

Clause-by-clause comparison

CDM 2015 v CDM 2007

Designer Duties

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Document History

Version 1.0 20 February 2015 – Prior to CDM 2015 coming into force

Version 2.0 8 June 2015 – After CDM 2015 came into force

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Profile

- Over 30 years' experience
- In the first part of his career, he was employed by the Cement & Concrete Association on concrete durability research and then by Mouchel on the design, appraisal and site supervision of building and bridge structures
- For the past 20 years, he has focused on construction safety, risk and regulation
- At the British Cement Association, his focus was on structural safety and he led a range of projects to investigate the deterioration of concrete structures and develop guidance for inspecting, assessing and managing existing structures safely (including input to the Hong Kong Building Safety Inspection System)
- As a Director at BOMEL Consultants, his focus was more on human and organisational risks, and he undertook a series of projects on construction health and safety issues including the use of CDM Regulations
- He undertook similar work as a Director of Frontline Consultants
- He recently set up **MPW R&R** to provide risk and regulatory solutions for regulators, regulated organisations and litigants

CDM Experience

- Led the independent evaluation of CDM 2007 for the Health and Safety Executive (HSE), where the construction industry's implementation of CDM 2007 was assessed to see what changes had been made from the implementation of CDM 1994 and whether the objectives of CDM 2007 had been met
- Reviewed the implementation of CDM 2007 in the construction of London 2012 on behalf of HSE, the Olympic Delivery Authority and the Institution of Civil Engineers
- Helped HSE to analyse the responses to the consultation on the draft ACoP for CDM 1994
- Acted as an expert witness on criminal prosecutions of fatal and major injury accidents resulting from construction activity; these cases have involved charges against clients, designers, planning supervisors, principal contractors and contractors
- Author of around 20 published reports and papers on construction health and safety and CDM – details are available on <http://mpwrandr.co.uk/publications/>

Introduction

CDM 2015

- The Construction (Design and Management) Regulations 2015 (CDM 2015) govern the management of health, safety and welfare when undertaking construction projects in Great Britain
- CDM 2015 replaced CDM 2007 from 6 April 2015
- The key changes are:
 - The CDM 2015 Regulations have a simplified structure
 - Clients' responsibilities have been strengthened and broadened
 - The exemption for Domestic Clients has been removed
 - The role of CDM Coordinator has been removed
 - The new role of Principal Designer has been introduced to plan, manage, monitor and coordinate the pre-construction (design) phase
 - Notification of the project to the Health and Safety Executive (HSE) has been removed as a trigger point for additional duties
 - The threshold for appointing a Principal Designer and Principal Contractor is if more than one Contractor is required on a project
 - The requirement for 'competence' has been removed and replaced with 'skills, knowledge, experience and training' and 'organisational capability'

This document

- This is the first document in this series, and provides a clause-by-clause comparison of the Designer duties in CDM 2015 and CDM 2007
- The relevant changes have been highlighted in bold
- Comments are provided on the potential implication of the changes between the two versions of the regulations
- Comparisons are also available for Client duties and Principal Contractor / Contractor duties:
 - <http://mpwrandr.co.uk/client-duties-cdm-2015-v-cdm-2007/>
 - <http://mpwrandr.co.uk/principal-contractor-and-contractor-duties-cdm-2015-v-cdm-2007/>
- A brief summary of eight key changes to the CDM 2015 Regulations from CDM 2007 and what those changes mean in practice: <http://mpwrandr.co.uk/cdm-2015-summary-of-changes/>
- If you have any comments, please drop me a line at mike.webster@mpwrandr.co.uk

Regulation 2 – Definitions

CDM 2015	CDM 2007	Initial Comments
<p>Reg 2 (1) “design” includes drawings, design details, specifications and bills of quantities (including specification of articles or substances) relating to a structure, and calculations prepared for the purpose of a design;</p>	<p>Reg 2 (1) “design” includes drawings, design details, specification and bill of quantities (including specification of articles or substances) relating to a structure, and calculations prepared for the purpose of a design;</p>	<ul style="list-style-type: none"> • No differences
<p>Reg 2 (1) “designer” means any person (including a client, contractor or other person referred to in these Regulations) who in the course or furtherance of a business—</p> <p>(a) prepares or modifies a design; or (b) arranges for, or instructs, any person under their control to do so,</p> <p>relating to a structure, or to a product or mechanical or electrical system intended for a particular structure, and a person is deemed to prepare a design where a design is prepared by a person under their control;</p>	<p>Reg 2 (1) “designer” means any person (including a client, contractor or other person referred to in these Regulations) who in the course or furtherance of a business—</p> <p>(a) prepares or modifies a design; or (b) arranges for or instructs any person under his control to do so,</p> <p>relating to a structure or to a product or mechanical or electrical system intended for a particular structure, and a person is deemed to prepare a design where a design is prepared by a person under his control;</p>	<ul style="list-style-type: none"> • Similar duty

Regulation 8 – General Duties (1 of 3)

