

### CDM Regulations 2014 - Client Duties

The proposed CDM Regulations 2014 involve a major change, specifically for Clients, as the Client duties are being extended and the new function of 'Principal Designer', [replacement for the CDM Co-ordinator], has limited involvement with the Client. Predominantly, the Client will lose their main CDM 'assistant' which is currently the CDM Co-ordinator.

Key changes "proposed" include:

1. CDM Co-ordinator replaced by Principal Designer from the design team
2. 'Domestic' Client exemption removed  
Domestic Client CDM duties "transferred" to the Designer or Contractor
3. CDM Competency requirements "removed"
4. Approved Code of Practice (ACOP) 'replaced' with Guidance

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### CDM Regulation 4 · Application to Domestic Clients

A primary change is the extension of the CDM Regulations to include **all** construction work, even for 'domestic' status clients which are defined by the HSE as:

*"domestic client" means a client for whom a project is being carried out which is not in the course or furtherance of a business of that client.*

Although this will have negligible impact to mainstream construction projects, the inclusion of Domestic Clients represents a fundamental change in UK Health & Safety legislation.

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### Regulation 5 · Client Duties for Managing Projects

#### Project Management Arrangements

Implement/maintain /review arrangements to ensure so far as is reasonably practicable, that construction work can be/is without risk & that there are suitable welfare arrangements for the construction stage.

[Non- Domestic Projects similar to CDM 2007 but no support from the new 'Principal Designer']

#### Pre- Construction Information

Pre- Construction Information to be provided to each Designer & Contractor by Client.

[Similar to CDM 2007 but with 'Principal Designer' providing assistance instead of CDM Co-ordinator]

#### Construction Phase Plan (CPP)

Ensure CPP produced by Principal Contractor before any construction commences on site.

[CDM 2014 · 'Principal Designer' no duty to review & advise Client on CPP suitability]

[CDM 2007 · CDM Co-ordinator advises Client on CPP suitability]

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### Regulation 7 · HSE Notifications

**Construction work >30 working days & >20 workers at same time or >500 person days.**

Notify as soon as is practicable before the construction phase begins.

[CDM 2014 – Client Duty | CDM 2007 – CDM Co-ordinator duty]

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### Regulation 8 · General Duty – Contractor Appointment & Co-operation Obligations

#### Contractor training etc.

Client to ensure necessary information | instruction | training received & appropriate supervision provided.

[CDM 2014 – new requirement – 'replaces' CDM 2007 Competency requirements]

#### Co-operation with others

Co-operate with project team & any adjoining site to facilitate CDM compliance, etc.[similar to CDM 2007]

### **Principal Designer – replaces CDM Co-ordinator**

A fundamental change centres round the new function of 'Principal Designer', which is the replacement during the Design and Tender Stages, for the current CDM Co-ordinator.

The HSE have defined 'Principal Designer' as meaning the Designer in control of the Pre-Construction Phase, appointed under Regulation 6(1)(a), which is a formal appointment by the **Client**, in that the Principal Designer has to undertake the duties as outlined within:

### **CDM Regulation 9 - Duties of a Principal Designer for Health & Safety at the Pre-Construction Phase**

The key function of the Principal Designer is to plan, manage, monitor and co-ordinate the Pre-Construction Phase of the project and specifically take into account the General Principles of Prevention to ensure that:

- (i) Project can be carried out without undue risk to health or safety, so far as is reasonably practicable;
- (ii) Assist the **Client** in the preparation of the Pre-Construction Information;
- (iii) Identify, eliminate, or control (mitigate), so far as is reasonably practicable, foreseeable risks to the health and safety of those:
  - (a) undertaking the construction work or liable to be affected by construction activities;
  - (b) maintaining or cleaning the structure/building;
  - (c) using the building as a Workplace.

Additional duties include ensuring:

- (iv) Co-operation amongst all those working on the project;
- (v) Designers' compliance with their duties within CDM Regulation 10, Duties of Designers;
- (vi) Preparation and update as necessary, of a Health & Safety File, containing information relating to the project, which is likely to be needed as Pre-Construction Information for any future construction work;
- (vii) Pre-Construction Information provided in a convenient form to:
  - Design Team; and Contractors appointed by the **Client**;
- (viii) Liaison with the Principal Contractor, as appropriate, for the duration of the project and in particular, relating to any information which the Principal Contractor may need to prepare their Construction Phase Plan or other information which could affect the Planning & Management of Construction work.

### **Principal Contractor & Principal Designer inter-relationship**

It is also important to note that there is reciprocal responsibility between the Principal Contractor and the Principal Designer to liaise as appropriate, for the duration of the project and in particular, regarding any information which the Principal Designer may need to prepare the Health & Safety File, or which may affect the planning and management of the Pre-Construction Phase.

It is difficult to understand how a Principal Contractor, appointed following the Pre-Construction Phase, can provide beneficial information retrospectively to the Principal Designer.

### **Health & Safety File**

The Principal Contractor also has a duty to ensure that the Health & Safety File is appropriately updated, reviewed and revised from time to time, to take account of site/construction work and any changes that have occurred, but it is primarily the responsibility of the Principal Designer to prepare, revise and issue the Health & Safety File ultimately to the **Client**.

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### **Regulation 14 – Duties of Contractors**

(8) Each contractor must comply with-

- (a) any directions given by the principal designer or the principal contractor; and
- (b) any site rules.

