



news bulletin

health & safety - summer 2007

New CDM Regulations

Executive summary

- The new Construction (Design and Management) Regulations 2007 (the CDM Regulations) apply straight away even in relation to existing projects
- The new CDM Regulations apply to all construction projects no matter how small, but many key duties only apply to notifiable projects, namely where construction phase lasts more than 30 days or involves more than 500 person days
- Clients must assess the competency of their previously appointed Planning Supervisor and Principal Contractor within 12 months
- Client's CDM duties may not be passed to an agent
- CDM Co-ordinator replaces the Planning Supervisor
- CDM Co-ordinator to be appointed as soon as possible after initial design or other preparation for construction has begun
- Significant new duty on clients to take reasonable steps to ensure that suitable management arrangements are in place
- New duties for Client, Designers, Contractors, Principal Contractors and CDM Co-ordinators

Application to existing projects

The new Regulations apply straight away even in relation to existing projects, with the planning supervisor being treated as the CDM Co-ordinator and the principal contractor under CDM 1994 being treated as the principal contractor appointed for CDM 2007 purposes.

Clients must assess the competence of their previously appointed planning supervisor and principal contractor to perform their new roles using the criteria set out in the Approved Code of Practice (ACOP) within 12 months.

Clients should consider revising existing appointments of planning supervisors to capture their expanded role as CDM Co-ordinator role and in particular to assist clients in their new wider role.

New client duties

A client is any person carrying out a project in the course of its business.

While clients can expect CDM Co-ordinators to be making sure that they (the client) understand their duties, note that, as part of the general notice to be given to the HSE for notifiable projects, clients have to give a signed declaration that they are aware of their duties under the Regulations.

New duty on clients to take reasonable steps to ensure that suitable management arrangements are in place by all duty holders for :-

1. construction works to be undertaken so far as reasonably practicable without risk to health and safety
2. welfare facilities to be in place
3. any workplace is designed to meet requirements under the Workplace (Health, Safety and Welfare) Regulations 1992 (Regulation 9)

Note in relation to this:-

- this provision like most of the new Regulations applies immediately to projects already begun, so **clients need to act in relation to this in respect of existing projects**



- it is an ongoing obligation to take reasonable steps to ensure arrangements are maintained and reviewed
- not limited to notifiable projects
- recognises that it is the client who has most power in making sure things are done
- “arrangements” includes checking sufficient time and resources are allocated
- the ACOP says that clarity on roles/responsibilities and arrangements for communication and cooperation between project team should be considered
- a failure to do this in relation to welfare facilities can give rise to a civil claim

Clients must check the competence of all those they engage (Regulation 4) - not a new duty but now there is no small project exclusion and there is an expectation that competence will be assessed against a list of criteria and standards set out in Appendix 4 of the ACOP.

Client election. No longer possible to appoint an “agent”. There can still be an “only client or clients” election (Regulation 8) but note in relation to this:-

- a client seeking to avoid client responsibilities must “agree in writing to such election” – those relying on the old Regulation 4 declaration would be wise to clarify their position by seeking an agreement in writing
- no client can avoid its duty to provide pre-construction information in its possession
- no longer a requirement to send a declaration to or notify the HSE
- applies to both notifiable and non-notifiable projects

Pre-construction information. New duty (under Regulation 10, and applies to all projects) to include in the pre-construction information to be provided “promptly” to designers (at any level) and contractors engaged or to be engaged by the client (previously it was to be provided to the planning supervisor):-

1. information “reasonably obtainable” by the client (previously was what could be “ascertained by making enquiries which it is reasonable for a person in his position to make”). It is not clear how much site investigation this means client must do – the ACOP says that clients should carry out the necessary surveys in advance.
2. the minimum amount of time before the construction phase which will be allowed to the contractors for planning and preparation for construction work (this is notified to the HSE as part of the general notice given by the CDM Co-ordinator).

Provision of information required for the health and safety file. The client has new duties (under Regulation 17):-

- to ensure that all relevant information in its possession (or reasonably obtainable) is provided to the CDM Co-ordinator for inclusion in the health and safety file
- to ensure that information relating to separate structures can be easily identified
- to take all reasonable steps to ensure that the health and safety file is revised after the construction phase to incorporate any relevant new information.

Client must ensure that the construction phase for notifiable projects does not start unless it is satisfied that sufficient welfare facilities (as set out in Schedule 2) will be provided (Regulation 16).

There is now a clear indication that the CDM Co-ordinator must be an early appointment – “as soon as practicable after initial design work or other preparation for construction has begun”. The ACOP says the appointment must be once the decision to proceed with the project is made and before beginning the initial concept design. The CDM Co-ordinator’s advice will be needed by client from the very early stages.