CDM 2015	CDM 2007	Initial Comments
<p>Reg 8 (1) A designer (including a principal designer) or contractor (including a principal contractor) appointed to work on a project must have the skills, knowledge and experience, and, if they are an organisation, the organisational capability, necessary to fulfil the role that they are appointed to undertake, in a manner that secures the health and safety of any person affected by the project.</p>	<p>Reg 4 (2) Any reference in this regulation to a person being competent shall extend only to his being competent to— (a) perform any requirement; and (b) avoid contravening any prohibition, imposed on him by or under any of the relevant statutory provisions.</p>	<ul style="list-style-type: none"> • Duty is now must rather than shall – this is the case for all Designer duties • Has split competence into its component parts of skills, knowledge, training and experience for individuals plus organisational capability for organisations
<p>Reg 8 (2) A designer or contractor must not accept an appointment to a project unless they fulfil the conditions in paragraph (1).</p>	<p>Reg 4 (1) No person on whom these Regulations place a duty shall— (b) accept such an appointment or engagement unless he is competent;</p>	<ul style="list-style-type: none"> • Only Contractors and Designers have this duty, not the Client
<p>Reg 8 (3) A person who is responsible for appointing a designer or contractor to carry out work on a project must take reasonable steps to satisfy themselves that the designer or contractor fulfils the conditions in paragraph (1).</p>	<p>Reg 4 (1) No person on whom these Regulations place a duty shall— (a) appoint or engage a CDM co-ordinator, designer, principal contractor or contractor unless he has taken reasonable steps to ensure that the person to be appointed or engaged is competent;</p>	<ul style="list-style-type: none"> • Duty holders now only need to take ‘reasonable steps to satisfy themselves’ rather than ‘reasonable steps to ensure’

Regulation 8 – General Duties (2 of 3)

CDM 2015	CDM 2007	Initial Comments
<p>Reg 8 (4) A person with a duty or function under these Regulations must cooperate with any other person working on or in relation to a project, at the same or an adjoining construction site, to the extent necessary to enable any person with a duty or function to fulfil that duty or function.</p>	<p>Reg 5 (1) Every person concerned in a project on whom a duty is placed by these Regulations, including paragraph (2), shall— (a) seek the co-operation of any other person concerned in any project involving construction work at the same or an adjoining site so far as is necessary to enable himself to perform any duty or function under these Regulations; and (b) co-operate with any other person concerned in any project involving construction work at the same or an adjoining site so far as is necessary to enable that person to perform any duty or function under these Regulations.</p>	<ul style="list-style-type: none"> • The duty to cooperate has been extended to those who have a ‘function’ under CDM • The duty to ‘seek the co-operation of any other person concerned in any project ...’ has been removed – the duty to cooperate has been extended to ‘any other person’ is covered by ‘function’
<p>Reg 8 (5) A person working on a project under the control of another must report to that person anything they are aware of in relation to the project which is likely to endanger their own health or safety or that of others.</p>	<p>Reg 5 (2) Every person concerned in a project who is working under the control of another person shall report to that person anything which he is aware is likely to endanger the health or safety of himself or others.</p>	<ul style="list-style-type: none"> • Similar duty • Duty is now explicitly ‘in relation to the project’

Regulation 8 – General Duties (3 of 3)

CDM 2015	CDM 2007	Initial Comments
<p>Reg 8 (6) Any person who is required by these Regulations to provide information or instruction must ensure the information or instruction is comprehensible and provided as soon as is practicable.</p>		<ul style="list-style-type: none"> • New duty to ‘ensure the information or instruction is comprehensible and provided as soon as practicable’ • Paragraphs 69 and 70 of HSE’s Guidance provides guidance on what is considered to be ‘comprehensible (easy to understand, / plain simple clear English (and/or other languages) • The duty is ‘practicable’ NOT ‘reasonably practicable’ (Paragraph 71 indicates “before the work begins”_
<p>Reg 8 (7) To the extent that they are applicable to a domestic client, the duties in paragraphs (3), (4) and (6) must be carried out by the person specified in regulation 7(1).</p>		<ul style="list-style-type: none"> • New duty to tie in with requirements for domestic clients
	<p>Reg 6 All persons concerned in a project on whom a duty is placed by these Regulations shall co-ordinate their activities with one another in a manner which ensures, so far as is reasonably practicable, the health and safety of persons— (a) carrying out the construction work; and (b) affected by the construction work.</p>	<ul style="list-style-type: none"> • No explicit requirement for all duty holders (including Designers) to co-ordinate their activities in CDM 2015 • However, Principal Designer (Reg 11(1) and (5)) and Principal Contractors (Reg 13(1) and (3)) do have duties to coordinate

Regulation 9 – Duties of Designers (1 of 3)

