

Construction (Design & Management) Regulations 2015 Briefing Note

Introduction

The Construction (Design & Management) Regulations 2015 ("CDM 2015") are in force on 6 April 2015 (Regulation 1 (R1)). Under the CDM Regulations 2007 a 'client' was required to appoint a 'CDM Co-Ordinator' to provide assistance and to co-ordinate health and safety measures. CDM 2015 removes the role of CDM Co-Ordinator and, arguably, imposes a more robust health and safety structure on the vast majority of construction and engineering projects using a 'principal designer' instead.

Some projects will, of course, have begun (but not concluded) before 6 April 2015 so transitional arrangements are established in CDM 2015 to cater for this. Where a project has started before 6 April 2015, but no CDM Co-Ordinator has been appointed, then the client must appoint a principal designer under CDM 2015 if the construction phase of the project has not started. If it has started a 'principal contractor' takes on responsibility for the health and safety file. In the more likely situation where a CDM Co-Ordinator has been appointed then the client must appoint a principal designer by 6 October 2015. During the transitional phase CDM Co-Ordinators do not have to satisfy the obligations that will face a principal designer.

So what does the structure of the new Regulations look like and what obligations do they impose on parties to a construction project? This Briefing Note summarises the new structure and duties imposed by CDM 2015.

Structure

Key Players

There are certain key aspects to CDM 2015 which identify both the scope of the Regulations and the key players involved in them.

The key players are:

- **"Client"** who is any person for whom the project is carried out.
- **"Contractor"** who is any person who, in the course of business, carries out, manages or controls construction work.
- **"Designer"** who is any person who, in the course of the business, prepares or modifies a design or arranges for anyone under their control to do so.
- **"Principal Contractor"** is the contractor appointed to carry out specified duties (see Regulations 12-14).
- **"Principal Designer"** is the designer appointed to carry out specified duties (see Regulations 11 and 12).

Scope of the Regulations

The Regulations cover construction work (R2). This is widely defined and includes many activities. Construction work is the carrying out of any (a) building, (b) civil engineering or (c) engineering construction work and includes a number of key activities including: construction, alteration, conversion, fitting out, commissioning, renovation, repair, upkeep or other maintenance, decommissioning, demolition or dismantling of a structure. It includes the preparation for an intended structure including site clearance, exploration, investigation and excavation and the clearance or preparation of a construction site or existing structure for use or occupation at its conclusion.

Construction work also includes the assembly on site of pre-fabricated elements to form a structure or the dis-assembly on site of such pre-fabricated elements which form the structure. It includes the removal of a structure resulting from the demolition or dismantling of it or from the dis-assembly of a pre-fabricated structure. Construction work also includes the installation, commissioning, maintenance, repair or removal of mechanical, electrical, gas, compressed air, hydraulic, telecommunications, computer or similar services which would normally be fixed within or to a structure.

Specifically excluded from CDM 2015 is the exploration for, or extraction of, mineral resources or preparatory activities carried out at a place where such exploration or extraction is carried out.

CDM 2015 applies on a **construction site** which is defined to include any place where construction work is being carried out (R2). CDM 2015 applies to a **structure** which means any building, timber, masonry, metal or reinforced concrete structure, railway line or siding, tramway line, dock, harbour, inland navigation, tunnel, shaft, bridge, viaduct, waterworks, reservoir, pipe or pipeline, cable, aqueduct, sewer, sewage works, gasholder, road, airfield, sea defence works, river works, drainage works, earthworks, lagoon, dam, wall, caisson, mast, tower, pylon, underground tank, earth retaining structure or structure designed to preserve or alter any natural feature and any fixed plant. It includes anything 'similar' too (R2).

The structure need not be permanent. Any temporary work such as formwork, scaffolding or other structure designed or used to provide support for all means of access during construction work is also within the definition of a structure (R2).

The carrying out of construction work is covered by the requirements of the CDM Regs 2015 and such work is accordingly "notifiable" (R6). What that means is that there is an obligation on the client to give written **notice** about the construction works to the health and safety executive as soon as is practicable but before the construction phase of the construction works begins. For rail or nuclear projects notice is given to the office of rail or nuclear regulation, as appropriate (R6). To qualify the construction work must be scheduled to last longer than 30 working days and have more than 20 workers working simultaneously or simply exceed the period of 500 person days (R6).

The notice must contain certain specified particulars required in terms of CDM 2015 (R6). These are found in Schedule 1 to CDM 2015. The notice will contain project specific information with a client declaration of awareness of its CDM 2015 duties. It must be displayed in the site office for the construction site. It must be periodically updated where necessary.

There are effectively 2 phases to any construction project under CDM 2015. These are the **pre-construction phase** and the actual **construction phase** (R2). Again they are defined.

