

Briefing Note

The Construction (Design and Management) Regulations 2007

Introduction

These regulations replace the previous 1994 regulations as well as the Construction (Health, Safety and Welfare) Regulations (1996). They have been introduced in order to raise health and safety awareness and encourage behavioural change within the construction industry. Generally, they attempt to increase communication, clarity and teamwork whilst encouraging sensible health and safety, early involvement and planning.

The main themes are set out in Part 2 of the regulations where general duties are established for everyone involved in a construction project. These duties are:-

- Competence
- Co-operation
- Co-ordination

The regulations state that no person shall appoint or engage a CDM co-ordinator, designer, principal contractor or contractor unless reasonable steps have been taken to ensure that person is competent. Competent means that the individual can perform any requirement under any of the relevant statutory provisions and will avoid contravening any prohibition under the relevant statutory provisions.

The regulations then go on to say that everyone concerned with a project must co-operate with every other person involved in a project involving construction work at the same or adjoining site in order to perform their duties. Although not a new concept, the regulations have extended this obligation to include those others concerned in adjoining sites. There is also an overriding duty on everyone to report anything which is likely to endanger the health and safety of himself or others.

Finally, there is a duty to co-ordinate activities with one another so as to ensure that the health and safety of those carrying out construction work, or those affected by it, is not jeopardised.

What does this mean for clients?

In the regulations, a 'client' means a person who in the course or furtherance of a business (a) seeks or accepts the services of another which may be used in the carrying out of a project for him; or (b) carries out a project himself.¹

¹ NB domestic clients i.e. those not acting in the course or furtherance of a business, are exempt from duties under these regulations in relation to purely domestic projects unless the client is a local authority, housing association, landlord, charity, group of collective leaseholders or any other trade, business or undertaking (whether profit or not)

Generally, the regulations do not impose new duties on the client but recognition is given to the influence that clients have over the way the project is run and guidance is given through the regulations as to how existing duties of the client are to be exercised. This results in the client having more onerous statutory duties and an increasing direct responsibility.

Client Duties²

In addition to Part 2 (outlined above) which applies to all persons involved in a construction project, the client is subject to the following additional duties:

- To provide pre-construction information
- To ensure that a competent project team is established and that security, health and safety issues are addressed in preparation of the commencement of work
- To allow sufficient time and resources for all stages
- To ensure compliance with workplace regulations

The client must provide pre-construction information (formerly the pre-tender health and safety plan) to all designers and contractors appointed. This is to consist of information about or affecting the site or the construction work and information relating to the proposed use of the structure of a workplace. Information must be passed giving the minimum amount of time allocated to the contractors for planning and preparation of the construction work before the construction phase. Also, any information relating to the existing health and safety file must be provided.

The work to be conducted on site should not commence until the client has ensured that the site is secure, that facilities are available and that proper arrangements are in place to ensure that work will be conducted safely. In addition, the client must take reasonable steps to ensure that arrangements for managing the project throughout its duration are suitable to ensure that the construction work is carried out without risk to the health and safety of others, and that facilities, for example, drinking water, toilets, etc. are maintained. The client must also provide enough time and resources to allow the project to be delivered safely.

Finally, the client must ensure that any structure designed for use as a workplace has been designed taking into account provisions of Workplace (Health, Safety and Welfare) regulations 1992.

Notifiable Projects

Where a project is notifiable i.e. if construction phase lasts more than 30 days or 500 person days of construction work, additional duties are imposed on the client.

² Please note, where there is more than one client in relation to a project, an election can be made by one or more client in writing to be treated for the purpose of the regulations as the only client or clients.

Firstly, the client must appoint a CDM co-ordinator (as opposed to a 'planning supervisor' in the previous regulations) to assist and ensure that the client is in compliance with these regulations. This appointment must be made as soon as practicable after initial design work or other preparation for construction has begun.

Secondly, following the appointment of a CDM co-ordinator, a principal contractor should be appointed as soon as the client knows enough about the project to be able to select a suitable person.³ Both appointments must be in writing.

