



Imperial College
London

CDM2015

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Background

In 1994, The Construction (Design and Management) Regulations 1994 (CDM94) came into force.

This was the UK Government's first attempt to interpret the 1992 Directive.

Due to industry resistance to change, CDM94 failed in two key areas:

- a) The key role of the Designer in eliminating and reducing risks and
- b) CDM94 omitted reference to Domestic construction work.

Background

However, where it has had a measure of success, is with the role of the Client.

For the first time in history, those who fund construction work would, in theory, be held to account for the management of construction work.

I use the term "in theory" deliberately, as to date no Client has been prosecuted for failures of management in the construction process, even where deaths have occurred. However, recent case law shows the courts moving in that direction.

Background

These changes are being fuelled by the Corporate Killing and Corporate Manslaughter legislation and recent outcomes included a case where a Director of a construction company and a safety consultant were both given custodial sentences.

The Director received 3 years and 3 months for gross negligence manslaughter and the safety consultant received a 9 months custodial sentence for his personal responsibility for exposing others to a risk to their health and safety, under section 7 of the 1974 Act.

Background

In 2007, due to dissatisfaction expressed by sections of industry in how the legislation was being implemented, we saw the introduction of CDM 2007.

The dissatisfaction was aimed mainly at the input from the Planning Supervisor and consequently the Planning Supervisor role was removed and replaced by the CDM Coordinator.

In truth the differences in roles were minimal and the Planning Supervisors took on the new role and nothing really changed.

Background

In 2014, the HSE embarked on an industry wide consultation process, with the stated aim of identifying areas for improvement, reducing costs to Clients and implementing in full, the original philosophy contained within the 1992 Temporary and Mobile Construction Sites Directive.

The original Directive required Designers to take full responsibility for eliminating and reducing risks through the design process and the Directive was to apply to Domestic Clients as well.

Background

The outcome of that consultation process is CDM 2015.

The Construction (Design and Management) Regulations 2015



STATUTORY INSTRUMENTS

2015 No. 51

HEALTH AND SAFETY

The Construction (Design and Management) Regulations 2015

<i>Made</i>	- - - -	22nd January 2015
<i>Laid before Parliament</i>		29th January 2015
<i>Coming into force</i>	- -	6th April 2015

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 15(1), (2), (3)(a) and (c), (5)(a), (8) and (9), 80(1) and (2)(c) and 82(3)(a) of, and paragraphs 1(1) and (2), 6 to 12, 14, 15(1), 16, 18, 20 and 21 of Schedule 3 to, the Health and Safety at Work etc. Act 1974(a) ("the 1974 Act").

The Regulations give effect without modifications to proposals submitted to the Secretary of State by the Health and Safety Executive ("the Executive") under section 11(3) of the 1974 Act(b).

Before submitting these proposals to the Secretary of State, the Executive consulted the bodies that appeared to it to be appropriate as required by section 50(3) of the 1974 Act(c).

It appears to the Secretary of State that the modifications to the instruments marked with an asterisk in the table in Schedule 5 are expedient for the purposes of section 80(1) of the 1974 Act. It also appears to the Secretary of State not to be appropriate to consult bodies in respect of those modifications for the purposes of section 80(4)(d) of the 1974 Act.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Construction (Design and Management) Regulations 2015 and come into force on 6th April 2015 immediately after the Mines Regulations 2014(e).

(a) 1974 c.37. Section 15(1) was substituted by paragraph 6 of Schedule 15 to the Employment Protection Act 1975 (c.71) and amended by S.I. 2002/794. Section 15(2) and (3)(c) was amended by paragraphs 1 and 5 of Schedule 12 to the Energy Act 2013 (c.32).

(b) Section 11(3) was inserted by S.I. 2008/900.

(c) Section 50(3) was amended by paragraph 16 of Schedule 15 to the Employment Protection Act 1975 (c.71), S.I. 2008/900, paragraphs 4 and 6 of Schedule 7 to the Health and Social Care Act 2012 (c.7), and by paragraphs 1 and 11(1) of Schedule 12 to the Energy Act 2013.

(d) Section 80(1) was amended by S.I. 2002/794.

(e) S.I. 2014/5246.

CDM 2015 Update

What are the main changes?

- Greater responsibilities on Clients
- CDM-C role removed
- Principal Designer role created
- Principal Contractors to “engage” the workforce
- CDM 2015 applies to “temporary” structures e.g. marques
- CDM 2015 applies to Domestic Clients

Before moving onto explaining the changes, let us reflect for a moment on why this and other safety related legislation is important.

