



Briefing 15/20 April 2015

## Changes to Construction (Design & Management) Regulations 2015

To: all building maintenance / construction contacts

For info: all other contacts

### Key issues

Changes to address on-going issue of fatalities and serious accidents on construction sites  
Requirement to appoint 'Principal Designer' and Principal Contractor'  
Replacement of Approved Code of Practice

### 1. Introduction

Subject to Parliamentary approval, new Construction (Design and Management) Regulations 2015 (CDM 2015) will come into force on 6 April 2015.

The philosophy behind CDM regulations is widely understood across the sector – it concerns and impacts not only those who design, build and manage the construction process on site but also those who procure construction work.

### 2. Context

Two-thirds of fatalities now occur on small sites where fewer than 15 people work. Overall the HSE proposes to make the regulations clearer and easier to understand. This is partially aimed at small to medium projects which tend to use Small Medium Enterprise (SME's) companies. The Health and Safety Executive hopes that the new regulations will help reduce the number of accidents and ill-health cases associated with construction work with a particular emphasis on raising standards within smaller projects where there is greater cause for concern

The new regulations recognise the influence and importance of the client as the head of the supply chain and being best placed to set standards throughout a project. The client is considered to have the most influence on the health and safety of the construction project, having responsibility for setting budget, programme and engaging a capable project team. This is reflected in the new regulations, with all of their duties now being elevated to a 'must do'.

What's key for the client will be to ensure that all other duty-holders (principal designer and contractor) that they appoint have the relevant skills, knowledge and experience to fulfil these functions. In addition they must ensure that sufficient arrangements are prepared for managing projects so that it can be delivered without risk to health and safety. These arrangements must then be maintained and reviewed throughout the project to ensure that they remain relevant

### 3. The Regulations

The Regulations will apply to all 'clients' (i.e. any person for whom a construction project is carried out). This includes domestic clients – however they are able to delegate most duties to a principal designer or principal contractor.

There main changes are as follows:

**3.1** The CDM co-ordinator role (under CDM 2007) will no longer exist and will be replaced by a principal designer. The role is responsible for health and safety and can be fulfilled by an individual or organisation. It is

the client's role to ensure that the Principal Designer complies with their duties and in order to do this the client needs to be informed and aware of their role and responsibilities. The responsibility for coordination of the pre-construction phase which is crucial to the management of any successful construction project, will rest with an existing member of the design team. Demonstrating clear leadership, ownership and partnership to ensure suitable management arrangements for construction projects from procurement to completion will be key to the client achieving adequate health and safety controls. The aim of the new role of 'Principal Designer' is to help eliminate and / or reduce the health and safety risks to those involved in the subsequent construction work and the maintenance and use of the building, facility or structure once it is completed. This role extends to the construction phase and involves liaising with the Principal Contractor and specialist designers.

**3.2** Where two or more contractors are on site the client must also appoint a Principal Contractor. A Principal Designer and Principal Contractor must be appointed for all projects with more than one "trade" contractor on site. The client must appoint both the Principal Designer and Principal Contractor in writing, otherwise they (the client) are deemed to be carrying out these roles. A health and safety file prepared by the principal contractor will also be required for projects involving more than one contractor. The file aims to ensure that, at the end of the project, the client has sufficient information about health and safety issues for occupiers and those undertaking subsequent activity.

**3.4** The concept of competence will be split into its component parts of skills, knowledge, training and experience, and - if it relates to an organisation - organisational capability. The intention is to provide clarity and help the industry to both assess and demonstrate that construction project teams have the right attributes to deliver a healthy and safe project. The HSE note that anyone who carries out a duty holder role needs to have the 'skill, knowledge, experience and (where relevant) the organisational capability' to carry out the role. The client will need to ensure those that are to be appointed (i.e. Designer, Contractor or Principal Contractor and Principal Designer) can demonstrate appropriate information, instruction, training and supervision. Anyone working on a construction project should be able to demonstrate capability and have the necessary resources to fulfil legal duties. They must provide sufficient information in relation to the preparation, provision and, where necessary, revision of health and safety information such as pre-construction information, construction phase plans and health and safety files. There is a legal obligation for duty holders to provide information, instruction, training and supervision, replacing the duty to assess competence. If SKATE (Skills, Knowledge, Attitude, Training and Experience) is adhered to, this will still be incorporated.

**3.5** The notification trigger point (the point an F10 is submitted to the HSE) occurs if the construction work on a construction site is scheduled to either last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project, or exceed 500 person days. It remains the client's responsibility but previously would have been actioned by the now defunct CDM coordinator role. It is expected that this should mean fewer notifiable projects.

