



CDM Regulations – 2 years on

The Construction (Design and Management) Regulations (CDM) are the main set of regulations for the managing health, safety and welfare of construction projects.

Although the CDM 2015 Regulations may be two years old, it is clear the construction industry is still getting used to the new role of 'Principal Designer' and the greater client responsibilities that the Regulations bring. This article gives a brief overview of:

- Why there was a need for change
- The key objectives and proposals
- A brief summary of the main changes

Why Change?

Although it was generally agreed that the intent, purpose and general structure of the previous CDM framework was fit for purpose, problems manifested themselves due to legal interpretation, levels of bureaucracy and burdensome competency assessments. Most significantly there appeared to be lack of

coordination at the pre-construction phase when hazards can be designed out of the construction, use and maintenance phases of the project life.

The consensus within the construction industry, was that the role of CDM Coordinator in its CDM 2007 form did not add the value intended by the legislation. In many cases this was attributed to late appointment and the fact that the CDM Coordinators were not fully embedded in the design team.

Key Changes Under CDM 2015

- The client is responsible for notifying the Health and Safety Executive (HSE), not the CDM coordinator as was previously the case with CDM 2007. The client can ask another party to carry out the notification on its behalf but this does not prevent the client from being responsible by law.
- The client must appoint a Principal Contractor in writing before any construction work begins.
- Under CDM 2015, the onus is on the client to be much more hands on and proactive in managing the consultants and contractors.

Another key change was the circumstances under which a Principal Designer needs to be appointed. Under CDM 2007 the CDM coordinator was only required on 'notifiable' projects and even in these instances the appointment was often only made at the last minute. Under CDM 2015 a Principal Designer must be appointed in writing in much wider circumstances i.e. whenever it is anticipated that more than one contractor would be involved. And ideally, this should be at the project outset.

How are these changes affecting the way projects are run?

Concerns were raised as to whether the new Regulations were in fact necessary; whether architects and other likely candidates for the principal designer role have been given enough time to reorganise their business structures and re-train their personnel; whether the Regulations and the guidance available was sufficient to allow all parties to identify their roles and the practical measures they should take to perform these roles and; whether costs (such as professional indemnity insurance premiums) would rise and the bureaucratic requirements (such as appointments by clients of bespoke CDM advisors in order to help clients to discharge their more burdensome responsibilities) would increase.

The most obvious method for procuring a Principal Designer is by the architect taking on the role. However in reality, most architectural practices and other key members of the design team have been reluctant to take on these additional responsibilities.

A common method that has evolved is to appoint the former CDM Coordinator as a Principal Designer. However, notwithstanding the new scope of services, the client must consider whether the consultant

satisfies the requirement that the principal designer be “a designer with control over the pre-construction phase”.

Other popular approaches include the client taking on the principal designer role (in which case the client must be confident it has the organisational capacity, skills and experience to deal with the role and is willing to take on the risks of non-compliance) or the principal contractor taking on the role as principal designer (although if the appointment is made upon execution of the building contract, there may well be a gap in coverage prior to that date during which period the client would be deemed to have been the principal designer).

It is probably still too early to draw firm conclusions as to the efficacy of CDM 2015, however, it is clear that the central aim of CDM 2015 is worthwhile and given time to allow the industry to come to terms with these changes, the practical benefits will come to fruition.

For further information on CDM 2015, Principal Designers or any other construction related query please contact:

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Other background reading is also available from the HSE “Managing Health and Safety in Construction”.

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