Appointments of CDM Co-ordinator and planning supervisor must be in writing (Regulation 14 (5)) – otherwise there is no valid appointment and the client will be treated as fulfilling those roles. Clients must check that there are appointments in writing for existing projects.

Client must now ensure that where it commissions designers outside GB that those designers comply with the Regulations or if the person commissioning design (other than the client) is established outside GB,



the duty to ensure that the designers outside GB comply is placed on the client. Clients on existing projects using designers abroad should review their position in relation to this.

New duties on designers

Not to commence work (other than initial design work) unless a CDM Co-ordinator has been appointed.

Designers must now avoid risks to persons using a structure designed as a workplace (in addition to the old requirement to consider risks of work including cleaning and maintenance) and take account of the provisions of the Workplace (Health, Safety and Welfare) Regulations 1992. Existing projects still being designed should consider this now.

To ensure that where commissioning designers abroad those designers comply with the Regulations.

New duties on contractors

No contractor shall carry out construction work unless any client for the project is aware of its duties under the Regulations (Regulation 13 (1)).

In relation to notifiable projects, in addition to the old requirements on contractors not to start work unless they have:

- details of the planning supervisor/CDM Co-ordinator and principal contractor; and
- relevant parts of the health and safety plan/construction phase plan

contractors must not now start work until:-

- the CDM Co-ordinator has given notice of the project to the HSE
- they have a construction phase plan containing sufficient detail in relation to their work

Any contractor whom the contractor appoints must be informed of the minimum amount of time which will be allowed to him for planning and preparation before he begins construction work.

New duty to ensure that where commissioning designers abroad they comply with the Regulations.

New duties on principal contractors

It is now clear that the duty to consult and to provide information in relation to health and safety matters is wider than the principal contractor's own employees – or at least to ensure that workers own employers consult those workers in relation to health and safety matters (Regulation 24).

New duties on CDM Co-ordinators

They have wider duty to advise clients on all measures the client needs to take to comply with the Regulations. Clients should consider carefully their position where the CDM Co-ordinator is engaged through a design and build contractor and thus not directly appointed.

There is also a wider duty with regard to designers – to take all reasonable steps to ensure that designers comply generally with their duties under the Regulations.

Their role during the construction phase has been clarified. They have a new duty to liaise with the principal contractor regarding any design development which may affect planning and management of construction work and to take all reasonable steps to ensure cooperation between designers and the principal contractor during the construction phase in relation to any design or change to a design.

General duties on all duty holders

New duties on all duty holders to:

- cooperate with all duty holders (Regulation 5)
- report anything of danger to the person under whose control you are working (Regulation 5)
- coordinate activities with all duty holders (Regulation 6). The duty to cooperate includes cooperation with adjoining projects/sites.
- take account of the “principles of prevention” (Regulation 7) – those principles are from the Management of Health and Safety at Work Regulations and are set out in Appendix 7 of the ACOP



Contact Us

If you have any specific queries please contact Claire Rawle on 029 2038 5532 or Iwan Jenkins on 029 2038 5492.



Claire Rawle
Partner

T: 02920 385532
E: claire.rawle@morgan-cole.com

All aspects of contentious matters involving Health and Safety and Environmental Law, having advised and represented a wide range of both private and public Companies and NHS Trusts on issues including defence of prosecutions, conduct of Appeals against Prohibition, Improvement, and Enforcement Notices. Numerous cases were complex and high profile. Advises and assists clients in relation to Critical Incident management and planning to include preparation of protocols and implementation training. Involved in an ongoing programme of workshops and seminars to include Management of Health and Safety; Directors responsibilities; Corporate Manslaughter and the proposed reforms; Crisis Management and other related topics. Recently invited to join the Health and Safety Panel of Constructing Excellence Wales. Currently participating in a series of training programmes for Working Well Together at the invitation of Health and Safety Executive.



Iwan Jenkins
Associate

T: 02920 385492
E: iwan.jenkins@morgan-cole.com

Iwan is experienced in non-contentious and contentious construction and engineering work. Iwan has advised on a wide range of building and engineering contracts and procurement issues including the procurement of National Assembly Government regional offices in Rhyd-y-Car, Llandudno and Aberystwyth and various process plant and engineering contracts for the Isle of Man Government. He has wide experience of framework agreements and call-off contracts having advised a wide selection of clients in relation to their procurement strategy and the use of framework agreements. He has extensive knowledge of the NEC3 form of contract. He acted for the Department of Health on the implementation of a significant project in relation to the independent sector treatment centre programme. Iwan has recently been appointed as a Board Member of Constructing Excellence in Wales.

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