

CONSTRUCTION : BULLETIN

The Construction (Design and Management) Regulations 2015

The Construction (Design and Management) Regulations are a key part of the health and safety legislation relating to construction projects. On 6 April 2015, the current 2007 Regulations will be repealed and replaced by the Construction (Design and Management) Regulations 2015 ("CDM 2015"). CDM 2015 will introduce some important changes affecting developer clients.

CDM co-ordinators replaced with principal designers

Probably the biggest change under CDM 2015 is that developers will no longer be required to appoint a CDM co-ordinator. Instead, developers must appoint a "principal designer" on any project involving, or anticipated to involve, more than one contractor. Since the definition of "contractor" includes sub-contractors, almost all commercial projects will require a principal designer.

The principal designer must be the designer with control over the pre-construction phase of the project. For each new project a developer undertakes, the developer will need to identify the consultant which satisfies this definition (which, in our view, will usually be the architect or project manager) and ensure his appointment document identifies him as principal designer for the purposes of CDM 2015.

Implications for novation

The requirement to appoint a principal designer has interesting implications in relation to the practice of novating consultant appointments from the developer to the contractor.

For example, if the architect is also the principal designer and his appointment document covers both roles, what happens if the client then wishes to novate his appointment to the contractor? The client needs to continue to appoint the architect for the principal

designer element of his services, but partial novation to the contractor of only the architectural element of the services is not possible.

Developers will really need to think ahead about which consultants they might wish to novate. If the principal designer could be novated, it would be prudent to engage the principal designer under two separate appointments, one covering design services and the other covering his role as principal designer under CDM 2015.

More duties for clients

CDM 2015 places more obligations on the client (defined as the person for whom a project is carried out). For example, whereas the CDM co-ordinator used to be responsible for notifying projects to the Health & Safety Executive, this is now the client's responsibility. Of course, the client may still engage a consultant to fill in the necessary notification paperwork on its behalf, but it is the client who remains responsible for the purposes of CDM 2015.

Crucially, whilst the role of a CDM co-ordinator included an obligation to advise and assist the client in complying with its obligations under CDM 2007, under CDM 2015 the role of principal designer does not. If the client requires advice and assistance from the principal designer, it would need to impose a contractual obligation on the principal designer to that effect.

Want to know more?

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