The pre-construction phase, as would be expected, means any period of time during which design or preparatory work is carried out for a project but that may continue during the construction phase. The construction phase means the period of time beginning when the construction work on a project actually starts and ends when it is completed. There are a number of very important obligations which follow logically from this structure. The first is that there is pre-construction information which the client must make available if within the client's possession (or which is reasonably obtainable by or on behalf of the client). That information is directed at risks involved in the construction works including information about the project, planning and management of the project and health and safety hazards including those within any design or construction process. The client **must** ensure the principal designer prepares the health and safety file during this phase (R4).

For the construction phase itself, a construction phase plan is drawn up by the Principal Contractor. This is to be done during the pre construction phase and before setting up the site.

CDM 2015 applies not only in Great Britain but also to premises and activities outside of Great Britain (R3). In essence they apply to water and wind energy production and the laying, installation, maintenance or repair of cables.

The "general principles of prevention" underpin CDM 2015 (R2 and Appendix 1). These principles are contained within Appendix 1 of CDM 2015. In general these principles can be summarised as follows:

- Avoid risks
- Evaluate risks which cannot be avoided
- Combat risks at source
- Adapt the work to the individual to alleviate monotonous work to reduce its effect on health
- Adapt to technical progress
- Replace what is dangerous with non or less dangerous work
- Develop a coherent prevention policy
- Give collective protective measures priority over individual ones
- Give appropriate instructions to employees.

Duties

Clients, designers and contractors have onerous duties under CDM 2015. These are very important to understand as is the standard applicable to each duty which varies depending upon its nature.

Client Duties

A client **must** give written notice where the project falls within the requirements of CDM 2015 (R6).

A client **must** make suitable arrangements for managing a project including allocation of sufficient time and other resources (R4). Those arrangements are suitable if the client **ensures** that the construction work can be carried out so far as is reasonably practicable without risk to the health or safety of any person (R4). Minimum welfare facilities are required to be provided (Schedule 2). The client has an absolute duty to **ensure** that these arrangements are maintained and reviewed throughout the project (R4).

A client **must** provide pre-construction information to every designer and every contractor as soon as is practicable (R4).

A client **must** ensure that before the construction phase begins a construction phase plan is drawn up by the contractor or the principal contractor (R4). The client **must** ensure that the principal designer prepares a health and safety file for the project which complies with the requirements of Regulation 12, is revised from time to time and is available for inspection (R4).

A client **must take reasonable steps** (note the lesser obligation) to ensure that the principal designer complies with its duties in Regulations 11 and 12 and that the principal contractor complies with its duties in Regulations 12, 13 and 14 (R4).

When the client disposes of his interest in the structure there is effectively a duty to pass the relevant information on (R4).

A principal designer with control over the pre-construction of phase and a principal contractor **must** be appointed in writing by the client where there is more than one contractor or it is reasonably foreseeable that more than one contractor will be working on the project at any time (R5). These appointments are to be made **as soon as is reasonably practicable** but, in any event, before the construction phase begins (R5). If the client fails to appoint a principal designer then the duties of principal designer are taken on by the client. Similarly, if the client fails to appoint a principal contractor then the client must fulfil those duties also (R5).

General Duties

There are a number of duties on designers in a construction project and a number on contractors in a construction project. Some duties apply to both.

A designer or contractor **must** have the skills knowledge and experience (as well as organisational capability) to fulfil the role they are appointed to undertake (R8).

A designer or contractor **must** not accept appointment unless they can fulfil such requirements (R8).

A person responsible for appointing a designer or contractor **must** take reasonable steps to satisfy themselves that the designer or contractor can fulfil such requirements (R8).

A person with a duty or function under these regulations **must** co-operate with any other person working on the project at the same time or an adjoining construction site (R8).

A person working under the control of another **must** report any health and safety risk to that person (R8).

Anybody required to provide information **must** ensure that is done in a comprehensible manner and as soon as practicable (R8).

Designer Duties

A designer **must** not commence work unless satisfied that the client is aware of his or her duties (R9).

When preparing or modifying a design, a designer **must** do so taking into account the general principles of prevention (R9). The intention is to eliminate so far as is reasonably practicable foreseeable risks in carrying out construction work on, maintaining or using any structure. Where it is not possible to eliminate those risks the designer **must** take reasonable steps to reduce or control the risks, provide information about them and include them in the health and safety file (R9).

Where a designer has prepared or modified design outside Great Britain, CDM 2015 will apply to the person who commissioned it or the client for the project (R10).

Duties of principal designer

The principal designer **must** plan, manage and monitor the pre-construction phase and co-ordinate health and safety matters during the pre-construction phase to **ensure** that, so far as **reasonably practicable**, the project is carried out without risks to health and safety (R11).

The principal designer **must** apply the general principles of prevention (R11).

The principal designer **must** identify and eliminate or control, so far as reasonably practicable, health and safety risks to any person carrying out or likely to be effected by construction work, maintaining the structure or using the structure (R11).

The principal designer **must** ensure that all designers comply with their duties (R11).