### **PFB General Comment**

This is an interesting requirement included within Regulation 14, Duties of Contractors, in that there is a statutory obligation for any Contractor to comply with Directions [instructions] given by the Principal Designer, or the Principal Contractor.

This implies that the Principal Designer has a safety function related to construction work and is able to directly instruct Contractors. There is no explanation regarding this provided by the HSE within the current ancillary information but the implication is that the Principal Designer has a site function to undertake Safety Inspections and a duty of care to issue Directions relating to Safety issues.

## **Regulation 6 · Appointment of the Principal Designer Client/Principal Designer**

Where there is likely to be more than one Contractor working on the project at any time, the **Client** has to formally appoint a Principal Designer.

If the **Client** does not do this, then they are responsible for undertaking the Principal Designer duties.

### **PFB Comment**

In essence, the role of the Principal Designer is fundamentally similar to the current CDM Co-ordinator, with one very significant exception in that, apart from assisting the **Client** with the preparation of the Pre-Construction Information, the Principal Designer is not specifically required to give advice and guidance to the **Client**, whereas the current CDM Co-ordinator has a primary duty to do so.

It is also important to note that the **Client** has an **absolute duty** to ensure that the Principal Designer complies with their duties within Regulation 9.

## **Regulation 6 · Appointment of the Principal Contractor Client/Principal Contractor**

Where there is likely to be more than one Contractor working on the project at any time, the **Client** has to formally appoint a Principal Contractor.

If the **Client** does not do this, then they are responsible for undertaking the Principal Contractor duties.

### **PFB Comment**

This is similar to the current CDM Regulations 2007 except for slightly different threshold criteria requiring a Principal Contractor to be appointed on more projects and the **Client** has an absolute duty to ensure that the Principal Contractor complies with their duties.

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## **Transitional Arrangements**

Contrary to new Regulations or amendments to Regulations that have been introduced previously, the HSE has to a large extent removed the normal arrangements relating to Transitional Provisions and is intending to make the new CDM Regulations retrospective from the 6<sup>th</sup> April, 2015.

What the proposed CDM Regulations 2014 state is:

### **Regulation 36 · Transitional Provisions**

*(1) These Regulations apply in relation to a project which began before their coming into force, with the following modifications.*

*(2) Where a project began before the coming into force of these Regulations, the **Client** must appoint the Principal Designer and, subject to paragraph (3), the Principal Contractor, as soon as is practicable.*

### **PFB Comment**

When CDM 2007 was introduced, transitional arrangements for the demised CDM Client's Agent extended for 5 years from the date CDM 2007 came into force, to take account of existing Contracts.

The Transitional Provisions within Regulation 36, requires the **Client** to appoint a Principal Designer on existing projects, 'as soon as is practicable'.

Although there is no legal definition of the phrase 'as soon as is practicable', Collins' English Dictionary defines 'practicable' as: 'capable of being done; feasible'.

This is potentially open to significant interpretation and a key question is, does it allow for taking into account existing contractual arrangements where a CDM Co-ordinator has already been appointed?

Or, is the **Client** under a duty to terminate the CDM Co-ordinator's appointment and replace them with the Principal Designer immediately?

## Regulation 10 – Duties of Designers

In connection with Designer duties, there is major emphasis on applying the General Principles of Prevention to the design, as well as using any available design stage Pre-Construction Information to eliminate, so far as is reasonably practicable, foreseeable risk to the health and safety of:

- (i) those carrying out construction work, or affected by it;
- (ii) maintaining or cleaning the structure/building;
- (iii) using the building as a workplace [Workplace (Health, Safety & Welfare) Regulations compliance].

Additionally, if the Designer is unable to eliminate foreseeable risks associated with construction, maintenance, or future use of the building (workplace), the Designer has to make **reasonable** effort to:

- (i) *Reduce and control risks through subsequent design development;*
- (ii) *Provide information regarding residual risks to the Principal Designer; and*
- (iii) *Ensure that appropriate information is provided for inclusion within the Health & Safety File.*

## PFB General Comment

In general terms, it appears that Designers will have a statutory obligation to make considerable effort to resolve buildability or maintainability issues, and that this is an ongoing requirement throughout all design stages.

## General Principles of Prevention

A fundamental emphasis within the duties of Principal Designer/Designers/Principal Contractor is the application of the General Principles of Prevention, as an ongoing requirement related to these particular roles.

This is a fundamental requirement of the EU Temporary and Mobile Construction Sites Directive 1992, which the new CDM Regulations are primarily a reproduction of without any embellishment by the HSE, as was the case with CDM 1994 and CDM 2007.

An important point to note is that the Principal Designer and Designers' duties are prefixed by the requirement of: *'so far as is reasonably practicable'*,

Designers have to eliminate foreseeable risks to health and safety of any person who will be affected by their design, whether this is: the Construction team, those affected by the Construction works, Contractors maintaining or cleaning the future building, or those using it, if it is a workplace.

'Reasonably practicable' has been defined by the Court of Appeal and they have stated:

*'Reasonably practicable' is a narrower term than 'physically possible' ... a computation must be made by the owner in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other, and that, if it be shown that there is a gross disproportion between them – the risk being insignificant in relation to the sacrifice – the defendants discharge the onus on them'.*

## PFB General Comment

In essence, this means that any design decision has to be potentially biased and influenced in favour of reducing health and safety risk, unless to do so would require totally unreasonable or grossly disproportionate effort, in comparison to the benefits that would be achieved.

**For further information on the implications of CDM 2014 or to arrange a CDM 2014 Workshop, contact:**

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