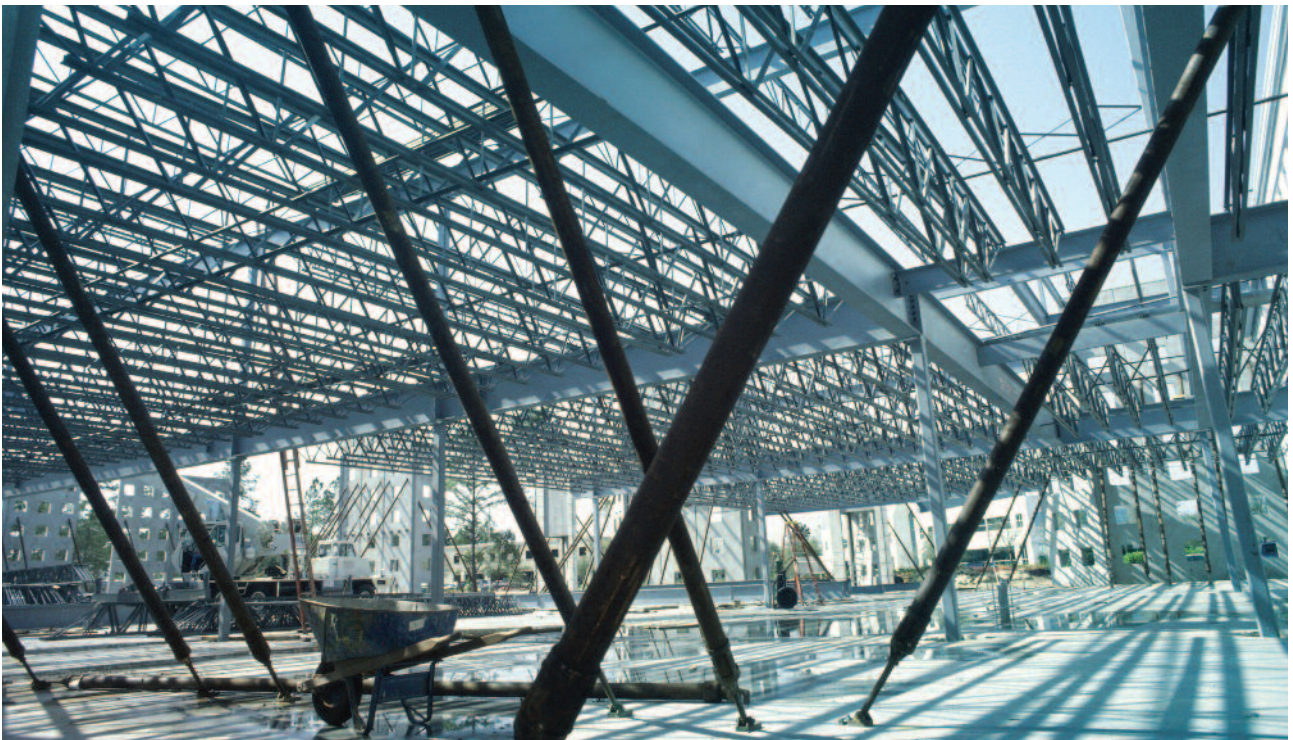


# TECHNICAL & LEGAL

REAL ESTATE BULLETIN MARCH 2015

## Construction, Design and Management regulation change – are you prepared?

Construction health and safety legislation will undergo a radical change on 6th April 2015 with the introduction of the Construction, Design and Management (CDM) regulations 2015. So how have these changes come about, what are they and how will they impact on the roles of the various parties involved in a construction contract? What insurance implications also need to be considered?



Some 20 years ago, on 31st March 1995, construction health and safety legislation underwent significant change with the introduction of the CDM regulations 1994 following the publication of a European Directive on the minimum health and safety standards for temporary or mobile construction sites. The regulations were intended to more clearly integrate health and safety during the whole lifecycle of the construction project, rather than just the construction phase. CDM regulations

1994 did not confer a right of civil liability for injury claims, other than where work was permitted to start where no effective health and safety plan was in place, or where unauthorised persons were allowed on site. However breaches of the legislation could lead to criminal prosecution.

Just over a year later in September 1996, final implementation of the European Directive was achieved with the introduction of the Construction (Health,

Safety and Welfare) regulations 1996. These regulations were intended to simplify and modernise existing and widespread health and safety regulations in the construction sector, and provide specific detail covering defined construction activities, for example, using access equipment or support for excavations. Breaches of the regulations gave rise to civil liability in compensation claims for injury.

