
ALL CHANGE IN HEALTH AND SAFETY: THE CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2015

The Health and Safety Executive (HSE) has announced that the Construction (Design and Management) Regulations 2007 will, subject to parliamentary approval, be replaced on 6 April 2015 by the Construction (Design and Management) Regulations 2015.

A draft of the 2015 Regulations has been published to enable parties involved in construction projects to understand the amendments to be brought into effect in April. Key amendments include the following:

The test as to when a project is “notifiable” will change

Under the 2007 Regulations, a project is notifiable if it involves more than 30 days of construction work or more than 500 person days of construction work, whatever the duration.

Under the 2015 Regulations, a project will be notifiable where it involves more than 30 days of construction work and more than 20 workers simultaneously on site at any point in time or where it involves more than 500 person days of construction work.

The responsibility to notify the HSE of a “notifiable” project will fall to the client

Under the 2015 Regulations, save where the client is a domestic client, the responsibility to send the F10 notification to the HSE will fall to the client, although this responsibility can be delegated to the principal designer. Under the 2007 Regulations, it is the responsibility of the CDM co ordinator to send the F10 notification.

The role of the CDM co-ordinator is to be replaced by that of the “principal designer”

The role of the CDM co ordinator will be abolished by the 2015 Regulations. Many of the duties previously undertaken by a CDM co ordinator will be the responsibility of a “principal designer” although it should be noted that the principal designer will not undertake all the responsibilities previously imposed on the CDM co-ordinator, leaving certain responsibilities with the client.

The principal designer must be a “designer with control over the pre-construction phase”. Under the 2015 Regulations, the term “designer” is given a fairly wide meaning and includes an organisation or an individual who prepares or modifies a design for a construction project or arranges for, or instructs someone else to do so. Guidance suggests that in addition to architects, structural and mechanical and electrical engineers, quantity surveyors and chartered surveyors may be considered to be designers.

“They have good client care, they focus on what’s
important for us and they get it done”

The trigger for appointing a principal contractor and a principal designer will change, as will the timings of their appointments

Under the 2007 Regulations, the client has a responsibility to appoint a principal contractor and a CDM co-ordinator where a project is notifiable. Under the 2015 Regulations, the client must appoint a principal contractor and a principal designer in writing where there is more than one contractor (or where it is reasonably foreseeable that there will be more than one contractor) working on site at any time. A contractor who appoints a sub-contractor will trigger these appointments.

Under the 2015 Regulations, the appointments of the principal contractor and the principal designer must be made as soon as is practicable, and in any event before the construction phase begins.

The 2015 Regulations will apply to domestic clients

Unlike the 2007 Regulations, the 2015 Regulations will apply to domestic clients, although the burden of responsibility on a domestic client will automatically be passed to other parties.

In the commercial context, if a client does not appoint a principal designer and a principal contractor, the client must fulfil both duties. In the domestic context, the designer in control of the pre-construction phase will be the principal designer and the contractor in control of the construction phase will be the principal contractor.

The Approved Code of Practice (ACOP) is to be replaced

The Approved Code of Practice (ACOP) is to be replaced by guidance accompanying the 2015 Regulations.

The notification procedure where there is more than one “client” will change

Where there is more than one “client” on a construction project, the obligation to make an election in accordance with Regulation 8 of the 2007 Regulations will be replaced with an obligation for the parties to agree in writing who will be the client (Regulation 4(8)(a) of the 2015 Regulations). A client who is not designated as “the client” is not subject to the full client duties but is under a duty to provide information in their possession that may help pull together the pre-construction information and to cooperate with anyone involved in the project.

The test of competence will be replaced

Under the 2007 Regulations, appointments cannot be made or accepted unless the appointee is competent. The test of competence will be replaced in the 2015 Regulations by “skills, knowledge, experience and organisational capability”.

Transitional arrangements

The 2015 Regulations include transitional arrangements which confirm how the 2015 Regulations will apply to projects on site or, which are due to commence on site when the 2015 Regulations come into force on 6 April 2015:

Transitional arrangements	Required appointments
Projects involving more than one contractor where there is no existing CDM co-ordinator or principal contractor on 6 April 2015 and where the construction phase has <i>not</i> started:	The client must appoint a principal designer and a principal contractor as soon as practicable and in any event before the construction phase begins.
Projects involving more than one contractor where there is no existing CDM co-ordinator or principal contractor on 6 April 2015 and where the construction phase <i>has</i> started:	The client may appoint a principal designer and must appoint a principal contractor as soon as practicable. The principal contractor must draw up a construction phase plan as soon as practicable. If the client does not appoint a principal designer, the principal contractor will be responsible for preparing the health and safety file.
Projects where there is an existing CDM co-ordinator on 6 April 2015 and the project comes to an end <i>before</i> 6 October 2015:	<p>The appointment of the CDM co-ordinator can continue until a principal designer is appointed or the project comes to an end.</p> <p>Unless and until a principal designer is appointed, the CDM co-ordinator will have various duties under paragraph 5 of schedule 4 of the CDM Regulations 2015.</p> <p>The client must appoint a principal contractor.</p>
Projects where there is an existing CDM co-ordinator on 6 April 2015 and the project comes to an end <i>after</i> 6 October 2015:	<p>The appointment of the CDM co-ordinator can continue until a principal designer is appointed. Until this time, the CDM co-ordinator will owe duties under paragraph 5 of schedule 4 of the CDM Regulations 2015. The client must appoint a principal designer before 6 October 2015. If the client does not do so, the duties of the principal designer will be the responsibility of the client.</p> <p>The client must appoint a principal contractor.</p>

Summary

The 2015 Regulations represent a shift towards increased client responsibility for health and safety during construction works and it is vital that clients and all those involved in development projects understand the impact of the proposed changes.

We are working closely with our clients and their professional teams to ensure that we are ready for the changes being introduced by the 2015 Regulations and we will continue to assess the impact of the new Regulations when they come into force.

If you would like more detailed guidance on how the 2015 Regulations are likely to affect your business, please contact:

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This article offers general guidance only. It reflects the law as at March 2015. The circumstances of each case vary and this briefing should not be relied upon in place of specific legal advice.