The principal designer **must** ensure that all persons co-operate (R11).

The principal designer **must** assist the client in relation to pre-construction information (R11).

The principal designer **must** liaise with the principal contractor (R11).

The principal designer **must** assist the principal contractor in preparing the construction phase plan by providing information held including information relating to pre construction obtained from the client and any information for the designers (R12).

During the pre construction phase the principal designer must prepare a health and safety file which is appropriate to the project containing information likely to be needed. That health and safety file must be reviewed and revised from time to time to take account of the work and any changes to it (R12).

If the principal designer's appointment concludes before the end of the project that principal designer must pass the health and safety file to the principal contractor. At the end of the project that health and safety file is passed to the client by the principal designer or principal contractor (R12).

Duties of principal designer

The principal contractor **must** draw up a construction phase plan (or arrange for one to be drawn up) during the pre construction phase and before the setting up of the site (R12). That construction phase plan must set out the health and safety arrangements and site rules. It has to be applicable to the site and 'non generic' (R12).

During the project the principal contractor **must** ensure that the construction phase plan is reviewed and updated from time to time so that it continues to be sufficient to ensure construction work is carried out without risks to health or safety. Test is reasonable practicability (R12).

The principal contractor **must** plan, manage and monitor the construction phase and co-ordinate health and safety matters during the construction phase to ensure, so far as reasonably practicable, work is carried out without risk to health and safety (R13).

The principal contractor **must** take into account the general principles of prevention (R13).

The principal contractor **must** provide the principal designer with any information in his possession relevant for the health and safety file. If that health and safety file is passed to the principal contractor then he takes the responsibility to review and update it (R12).

The principal contractor **must** organise co-operation between contractors (R13). The Principal contractor must ensure that the employer's apply the general principles of prevention in a consistent manner and follow a construction phase plan (R13). The principal contractor must ensure that a suitable site induction is provided and that necessary steps are taken to prevent access by unauthorised persons (R13).

The principal contractor **must** liaise with the principal designer for the duration of the principal designer's appointment (R13).

The principal contractor **must** make and maintain arrangements directed at the health, safety and welfare of the workers (R14).

The principal contractor **must** consult those workers in good time (R14).

The principal contractor **must** ensure that those workers or their representatives can inspect and take copies of any information which the principal contractor has which relates to health and safety and welfare of workers at the site (R14).

Duties on Contractors whether the principal contractor or not

Not to carry out any construction work unless satisfied that the client is aware of its duties (R15).

Plan, manage and monitor the construction work carried out by themselves or by workers under their control to ensure that, so far as reasonably practicable, they are carried out without risk to health and safety (R15).

Comply with directions given by the principal designer or principal contractor where there is more than one contractor on site (R15). Take account of the general principles of prevention if he is the only contractor (R15).

Draw up a construction phase plan where he is the only contractor (R15).

Provide each worker under their control with appropriate supervision instructions and information relative to health and safety (R15).

Sanctions

CDM 2015 is **enforced** by the Health and Safety Executive in terms of the Health & Safety at Work Act 1974. Breach of CDM 2015 may result in **criminal** prosecution for businesses and/or for individuals such as directors, managers or other officers of such businesses where neglect of CDM 2015 duties can be proved.

Contractor Site Control Measures

A Contractor has duties in relation to the control of a site (R16-35). These cover a number of areas:

- Safe Place of Work
- Security
- Stability of Structures
- Demolition and Dismantling
- Explosives
- Excavations
- Cofferdams and Caissons
- Reports of Inspections
- Energy Distribution Installations
- Prevention of Drowning
- Traffic Routes
- Vehicles
- Fire, Flood, Asphyxiation Prevention
- Emergency Procedures, Routes and Exits
- Fire Detection and Fire Fighting
- Fresh Air
- Temperature and Weather Protection
- Lighting

Particulars to be Notified by Client

- A. Date of Notice
- B. Address of the construction site or precise description of its location
- C. Name of local authority area in which site is situated
- D. Brief description of the project and the construction work it entails
- E. Names addresses contact details of Client, Principal Contractor and Principal Designer
- F. Planned start date for construction phase
- G. Time allocated for the construction work
- H. Planned duration of the construction work
- I. Estimate of maximum number of people at work on the site
- J. Name and address of any contractor already appointed
- K. Name and address of any designer already appointed
- L. Client declaration that it is aware of CDM 2015 duties.

If you require advice in relation to any of the above, or if you have any further questions, please contact Keith Bishop:



Keith Bishop

Partner in the Construction and Engineering Team

Muckle LLP

Tel: 0191 211 7983

Mob: 07738 027 087

keith.bishop@muckle-llp.com

Muckle LLP

Time Central, 32 Gallowgate, Newcastle upon Tyne, NE1 4BF | DX 61011
Tel: 0191 211 7777 | Fax: 0191 211 7788 | www.muckle-llp.com



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