The unacceptable statistics within the construction industry

Although it accounts for only about 5% of the employees in UK, construction accounted for 31% of fatal injuries to employees and 10% of reported major/specified injuries.

There has been a substantial reduction in the number of fatal injuries in construction since 1961. **215 deaths in 1961 and 166 deaths in 1974.**

2013/14 **42** fatal injuries to workers - **14** of these fatalities were to the self-employed.

76,000 total cases of work-related ill health, of which **31,000** were new cases

2.3 million working days were lost in 2013/14, **1.7 million** due to ill health and **592,000** due to workplace injury, making a total of 1.1 days lost per worker.

Injuries and new cases of ill health resulting largely from current working conditions in workers in construction cost society over £1.1 billion a year.

Source: www.hse.gov.uk/statistics

The unacceptable statistics of Occupational Ill Health

- **12,000** deaths each year caused by past work-related health issues, mainly chemical and dust exposure. (All Industries)
- Over **3,700** occupational cancer cases are estimated to arise each year from past exposures in construction.
- Nearly **half of deaths** from occupational cancer are in the construction industry.
- **1.2 million** people who worked during the last year were suffering from an illness (long standing as well as new cases) they believed was caused or made worse by their current or past work. **551,000** of these were new cases.
- **29.3 million** days were lost overall (1.24 days per worker), **24.6 million** due to work-related ill health and **4.7 million** due to workplace injury.

Source: www.hse.gov.uk/statistics

CDM 2015-Main Changes

The main changes include:-

- The removal of the role of CDM Coordinator - Clients no longer have the services of an “independent” construction safety specialist.
- The new role of Principal Designer - Most significant change.
- The removal of Appendix 4 regarding specific levels of competence - **but yet**-Regulation 8 still requires the Client to ensure the competence of all appointees i.e. skills, knowledge, experience and where an organisation is appointed, organisational capabilities to undertake the tasks involved.

Main Changes - Client's Role

The Client's role is seen by the Health and Safety Executive (HSE) as pivotal and crucial to setting the scene for goal setting and the Client's expectations for construction safety management through the whole process.

The HSE considers this role of such importance, that the Client's role is given special mention in the L Series Guidance document to the CDM Regulations as follows:

" The Client has a major influence over the way a project is procured and managed. Regardless of the size of the project, the Client has contractual control, appoints designers and contractors and determines the money, the time and other resources available".

Main Changes - Client's Role

- Make suitable arrangements for managing a project, including the allocation of sufficient time and other resources.
- Ensure duty holders are undertaking their roles adequately - a monitoring role (used to be by CDM-C).
- Provide pre-construction information - required from day 1 including at the feasibility stage of the project.
- Notify the HSE where a construction project falls within the new criteria - i.e. F10 by Client.

What is pre-construction information?

Regulation 2

Interpretation defines pre-construction information as information in the Client's possession, or which is reasonably obtainable by, or on behalf of the Client, which is relevant to the construction work and is of an appropriate level of detail and proportionate to the risks involved, including:

- a) Information about:
 - (i) the project
 - (ii) planning and management of the project
 - (iii) health and safety hazards, including design and construction hazards and how they will be addressed, and

- b) Information in any health and safety file.

Pre-construction information.

- The information is important to contractors, designers and surveyors during feasibility studies and for inclusion in the contractor's health and safety plan for the works.
- Asbestos information is a good example of important information and previous surveys provide opportunities to reduce the costs of covering the same ground again.
- Appendix 2 in the Regulations provides more comprehensive information on what should be included.
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- A template provides a good starting point for the production of this information and will be available on the Estates Projects website after Easter.

Main Changes

New "Notifiable" criteria - Regulation 6

A project is notifiable if the construction work on a construction site is scheduled to:

- a) last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project, or
- b) the work is expected to exceed 500 person days.

Regulation 6(2) - Where the project is notifiable, the Client must give notice in writing to the HSE as soon as is practicable, before the construction phase begins. (Refer to Schedule 1 of L Series Guidance)

CDM 2015 Update.

Appointments of Principal Designer and Principal Contractor - Regulation 5

Where there is more than one (1) contractor, or it is reasonable to foresee that more than 1 contractor will be working on the project at any time, the Client must appoint in writing:

- a) a designer with control over the pre-construction phase as Principal Designer and
- b) a contractor as Principal Contractor.

The Designer - Roles and Responsibilities

Regulation 9(2)

When preparing, or modifying a design, the designer must take into account the general principles of prevention (to eliminate, reduce and/or control hazards) and any pre-construction information, to eliminate, so far as is reasonably practicable, foreseeable risks to the health and safety of any person:

- a) carrying out, or liable to be affected by construction work,
- b) maintaining or cleaning a structure, or
- c) using a structure designed as a workplace.