Over time, this new legislation was considered to result in an overly cautious, costly and bureaucratic approach to compliance, where important health and safety information was not effectively communicated. Concerns were raised from within the construction industry and the Health and Safety Executive (HSE) that the expected health and safety improvements were not being delivered. Following an industry wide consultation in 2002, this in turn led to the introduction of the CDM regulations 2007 which merged and modernised the two preceding pieces of legislation with the key aim of reducing the risk to health and safety of all parties involved in a construction project, from inception to project completion and beyond.

The 2007 regulations identified five duty holders for a construction project – the client, designer and contractors, but for ‘notifiable’ projects where construction work was more than 30 working days in duration (or more than 500 person days on site) there was an additional requirement for the client to appoint a CDM Co-ordinator and a Principal Contractor to assist with planning, co-ordination and construction management. A requirement was introduced that pre-construction information should be prepared, including details of the CDM planning period, intended to allow contractors sufficient time to assess health and safety issues and plan their works before commencing construction. Alongside this, the ‘Construction Phase Plan’ (CPP) was introduced, which set out the management arrangements during construction, and a ‘Health and Safety File’, containing key health and safety information for use in future work on the structure. Finally, an Approved Code of Practice (ACOP) replaced the construction (Health Safety and Welfare) regulations 1996, giving clear and detailed advice and guidance to duty holders on design and management issues as well as site safety and compliance.

Civil liability for breaches of CDM 2007 regulations was conferred to employees of duty holders, and to others in more limited circumstances. However, this was revoked on 1st October 2013, following introduction of the Enterprise and Regulatory Reform Act 2013. In practice, from that date breaches of the regulations, whilst not conferring civil liability, would still be persuasive that an employer was negligent and in breach of its common law duties.

In 2014, some seven years on from the introduction of the 2007 regulations, HSE undertook a consultation to effect further changes, having evaluated that whilst the model of risk management embedded within CDM 2007 had become standard practice in the more organised parts of the construction industry, more needed to be done to embed the approach with smaller contractors. The consultation had the stated aim to make the regulations easier to understand, replace the CDM co-ordinator role with that of principal designer, replace the ACOP

with targeted guidance, replace the detailed and prescriptive requirements for individual and corporate competence with a more generic requirement, align notification requirements with the Directive and apply the Regulations to domestic clients but in a proportionate way. The results of this consultation are the CDM regulations 2015, which subject to any last minute drafting changes will come into effect on 6th April 2015.

## CDM REGULATIONS 2015 – KEY CHANGES

- **Clients** – The new regulations recognize the influence and importance of the client as the head of the supply chain and that they are best placed to set standards throughout a project. Additional responsibilities therefore arise, not just at the commencement of the project but throughout. Clients who are regular developers will be more able to manage these responsibilities, but there may be a steep learning curve for new or inexperienced clients. A client is required to appoint a Principal Designer as well as a Principal Contractor in any project where there is more than one contractor working on the project. If they do not, they will assume those parties’ responsibilities.
- **Principal Designer** – The CDM coordinator role (under CDM 2007) is replaced by Principal Designer. The Principal Designer is required to coordinate all health and safety matters. Any designer (not just the Principal Designer) must not start any design work unless they are satisfied that the client is aware of the duties that a client has under CDM 2015. It is possible that a design and build contractor may be appointed as Principal Designer although in cases where they are not in place at concept design stage, the architect may take on this role up to completion of the pre-construction phase. At the end of the pre-construction phase the architect would then pass the health and safety file to the Principal Contractor.
- **Principal Contractor** – this role fulfils the role of health and safety coordinator for the project execution phase (the construction phase). The Principal Contractor largely retains the core duties that they held under CDM 2007, with only minor modification. Essentially therefore, during the pre-construction phase, and before setting up a construction site, the principal contractor must draw up a construction phase plan or make arrangements for one to be drawn up. The plan must set out the health and safety arrangements and site rules taking account, where necessary, of the industrial activities taking place on the construction site and any specific measures arising. The principal designer must assist the principal contractor by providing all information that is relevant to the construction phase plan.
- **Domestic Clients** – i.e. non-commercial clients – these were excluded under CDM 2007 but are included under CDM 2015. The regulations will therefore apply to more of the smaller contractors who work with domestic clients. Duties of

domestic clients are normally transferred to the contractor, on a single contractor project or the principal contractor, on a project involving more than one contractor.

- **Notifiable project** – Changes to the threshold are made where projects need to be notified to HSE. The new notification limit is now ‘more than 30 working days and more than 20 workers simultaneously, or involve more than 500 worker days’. This is likely to reduce the number of projects notified annually by some 60,000.
- **Transitional arrangements** – Whilst any new contract commencing after 6th April 2015 falls under the new regulations, if a contract commenced before 6th April and will conclude before 6th October 2015, the new regulations will not apply.
- **Civil Liability** – Specific health and safety regulations are set out in part 4 – as with CDM 2007, these do not confer a right of civil liability, however breaches will inevitably be cited as evidence of negligence in any personal injury claim made by employees of the duty holders.

