the competence of industry professionals is the responsibility of the relevant professional bodies and institutions.

Transitional arrangements

The provisions in Schedule 4 to CDM 2015 recognise that there will be projects that start before the new rules come into force on 6 April and continue beyond that date. For these projects, certain specified transitional arrangements apply - particularly with regard to projects that will continue beyond a six month transitional period (namely, beyond October 2015).

Different transitional arrangements apply to projects beginning before 6 April where no CDM co-ordinator has been appointed and, separately, where a CDM co-ordinator has been appointed.

NEXT STEPS

If your business is affected by CDM, you need to get up to speed.

Our [Construction & Engineering Group](#) is preparing a detailed guide to CDM 2015 and rolling out a series of webinars and presentations. For more information, email szilvia.gyorgyi@dlapiper.com. We are advising our clients on the changes they need to make to their documents.

HOW WE CAN HELP

With specialists across the UK, our [Construction & Engineering Group](#) is uniquely placed to advise our clients in relation to all types of construction, development, engineering and infrastructure project and dispute resolution procedure - wherever they are and wherever their projects are. Find out more about our [Construction & Engineering UK](#) and [global](#) practices.

We also have one of the largest global [Litigation & Arbitration](#) practices comprising of a team of experienced litigators able to represent a varied range of interests on an international basis.

Our [Environmental, Health and Safety practice](#) is one of the largest teams of specialist health and safety lawyers of its kind providing comprehensive services (both contentious and non-contentious) on all aspects of the law and policy governing health and safety at work. Our Regulatory Group is comprised of leading advisory practitioners and defence lawyers, many of whom have been regulators or have prosecuted on behalf of regulators previously in their careers.

REALWORLD

Construction & Engineering is part of our wider Real Estate practice - the largest group of Real Estate lawyers in the world.

[REALWORLD](#) is our interactive online guide to real estate that provides answers to the key questions that arise when entering foreign real estate markets.

The site covers questions related to sale and purchase, real estate finance, leases, construction, planning and zoning, real estate taxes and corporate vehicles. It allows users to compare the way in which issues in any two (or more) different countries are dealt with and help evaluate the possible options.

WHAT IN HOUSE LAWYERS NEED (WIN)

Knowledge, support and networking for the in-house lawyer community

WIN is the DLA Piper programme for in-house lawyers. The aim of the programme is to listen to our clients and identify the key legal and commercial issues in-house lawyers face on a day to day basis so we can tailor our services to meet their changing needs and priorities.

Many of our in-house clients are helping us shape the agenda so that it remains topical and relevant. Clients can join the discussion at www.dlapiperwin.com and tell us what topic areas are of interest for access to a master-class programme of targeted updates and educational networking events.

For more information or to request additional information on WIN please contact Richard Norman or Bethany Jennings via www.dlapiperwin.com.

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