

# CDM Regulations 2015 - Are we building the future?



**Following a recent consultation on the changes to Construction Design and Management (CDM) regulations we take a look at the key associated issues.**

It has been well publicised that the UK, despite having one of the best track records in construction health and safety, did not fully implement the European Directive 92/57/EEC – temporary or mobile construction sites 1992 and is now being forced by the European Union to address the issue. Add to this the recommendation by Professor Löfstedt in his report “Reclaiming health and safety for all: an independent review of health and safety legislation” and hey presto - you have a rewrite of the regulations and a ten week consultation.

The consultation closed on 6th June and it is fair to say the draft set of regulations being proposed was one of the more hotly debated, with all of the main stakeholders seemingly having made representation. The consultation sparked considerable activity though with the safety fraternity fizzing with disbelief at the prospect of losing the CDM-Coordinator and the majority of organised groups appearing to have had the debate at their regular meetings in a bid to canvass opinion and provide a collective response. One high profile association, faced with the prospect of losing a significant slice of its membership, appears to have seized the opportunity to hold a series of regional debates under the guise of CPD roadshows - and charging its members a fee of £65.

## **Minimum requirements at temporary or mobile construction sites**

The Directive is concerned with and lays down minimum requirements for the implementation of safety and health standards at temporary or mobile construction sites. As the old saying goes “if it ain’t broke, don’t fix it” which, given the UK’s track record in construction safety, prompts the question do we accept that the current system is in fact “broken?”. It is of course widely accepted that one fatality is too many. It is also widely accepted that we would love for a risk free world with no serious injuries, but we must also accept that this is real life, and we can only control those risks of which we are aware. Ultimately, clearly somebody somewhere thinks it is broken.

The draft regulations are again aimed at reducing bureaucracy and unnecessary paperwork, which ironically was a key objective of the 2007 regulations! Historically, paperwork and bureaucracy is created through a fear of civil or criminal repercussions and certain individuals trying to justify and/or amplify their roles. It is thought that if everyone went back to basics and thought about the common goal, there is a chance that unnecessary paperwork would be reduced.

## **Replacement of the Approved Code of Practice**

Despite the proposal to replace the CDM Co-ordinator (CDMC) role with a Principal Designer being the single most debated point in the revised regulations, one of the most significant changes is the replacement of the supporting Approved Code of Practice (ACoP) with guidance tailored to specific activities. This is a disappointing decision for such a high risk industry as Approved Codes of Practice give practical guidance on compliance. Failure to comply with an Approved Code of Practice is not an offence in itself but ACoPs have special (quasi) legal status. If an employer or individual faces criminal prosecution under health and safety law, and it is proved that the advice of the relevant ACoP has not been followed, a court can regard it as evidence of guilt unless it is satisfied that the accused has complied with the law in some other way. Following Approved Codes of Practice is therefore regarded as best practice. This move will no doubt only serve to fuel legal debate in cases as the room for manoeuvre in interpreting regulations increases and any ambiguity exploited to the full.



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## Notification thresholds - fewer projects to require notification

A further point for concern relates to the notification thresholds. HSE has long since advised that small and medium sized projects are responsible for the majority of deaths and accidents in the industry and accident statistics support this. However, the new triggers for notifying a construction project to HSE (over 30 days and more than 20 persons on site) mean that fewer projects will require notification, moreover considerably fewer small construction projects. If HSE knows about a project at least there is a chance they will visit. Many smaller projects either do not have the correct guidance, resources or sometimes inclination to properly manage health and safety on site and this is an area of real concern as the likelihood of an Inspector turning up at the entrance of a small refurbishment project undertaken by a small builder diminishes further.

All in all, CDM is going to change. Some stakeholders will think for the better, others for the worse but whether we are an institution trying to defend its position and role within the industry, a client looking for a return on its investment or a designer looking to push the boundaries in modern design, one thing is clear; we should all be pulling in the same direction and that is to run our projects safely.

## Following a recent consultation on the changes to Construction Design Management (CDM) regulations we take a look at the key changes proposed in the draft 2015 regulations which include:

- A legal obligation for duty holders to provide information, instruction, training and supervision, which replaces the duty to assess competence. The draft regulations do not specify the minimum standard required for compliance.
- Construction phase co-ordination duties to remain with the Principal Contractor. But the current proposals do not make any provision for an independent role, as currently provided by the CDMC, to protect the client.
- Replacement of the CDM Co-ordinator (CDMC) role with a Principal Designer responsible for health and safety in the design team. The role can be fulfilled by an individual or organisation.
- Replacement of the ACOP with tailored guidance. No date has been announced for HSE issue of the guidance documents.
- Creation of client duties for domestic projects which can be transferred to the Principal Designer and/or Principal Contractor.
- Client must ensure that the Principal Designer for health and safety complies with their duties. Requires the client to be informed and aware of their role and responsibility (difficult for ad-hoc and lay clients).
- Client must ensure that the Principal Contractor complies with their duties. The draft regulations provide no indication as to how compliances are achieved.
- The notification trigger (the point at which an F10 needs to be submitted to HSE) has been amended to 30 days and more than 20 persons on site or 500 man days.
- The Client will be responsible for notifying HSE of a project (F10 notification).
- The Client will be required to appoint a Principal Contractor and/or Principal Designer if there will be more than one contractor on site. Assuming that contractor means trade meaning any project with more than one trade on site (most) will require these appointments.
- A construction phase plan will be required for all projects. The draft regulations do not require a review or indicate any requirements for its contents.