Duties of CDM Co-ordinator

As well as general giving of advice and assistance to the client and ensuring suitable arrangements are made and implemented to co-ordinate health and safety measures, the CDM co-ordinator has to update the health and safety file and also notify the Executive of the project.⁴

Duties of Principal Contractors

In addition to the duties imposed under Part 2 of the regulations and the duties set out below of a contractor generally, the main duty and responsibility of the principal contractor is to plan, manage and monitor construction work and ensure that works are carried out without risks to health and safety. He must consult with the workforce, co-operate with designers and CDM co-ordinators and ensure that the client is aware of his duties⁵.

It is the principal contractor's role to also develop the construction phase plan.

Contractor's Duties (on all projects)

The definition of 'contractor' in the regulations is someone who manages construction work. A contractor can also be the client or the principal contractor.⁶

In summary, the duties of contractors have not changed in any significant way from the previous regulations apart from what they can expect from others. In particular there are very clear requirements to involve the workforce.

In addition to the duties set out in Part 2 of the regulations above, the contractor's duties for all projects are:-

- To provide relevant information
- To prepare prior to commencement of work
- To allow time for construction phase planning
- To ensure compliance with workplace regulations

³ Please note, for any period that these appointments are not filled, the client is deemed to assume the appointment

⁴ When notifying the Executive the following must be presented; a declaration by the client is given showing that he is aware of his duties; contact details for various appointments; the minimum time to be allowed to principal contractor before construction for planning and preparation and information about the proposed use of a building or a work place.

⁵Approved Code of Practice

⁶ Principal contractors are only required in notifiable projects

The contractor must ensure that any contractors appointed by him are aware of the minimum amount of time before the construction phase which will be allowed to the contractors for planning and preparation for construction work before the work is commenced, thus imposing similar obligations to sub-contractors down the chain.

Every worker under the contractor's control must be provided with information and training to ensure safety without risk to health. This is to include site inductions as well as the establishment of site rules and procedures. Finally, the contractor must provide employees with health and safety training under 13(2)(b) of the Management of Health and Safety at Work Regulations 1999.

No contractor can begin work until reasonable steps have been taken to prevent unauthorised site access.

Notifiable Projects

If a project is notifiable then the contractor must not perform construction work in relation to it unless the names of the CDM co-ordinator and the principal contractor have been provided, the relevant construction phase plan has been made available and notice of the project has been given to the Executive.

All contractors must provide the principal contractor with any information that may affect the health and safety of persons carrying out the construction work or that may be affected by it. Contractors must inform the principal contractor of any information which may require a review or alteration of the construction phase plan. All contractors must take all reasonable steps to ensure that the construction work is carried out in accordance with the construction phase plan.

Designer's Duties (all projects)

Part 2 of the regulations again apply to this group. The fundamental role of the designer is to eliminate hazards and reduce risks during the design phase. He must take into account the provisions of the Workplace (Health, Safety and Welfare) Regulations 1992 in designing any structure for use as a workplace. Additionally, it is the designer's duty to provide sufficient information about the design and information about the remaining risks to clients, other designers and contractors.

Notifiable projects

When a project is deemed to be notifiable, the designer is under an obligation to ensure that the client is aware of his duties. He is also required to provide information for the Health and safety plan and, like the contractor, is not to start design work until the CDM co-ordinator has been appointed.

General

These regulations apply to all existing projects from 6th April 2007, therefore everyone must already be performing their duties under the regulations. It is



assumed that the planning supervisor will transfer into the role of the CDM co-ordinator and that the previous principal contractor remains the principal contractor for the purposes of the new regulations. On existing projects, CDM co-ordinators and principal contractors have 12 months in which to meet the new competence requirements.

****This note is written as a general guide, it is therefore recommended that specific professional advice be taken in relation to specific issues that may require to be addressed.***

This e-briefing is sent to you by [Donna Cooper](#) in the Anderson Strathern's Construction & Projects Department. We hope you find it useful. If we can help with any matters arising from this e-zine, or any construction law matters please contact [Keith Bishop](#), or any other member of [our team](#).