

CONSTRUCTION : BULLETIN

The Construction (Design and Management) Regulations 2015 – Key Changes

The Construction (Design and Management) Regulations 2015 (“CDM 2015”) come into force on 6 April 2015. With effect from that date, the current Construction (Design and Management) Regulations 2007 (“CDM 2007”) are being repealed and will no longer apply. It is essential for everyone in the construction industry to be aware of the significant changes which CDM 2015 will introduce.

No more CDM co-ordinators

Perhaps the biggest change in CDM 2015 is that the role of CDM co-ordinator has been abolished. Clients must instead appoint a “principal designer” on any project involving, or anticipated to involve, more than one contractor. Since the definition of “contractor” includes sub-contractors, the vast majority of projects will require a principal designer.

The principal designer must be the designer with control over the pre-construction phase of the project. In many cases, the principal designer will be an architect or project manager (the definition of “designer” is wide enough to potentially include a project manager). It will be for clients to ensure that the principal designer is competent to fulfil the role of both principal designer and architect, project manager or other relevant specialism.

The role of the principal designer is set out in regulation 11 of CDM 2015 and includes planning, managing and monitoring the pre-construction phase and assisting the client in the provision of pre-construction information under regulation 4(4). The principal designer is responsible under regulation 12 for preparing and maintaining the health

and safety file, and will almost certainly also have separate duties as a designer under regulation 9.

CDM applies to domestic projects

Another important change is that CDM 2015 applies to domestic clients i.e. any client for whom a project is being carried out not in the course of business. This will mean that compliance with CDM becomes relevant on small domestic extension and refurbishment projects which were previously exempt.

Importantly, under regulation 7 of CDM 2015, the role of the client on domestic projects is to be fulfilled by the contractor (on a single contractor project), the principal contractor (on a multiple contractor project) or the principal designer (where he has agreed to do so in writing). This will minimise the burden on domestic clients who cannot reasonably be expected to have the knowledge or experience to carry out their CDM responsibilities. However, small contractors who work on domestic projects will need to ensure they are familiar with the duties of the client because they may be required to fulfil this role.

Changes to notification requirements

Whereas under CDM 2007 the CDM co-ordinator was responsible for notifying the project to the HSE, under CDM 2015, notification is the client’s responsibility.

The requirements for notification have also changed. Under CDM 2007, a project was notifiable if the construction phase was likely to involve more than 30 days or 500 person days of construction work. Under regulation 6 of CDM 2015 a



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

- last longer than 30 working days and have more than 20 workers working simultaneously at any point during the project; or
- exceed 500 person days.

The changed criteria are likely to reduce the number of notifiable projects.

However, notification is also no longer significant for the purposes of triggering additional CDM duties. For example, under CDM 2007, a principal contractor was required to be appointed if the project was notifiable. Under CDM 2015, the trigger for appointing a principal contractor is whether the project involves more than one contractor (including sub-contractors).

Construction phase plan always required

Under CDM 2007, a construction phase plan was only required for a notifiable project. Under CDM 2015, a construction phase plan is always required. Where a project involves only one contractor, and therefore no principal contractor has been appointed, the construction phase plan must be drawn up by the contractor.

Approved Code of Practice repealed

The Approved Code of Practice ("ACOP") which accompanies CDM 2007 is also being revoked with effect from 6 April 2015 and is to be replaced with HSE Legal (L) Series Guidance. The HSE consultation conducted prior to the introduction of CDM 2015 found that the ACOP was too lengthy and difficult to follow.

Transitional arrangements

For live projects, there will be a transition period running from 6 April 2015 until 6 October 2015. Full details of this period are set out in Schedule 4 to CDM 2015, with the key points being as follows:

- On projects where a CDM co-ordinator has already been appointed, the client has until 6 October 2015 to replace its CDM co-ordinator with a principal designer (unless the construction

phase will complete before that date).

- During the transition phase, CDM co-ordinators will have revised duties in order to comply with CDM 2015.
- For projects where a CDM co-ordinator has not yet been appointed and where there will be more than one contractor, a principal designer must be appointed instead.
- On projects with no principal contractor appointed, a principal contractor must be appointed as soon as practicable if the project involves more than one contractor.
- A principal contractor already appointed under CDM 2007 will remain principal contractor for the purposes of CDM 2015.
- On a project involving only one contractor, the contractor must draw up a construction phase plan as soon as reasonably practicable.
- Any pre-construction information, construction phase plan or health and safety file produced under CDM 2007 will be deemed to have been provided under CDM 2015.
- Notifications to the HSE under CDM 2007 will still be valid for the purposes of CDM 2015.

Contractual changes

Due to the transitional arrangements, there is no real need to amend existing contracts to refer to CDM 2015 once it comes into force, but contracts which have not yet been entered into and where work will start after 6 April 2015 should be amended to refer to CDM 2015.

On the consultant side, CDM co-ordinator appointment documents will no longer be required and standard design consultant appointments will need to be amended to cater for the possibility of a designer being appointed as a "principal designer".

Neither the current RIBA Standard Conditions of Appointment nor the ACE Agreements expressly refer to CDM 2007, but the template schedules of services which accompany them do, so are likely to require amendment.

As for building contracts, JCT have confirmed that they will shortly be issuing a supplementary amendment for CDM 2015, which will need to be incorporated into all contracts where work will start after 6 April 2015.

The NEC3 Engineering and Construction Contract does not require amendment as it does not refer expressly to CDM 2007, although standard Z clauses and Works Information documents should be checked to see if they contain any references to CDM 2007 which need updating.

The Infrastructure Conditions of Contract standard forms contain a specific clause relating to CDM 2007 which will need to be updated. It is unclear whether the ICC publishers will issue an official update covering this.

The MF/1 Model Form of Contract Revision 6 and the FIDIC forms of contract do not expressly refer to CDM 2007, although standard schedules of bespoke amendments to these contracts may do so, in which case they would need updating.

Where a contract has not yet been entered into but work will start before 6 April 2015 (and will therefore initially fall under CDM 2007), the parties may wish to add wording to the contract acknowledging that CDM 2015 will come into force during the course of the project and that they will comply with it.

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