Regulation 9(4)

A designer must take all reasonable steps to provide with the design, sufficient information about the design, construction, or maintenance of the structure, to adequately assist the Client, other designers and contractors, to comply with their duties under these Regulations.

Definition of Designer

Regulation 2 definition of designer states that a designer means any person (including a Client, contractor, or other person referred to in these Regulations) who in the course, or furtherance of a business:

- a) prepares or modifies a design, or
- b) arranges for, or instructs any person under their control to do so, relating to a structure, or to a product or mechanical or electrical system intended for a particular structure and a person is deemed to prepare a design where a design is prepared by a person under their control.

The Client can be considered as Principal Designer, provided he also fulfils the requirement for competence. Training would need to include an understanding of safety in design issues and how the principles of prevention should be applied to construction design.

Principal Designer - Roles and Responsibilities.

Regulation 11

The Principal Designer must:

- Plan, manage and monitor the pre-construction phase and coordinate matters relating health and safety during the pre-construction phase to ensure, so far as is reasonably practicable, the project is carried out without risk to health, or safety.
- Take into account the general principals of prevention and where relevant, the content of any construction phase plan and any health and safety file.

Principal Designer - Roles and Responsibilities.

Regulation 11(6)

The Principal Designer must assist the Client in the provision of pre-construction information required by Regulation 4(4).

Regulation 12(3)

The Principal Designer must assist the Principal Contractor in preparing the construction phase plan, by providing to the Principal Contractor, all information the Principal Designer holds that is relevant to the construction phase plan including:

- a) pre-construction information obtained from the Client and
- b) any information obtained from designers under Regulation 9(3)(b)

Principal Designer - Roles and Responsibilities.

Regulation 12(5)

During the pre-construction phase, the Principal Designer must prepare a health and safety file appropriate to the characteristics of the project which must contain information relating to the project which is likely to be needed during any subsequent project, to ensure the health and safety of any person.

Regulation 12(8)

If the Principal Designers appointment concludes before the end of the project, the Principal Designer must pass the health and safety file to the Principal Contractor for completion and delivery to the Client.

Principal Designer - Roles and Responsibilities.

- The implications appear to indicate that the Principal Designer's role is a combined role of "lead designer" and many of the tasks previously undertaken by the CDM-C.
- But that isn't the whole picture as the interpretation of "Designer" includes anyone with the influence to input into the design of construction work and may include the Client, quantity surveyors and Project Managers, anyone in fact that the Client has empowered to make changes to design during the process.
- This may be fine on large projects where the Client can appoint an organisation like Arup, or AECOM, or EC Harris for example, as a one stop shop for design and Principal Designers services.
- In terms of cost and value, it doesn't work so well for small to medium sized projects.

What are the options for us as a Client?

Option A

- On large and/or complex projects, The Client appoints a large design practice that has all the competence and organisational capabilities to fulfil the role of designer and Principal Designer.
- This benefits the Client as it maintains an element of control and independent oversight of the safety in design process.
- The disadvantage might be that of a conflict of interest, where both roles are undertaken by the same organisation.

Option B

- Appoint a design company that has the appropriate PI cover and is prepared to undertake the role.
- This may require the Designer to employ an external safety consultant to assist them with the safety management element of those duties. Not unlike the role previously undertaken by the CDM Coordinator.
- The safety consultant would be directly employed by the Designer and not by the Client. The safety consultant would need to be employed during the whole of the pre-construction design phase, including feasibility and the Client would have to pick up the cost of this service.
- As in Option A, both parties work for the same company and the Client has no independent oversight of safety in design.

Option C

- The Client appoints an external consultant as Principal Designer (CDM-C Mk 2) who works with the design team, from the feasibility stage and continues until the end of the project.
- The Client still has control and maintains independent oversight of health, safety and environmental elements of design, throughout the whole design process.
- In this scenario, the Client must empower the CDM Consultant to make changes to design that are compatible with safety in design aspirations and legislative requirements.
- In D&B projects, the Client's contract needs to ensure this provision is maintained throughout the design process.

Option D

- On very small projects, the Client could undertake the role and responsibilities of the Principal Designer.
- The Client is definitely a "Designer" as described in Regulation 2 where the Client specifies goods, services and finishes for example.
- However, to meet the requirements for competence, members of the Clients team would need specific training, to assist them fulfil their duties as Principal Designer and it would require an additional time resource to adequately fulfil the duties.

