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Construction Newsletter



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Ignore at your Peril! The New CDM Regulations

6 April 2007 sees the introduction of the Construction (Design and Management) Regulations 2007. The title to the Regulations is a familiar one – it appeared in the 1994 Regulations. The change is not however ‘just a little bit of updating’. Ignore the new version at your peril since it brings substantial new duties on clients, contractors, designers and all involved in construction projects. Failure to meet the duties can give rise to both criminal and civil liability.

In this newsletter we only intend to highlight the Regulations and do not provide definitive guidance.

Overview

The Regulations are supported by a Code of Practice issued by the Health and Safety Executive (HSE). Guidance is to come from the industry - there is little presently in place.

Key novel aspects are:

- Projects are notifiable or non-notifiable
- Clients have a number of new duties, whatever the project
- The role of planning supervisor is changed to CDM co-ordinator

The Regulations strengthen the duties on all involved in a construction project. Whether a project is notifiable will determine the nature of the duties imposed by the Regulations.

General Duties

The general management duties under Part 2 of the Regulations apply to construction projects whether notifiable or not. These duties cover:

Competence: No-one should be engaged as a designer contractor or CDM co-ordinator without reasonable steps having been taken to ensure that person is competent. This will mean that any person taking on these tasks must be able to demonstrate the steps taken and why they are reasonable.

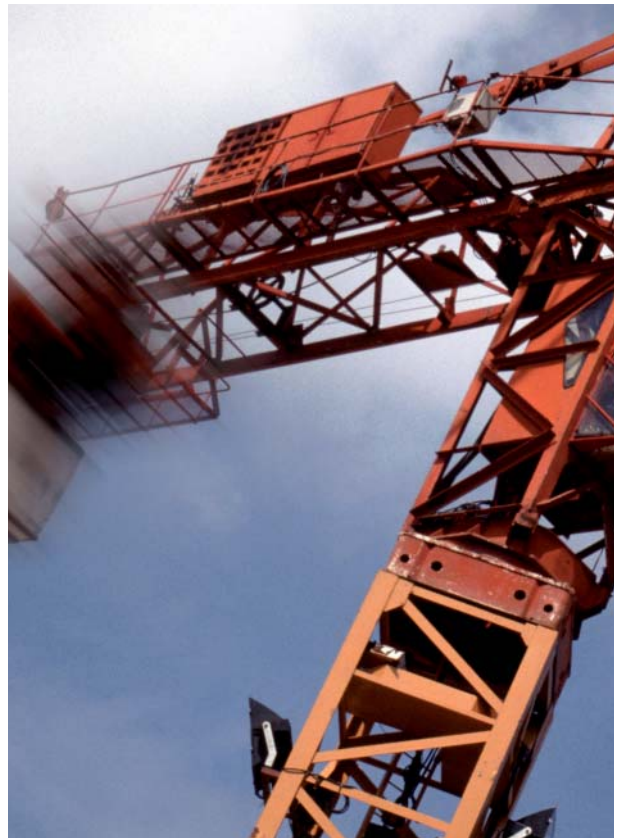
Co-operation: There is a duty of mutual co-operation so that everyone involved in meeting duties under the Regulations must assist others in meeting theirs.

Prevention: This refers to the ‘General Provisions of Prevention’ as set out in Schedule 1 of The Management of Health and Safety at Work Regulations 1999.

Time: The client should ensure that persons have sufficient time to carry out their tasks.

Procuring management: It is the client’s personal responsibility to make arrangements that ensure that the project is managed so as to:

- Eliminate risk to health and safety
- Meet the duties in Schedule 2 (which relate to welfare etc.)
- Make sure that a workplace takes into account particular Regulations



Provision of information: It is the client’s personal responsibility to ensure that any designer and contractor receives all information relevant to their task so as to:

- Eliminate risk to health and safety
- Meet the duties under the Regulations

Designer’s duties: It is the designer’s responsibility to:

- Make sure the client knows his duties
- Ensure that they avoid foreseeable risks to health and safety both in construction, to others and in the use of the building
- Provide information to others

Contractor’s duties: It is the contractor’s responsibility to:

- Make sure the client knows his duties
- Manage his work so as to eliminate risk to health and safety
- Provide information and training to workers
- Meet the duties in Schedule 2 (which relate to welfare etc.)