## NEW ROLES AND DUTIES

CDM duty holder	Summary of role/main duties
<b>Clients</b> – organisations or individuals for whom a construction project is carried out	<ul style="list-style-type: none"> <li>• Make suitable arrangements for managing a project. This includes making sure: <ul style="list-style-type: none"> <li>– other duty holders are appointed</li> <li>– sufficient time and resources are allocated</li> </ul> </li> <li>• Making sure: <ul style="list-style-type: none"> <li>– relevant information is prepared and provided to other duty holders</li> <li>– the principal designer and principal contractor carry out their duties</li> <li>– welfare facilities are provided.</li> </ul> </li> </ul>
<b>Domestic clients</b> – people who have construction work carried out on their own home, or the home of a family member that is not done as part of a business, whether or not for profit	<ul style="list-style-type: none"> <li>• Duties are normally transferred to the contractor, on a single contractor project; or the principal contractor, on a project involving more than one contractor. However, the domestic client can choose to have a written agreement with the principal designer to carry out the client duties.</li> </ul>
<b>Designers</b> – who as part of a business, prepare or modify designs for a building, product or system relating to construction work	<ul style="list-style-type: none"> <li>• When preparing or modifying designs, to eliminate, reduce or control foreseeable risks that may arise during construction and the maintenance and use of a building once it is built.</li> <li>• Provide information to other members of the project team to help them fulfil their duties.</li> </ul>
<b>Principal designers</b> – appointed by the client in projects involving more than one contractor. They can be an organisation or an individual with sufficient knowledge, and experience	<ul style="list-style-type: none"> <li>• Plan, manage, monitor and coordinate health and safety in the pre-construction phase of a project. This includes identifying, eliminating or controlling foreseeable risks and ensuring designers carry out their duties.</li> <li>• Prepare and provide relevant information to other duty holders.</li> <li>• Liaise with the principal contractor to help in the planning, management, monitoring and coordination of the construction phase.</li> </ul>
<b>Principal contractors</b> – contractors appointed by the client to coordinate the construction phase of a project where it involves more than one contractor	<ul style="list-style-type: none"> <li>• Plan, manage, monitor and coordinate the construction phase of a project, including <ul style="list-style-type: none"> <li>– liaising with the client and principal designer</li> <li>– preparing the construction phase plan</li> <li>– organising cooperation between contractors and coordinating their work</li> <li>– ensuring suitable site inductions are provided</li> <li>– ensuring reasonable steps are taken to prevent unauthorised access</li> <li>– ensuring workers are consulted and engaged in securing their health and safety</li> <li>– ensuring welfare facilities are provided.</li> </ul> </li> </ul>
<b>Contractors</b> – those who do the actual construction work and can be either an individual or a company	<ul style="list-style-type: none"> <li>• Plan, manage and monitor construction work under their control so that it is carried out without risks to health and safety</li> <li>• For projects involving more than one contractor, coordinate their activities with others in the project team – in particular, comply with directions given to them by the principal designer or principal contractor</li> <li>• For single-contractor projects, prepare a construction phase plan.</li> </ul>
<b>Workers</b> – the people who work for or under the control of contractors on a construction site	<ul style="list-style-type: none"> <li>• They must: <ul style="list-style-type: none"> <li>– be consulted about matters which affect their health, safety and welfare</li> <li>– take care of their own health and safety and others who may be affected by their actions</li> <li>– report anything they see which is likely to endanger either their own or others</li> <li>– co-operate with their employer, fellow workers, contractors and other duty holders.</li> </ul> </li> </ul>



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## CONTACT

If you have questions with regard to the above points, or any other provisions within the bill, please contact your Account Executive.

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## INSURANCE CHANGES

Aside from the alterations to contractual and other documentation surrounding the changes to the role of CDM co-ordinator, it is important that insurance implications are considered as responsibilities of the various parties to a construction contract may change. Designers appointed as Principal Designer will have additional health and safety responsibilities which may trigger the need to amend business descriptions, risk ratings and the wording of any relevant endorsements on both professional indemnity and general liability policies. Clients who are inexperienced in procuring and running construction projects will face new challenges and

risks as a result of their additional responsibilities under CDM 2015, and this may have a particular impact on their professional indemnity exposures. Furthermore with breaches of the legislation potentially resulting in criminal liability, for which the maximum penalty is an unlimited fine and/or two years imprisonment, policy wordings relating to criminal prosecutions, the appointment of criminal defence lawyers and the payment of defence legal costs, also need to be reviewed and updated accordingly. We recommend you speak to your insurance advisor to discuss your individual arrangements and the potential need for any changes.



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