Option D continued

- The PD role requires the individual appointed, to have a thorough knowledge of construction legislation and how it is applied to construction work on site.
- A thorough knowledge of the "principles of prevention" as defined in Schedule 1 of the Management of Health and Safety at Work Regulations 1999 and safety in design training.
Principal Designer is required to:
 - Provide pre-construction information –CDM2015 Schedule 2.
 - Review and agree construction phase health and safety plans with contractors-CDM2015 Schedule 3 and
 - Produce Health and Safety Files in accordance with the existing College system and CDM2015 Schedule 4.

Transitional Arrangements

What actions do Clients have to take on 6th April, where projects have already started?

Transitional Arrangements

First a quick reminder about Clients duties:

Regulation 5

Where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time, the Client must appoint in writing:

- a) a designer with control over the pre-construction phase as Principal Designer and
- b) a contractor as Principal Contractor.

Transitional Arrangements

Regulation 6 - Notification of a project to the HSE

A project is Notifiable, if the construction work on a construction site is scheduled to:

- a) last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project, or
- b) exceed 500 person days.

Transitional Arrangements

Paragraph 3 - Projects with no Principal Designer or Principal Contractor.

Small projects where design is in progress on April 6th but no appointments have been made-where more than one contractor is anticipated:

- The Client must appoint a Principal Designer (PD) and a Principal Contractor(PC).
- The PD and the Client must provide pre-construction information to designers and contractors.
- The PD must produce a health and safety file, at tender stage.

Transitional Arrangements

Continued....

- The PC must provide a construction phase health and safety plan agreed with the PD, prior to works commencing on site.
- The PD role continues into the construction phase, where it is anticipated design work has not been completed.
- Where design work is completed, the role of the PD can terminate and the health and safety file passed to the PC for completion.
- The Client may decide to employ the PD until the project is completed and the health and safety file handed over to the Client.

Transitional Arrangements

Projects with no Principal Designer or Principal Contractor

Small projects where the construction work has commenced on site and where more than one contractor is employed:

- The Client must appoint in writing, a Principal Contractor (PC) as soon as possible.
- The PC must produce a construction phase plan and agree its suitability with the Client.
- If the Client decides not to appoint a Principal Designer, the PC will take responsibility for producing the health and safety file and handing to the Client at project completion.

Transitional Arrangements

Projects with an existing CDM Coordinator

Paragraph 4:

- The Client may appoint a Principal Designer, or continue with the existing CDM-C up to the 6th October, or to project completion, where this occurs before the 6th October.
- If project completion occurs after 6th October, the Client must appoint a Principal Designer, if design work has not been completed.
- If design work is nearing completion, the Principal Contractor could fulfil this function and complete the health and safety file for the Client's use.
- If design work is complete on 6th October, no Principal Designer is required and the Principal Contractor takes responsibility for completing the health and safety file.

Transitional Arrangements

Projects with only one contractor

Where construction work has commenced before 6th April, the contractor must produce a construction phase plan and agree the suitability of the plan with the Client, as soon as is practicable after 6th April.

Challenges and Opportunities

Challenges

- To make meaningful improvements in how we manage our construction business.
- To review the skill sets required for our internal staff and external consultants and contractors
- To review our commitment to safety, health and environmental leadership.

Opportunities

As a Client, we have serious influence on how construction work is to be undertaken and we need to channel that influence through our procurement processes by:

- Employing the right people as Project Managers, Consultants and Contractors.
- Providing the right information to the right people at the right time.
- Providing the appropriate resources, including time, so that all Duty Holders can provide the service and the quality outcomes that the College deserves.
- Setting out clearly, the Client's expectations and standards for health, safety and environmental management in our contract documents.
- Ensuring a consistent message about the importance we attach to health, safety and environmental management is delivered to everyone we employ, via our understanding and awareness of College policy, construction legislation and our individual and collective leadership.

Pre-qualification Schemes-SSIP & PAS91:2013

- Safety Schemes in Procurement is a scheme used by the Government and LAs, for construction procurement. This scheme is being touted by the HSE through CDM 2015, as a means of standardising pre-qualification processes and thereby reducing costs and bureaucracy across the industry.
- SSIP is similar to the Construction Health and Safety Scheme (CHAS) currently being used by Estates and is also a registered members type scheme that permits Clients to check on the veracity of documents provided by contractors and consultants.
- Publicly Available Specification 91:2013 (PAS91) provides a set of questions to be asked by buyers/Clients of potential suppliers, to enable pre-qualification for construction projects.

CDM 2015 Update

You'll be pleased to hear that we're almost finished!

Any Questions?