Notifiable Projects

The test for a project being notifiable is whether it involves 30 days or 500 person days of construction work or more. It is thus likely to affect any significant project. Attempts to split parts of a project to create separate projects are unlikely to succeed since the definition covers the time from planning design and management through to the end of the construction phase.

The further duties imposed in a notifiable project include:

Client: The client must promptly appoint a:

- CDM co-ordinator and
- Principal contractor

If he does not he assumes those responsibilities himself.

Start-up: The client must not let the project commence unless:

- The principal contractor has prepared a compliant construction phase plan and
- He is satisfied that the regulations for welfare facilities will be met

Health and Safety file: The client must provide all relevant information to the CDM co-ordinator and maintain the file so it is available and updated for others.

Designer: Designers must not start without a CDM co-ordinator in place and provide all relevant information to the CDM co-ordinator for the health and safety file.

Contractor: Any contractor should not start unless the CDM co-ordinator and principal contractor have been identified to him. He must have seen the relevant part of the construction phase plan and be sure the project has been notified. He must provide relevant information to the principal contractor (including any event under RIDDOR) and comply with health and safety arrangements and site rules.

CDM co-ordinator: This role is similar to that of planning supervisor. He must:

- Provide sufficient advice to the client to assist the client in meeting his duties
- Notify the project
- Ensure arrangements for health and safety during the planning phase
- Facilitate co-operation and application of prevention
- Liaise with the client, principal contractor and designers
- Collect and provide pre-construction information

Principal contractor: He must:

- Plan manage and monitor the work to eliminate risk to health and safety
- Facilitate co-operation and application of prevention
- Ensure welfare and site rules
- Ensure time for others to plan and prepare and tell them of that time
- Provide information and seek that needed for the health and safety plan
- Display the notice given in relation to the project
- Prevent unauthorised access
- Take steps to see each worker is trained and has an induction
- Draw up a construction phase plan
- Consult with workers regarding health, safety and welfare

Not only will it be necessary to meet these duties but there will need to be objective evidence demonstrating compliance. There should be a clear paper trail showing that steps have been taken and that the parties concerned have acknowledged that.

Health and Safety

Part 4 of the Regulations effectively repeats a number of existing duties in relation to site safety matters.

General

Part 5 of the Regulations deals with some administrative points and the incidence of civil liability for breach of the Regulations.

It also sets out a code of transitional provisions. Former planning supervisor and principal contractor will become (and have the duties of) CDM co-ordinator and principal contractor. Where the client makes such appointments (of pre-existing post holders) he must ensure their competence by 6 April 2008 – they must ensure their own competence by then also.

The Future

The HSE express the view that these new Regulations:

“will increase the focus on effective planning and management of construction projects, to improve risk management by ensuring responsibility is placed with those best placed to influence or manage it; reduce bureaucracy; and simplify and clarify the law for dutyholders, so they can easily understand what they (and other members of the construction project team) are required to do.”

There is no doubt that the Regulations are well presented – but there remains huge scope for debate over what is reasonable where that is the test for compliance.

What is the practical impact of these new Regulations? We would suggest that this includes:

- Know how the Regulations affect your business
- Consultants and employers need to make sure that the appointments and warranties they use for projects reflect the changes brought in both in terminology and scope
- Employers and contractors need to make sure that their contracts cover the new Regulations and the duties imposed
- All concerned need to consider their working practices and procedures. Not only should practice comply, it should be carefully recorded

Failure to review your position and the document you are using could leave you with unexpected responsibilities and facing possible prosecution.

If you would like detailed advice on the application of these new regulations to your business, please get in touch.

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About Hill Dickinson

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