CDM 2015	CDM 2007	Initial Comments
<p>Reg 9 (1) A designer must not commence work in relation to a project unless satisfied that the client is aware of the duties owed by the client under these Regulations.</p>	<p>Reg 11 (1) No designer shall commence work in relation to a project unless any client for the project is aware of his duties under these Regulations.</p>	<ul style="list-style-type: none"> • Designer now needs to be ‘satisfied that the client is aware’ rather than ‘client for the project is aware’
<p>Reg 9 (2) When preparing or modifying a design the designer must take into account the general principles of prevention and any pre-construction information to eliminate, so far as is reasonably practicable, foreseeable risks to the health or safety of any person—</p> <p>(a) carrying out or liable to be affected by construction work;</p> <p>(b) maintaining or cleaning a structure; or</p> <p>(c) using a structure designed as a workplace.</p>	<p>Reg 11 (2) The duties in paragraphs (3) and (4) shall be performed so far as is reasonably practicable, taking due account of other relevant design considerations.</p> <p>(3) Every designer shall in preparing or modifying a design which may be used in construction work in Great Britain avoid foreseeable risks to the health and safety of any person—</p> <p>(a) carrying out construction work;</p> <p>(b) liable to be affected by such construction work;</p> <p>(c) cleaning any window or any transparent or translucent wall, ceiling or roof in or on a structure;</p> <p>(d) maintaining the permanent fixtures and fittings of a structure; or</p> <p>(e) using a structure designed as a workplace.</p>	<ul style="list-style-type: none"> • Duty now to take account of ‘any pre-construction information’ • The requirement for ‘taking due account of other relevant design considerations’ is not stated explicitly in the CDM 2015 Regulations, but is covered in Paragraph 83 of HSE’s Guidance where it states that: ‘Health and safety risks need to be considered alongside other factors that influence the design, such as cost, fitness for purpose, aesthetics and environmental impact.’

Regulation 9 – Duties of Designers (2 of 3)

CDM 2015	CDM 2007	Initial Comments
<p>Reg 9 (3) If it is not possible to eliminate these risks, the designer must, so far as is reasonably practicable—</p> <p>(a) take steps to reduce or, if that is not possible, control the risks through the subsequent design process;</p> <p>(b) provide information about those risks to the principal designer; and</p> <p>(c) ensure appropriate information is included in the health and safety file.</p>	<p>Reg 11 (4) In discharging the duty in paragraph (3), the designer shall—</p> <p>(a) eliminate hazards which may give rise to risks; and</p> <p>(b) reduce risks from any remaining hazards,</p> <p>and in so doing shall give collective measures priority over individual measures.</p>	<ul style="list-style-type: none"> • Now a duty to ‘control the risks’ if elimination or reduction are not possible • Duty is now to ‘eliminate risks’ rather than ‘eliminate hazards’
<p>Reg 9 (3) If it is not possible to eliminate these risks, the designer must, so far as is reasonably practicable—</p> <p>(b) provide information about those risks to the principal designer; and</p> <p>(c) ensure appropriate information is included in the health and safety file.</p>	<p>Reg 18 (2) The designer shall take all reasonable steps to provide with his design sufficient information about aspects of the design of the structure or its construction or maintenance as will adequately assist the CDM co-ordinator to comply with his duties under these Regulations, including his duties in relation to the health and safety file.</p>	<ul style="list-style-type: none"> • Duty is now ‘so far as reasonably practicable’ rather than ‘take all reasonable steps’ • Duty is now to provide ‘information about those risks’ rather than ‘sufficient information’ (to the Principal Designer rather than the CDM Co-ordinator) • Duty is now to provide ‘appropriate information’ rather than ‘sufficient information’ for the Health and Safety File

Regulation 9 – Duties of Designers (3 of 3)

CDM 2015	CDM 2007	Initial Comments
<p>Reg 9 (4) A designer must take all reasonable steps to provide, with the design, sufficient information about the design, construction or maintenance of the structure, to adequately assist the client, other designers and contractors to comply with their duties under these Regulations.</p>	<p>Reg 11 (6) The designer shall take all reasonable steps to provide with his design sufficient information about aspects of the design of the structure or its construction or maintenance as will adequately assist—</p> <ul style="list-style-type: none"> (a) clients; (b) other designers; and (c) contractors, <p>to comply with their duties under these Regulations.</p>	<ul style="list-style-type: none"> • Duty is no longer limited to ‘aspects of’

Regulation 10 – Designs prepared or modified outside Great Britain

CDM 2015	CDM 2007	Initial Comments
<p>Reg 10 (1) Where a design is prepared or modified outside Great Britain for use in construction work to which these Regulations apply—</p> <p>(a) the person who commissions it, if established within Great Britain; or</p> <p>(b) if that person is not so established, the client for the project, must ensure that regulation 9 is complied with.</p>	<p>Reg 12 Where a design is prepared or modified outside Great Britain for use in construction work to which these Regulations apply—</p> <p>(a) the person who commissions it, if he is established within Great Britain; or</p> <p>(b) if that person is not so established, any client for the project, shall ensure that regulation 11 is complied with.</p>	<ul style="list-style-type: none"> • Similar duty