**3.6** Duties to be applicable to domestic projects. It is proposed for projects involving more than one contractor that the Principal Contractor will normally assume the Client duties. The domestic Client can choose to appoint the Principal Designer for the project. If, however, they do not make this appointment, the first Designer appointed during the preconstruction phase is the Principal Designer for the project. If so, the Principal Designer will be answerable to the Principal Contractor in their role as 'Client' for the project and will be responsible for liaising with them.

Final versions of the regulations and guidance (which will replace entirely the Approved Code of Practice which is currently in place) will be available before 6<sup>th</sup> April. When it does come into force, transitional arrangements will run until October

#### **4. Issues**

The impact of the new regulations reactive maintenance jobs will be a consideration for those undertaking this kind of work. For example, in the case of water entering a property, the provider might attend the property, turn the water off, knock through the wall, repair/replace the pipe, fix the wall and so solve the problem pending some decorating work. If that provider is trading externally and the client is a housing association, they may be able to turn off the water but considering the new regulations would most likely be delayed from continuing with the work because they would need a construction phase plan for the particular situation based on information from the client ( landlord in this case). This will obviously hold up the work and it may be that the housing association doesn't have the relevant information anyway. Although this is a specific example the principles are relevant to many scenarios.

This query was raised with the HSE and their advice from the Construction Sector refers to long-term maintenance contracts of a similar type – using the example of changing a light bulb. A risk-based approach is advocated and generic plans could be produced to cover most types of maintenance work that will arise as part of the overall contract. The new regulations do require a construction phase plan for any construction ‘project’ but this is not intended to provide a burden to low risk routine activities. Changing a light bulb may need a plan if it was a very high lamp, required a sophisticated system and was a high risk activity. But routine changing of light bulbs will not. HSE is producing a template construction phase plan for small projects and CITB have developed an app – ‘*CDM Wizard*’ available free to download from their website to deal with these small project requirements. HSE go on to say that the issue is about planning a construction phase PROJECT to ensure risk is properly controlled. The L series of guidance should clarify most issues.

HSE have drawn up a draft guidance covering legal and other issues for CDM 2015 and it can be found [here](#).

## **5. APSE Comment**

APSE welcomes the review of CDM regulations in order to ensure they remain relevant, in line with wider EU approaches and have a high profile.

It is desirable that an underlying health and safety philosophy is built in to the industry rather than being dependent on external arrangements. For most of the large organisations working in the sector this is certainly the case. Health and safety is a prime concern for local authorities, ALMOs and housing associations that provide operational services but serious accidents still occur on a regular basis. It is more likely that smaller companies will need to improve the attention and resources they allocate to health and safety as it is the smaller companies where most accidents occur and is where the new regulations are aimed.

Of particular concern is the removal of the client’s duty to ensure health and safety “competence” as enshrined in the ACoP, Replacing it with a, possibly vaguer, duty to ensure that contractors have “the necessary information, instruction and training” to carry out their roles safely, may reinforce the industry’s reliance on “competence”-based accreditation schemes. Schemes such as CHAS (the Contractors Health and Safety Assessment Scheme), SafeContractor and Safe-T-Cert come with a financial cost as well as associated bureaucracy. They are considered an adequate reflection of competence based but with that comes the added responsibility on those managing the schemes to ensure they are robust, relevant as the industry changes and enforced appropriately.

Relevant elements of the regulations will of course have to be written into contracts as well as ensuring that the appointment of both the Principal Designer and Principal Contractor are made in writing.

It is likely that fees for inspection will have an added impact because, unfortunately, financial costs sometimes have a greater influence than health and safety considerations.

The need for clarity for those providing external services to clients is vital too. Traded services bring in critical funds for many local authorities which help support a range of services. The service providers and their clients need to be confident they are meeting legal requirements and the chance that these may be open to interpretation and possibly challenged in court is not helpful. As such officers need to keep abreast of developments with HSE’s draft guidance.

The issue of health and safety will remain high profile a fact reflected in a case in Southwark in December 2014 when a site manager and safety consultant were sent to jail for 3 years 3 months and 9 months respectively, the latter being convicted under section 7 of the Health and Safety at Work Act, after a man was crushed to death in 2010.

APSE will continue to run training courses addressing the changes in CDM regulations. The next courses are planned for 22<sup>nd</sup> June 2015 in Manchester and 16<sup>th</sup> July 2015 in London. Details can be found [here](#).

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