

Consultation to replace the Construction (Design and Management) Regulations 2007

The Health and Safety Executive (**HSE**) is required to regularly review the effectiveness of the Construction (Design and Management) Regulations 2007 (**CDM Regulations**). It has launched a consultation on replacing the CDM Regulations and its associated Approved Code of Practice (**ACoP**). The aim is that revised regulations will come into force in April 2015. The consultation closes on 6 June 2014.

Olswang intends to submit an umbrella response to the HSE on behalf of construction clients, contractors and designers. As such, we welcome your feedback on the proposed regulations. Our aim is to produce a measured, balanced response. The HSE's goals are to simplify the CDM Regulations, improve worker protection, improve health and safety on small sites; and discourage bureaucracy. Olswang and its clients share these goals. The new regulations:

- Have a simplified structure;
- Replace the ACoP with targeted guidance;
- Replace the CDM Co-ordinator with a "principal designer" (**PD**);
- Require a Principal Contractor (**PC**) and a PD to be appointed for all projects where there is more than one contractor;
- Remove the requirement for clients to appoint "competent" individuals, and replace that with a more general obligation on clients to ensure that individuals on site have sufficient information and supervision to work safely;
- Extend the CDM Regulations to domestic clients (i.e. homeowners).

Implications for you

The simplification of the CDM Regulations and introduction of targeted guidance is greatly welcomed. The ACoP, in particular, is often criticised as too lengthy and inaccessible.

The PD will have greater control and influence over design than the CDM Co-ordinator. It will be responsible for planning, managing and monitoring pre-construction and those obligations will pass to the Principal Contractor upon the commencement of construction. The aim is to integrate the approach to risk management. The HSE cites feedback that the CDM Co-ordinator often operates on the fringes of the construction team. The new default position means the PD will be appointed from the existing project team (rather than be a standalone consultant), which should help achieve this aim. This is a major change as it is common for project teams to have a standalone CDM-Coordinator, which will no longer be an option.

The extension of the CDM Regulations to homeowners is also a significant change. Presently the CDM Regulations only apply where the person or company carrying out the development is doing so as part of a business. The business aspect will be removed, therefore all the obligations which fall to commercial clients will now also apply to homeowners. The HSE hopes that extending the CDM Regulations to homeowners will be proportionate as there is a default position where the domestic client's duties fall to the contractor (or to the PC where there is more than one contractor). The impact of compliance is therefore likely to be felt by contractors in the domestic sector. A smooth transition may depend on the quality of the targeted guidance.

Implications for you

Clients will also be required to appoint a PC and a PD where there is more than one contractor appointed on the project. This is a change to the current requirement that a PC and PD are appointed if the project is to last 30 calendar days, or the equivalent of 500 person days (e.g. 50 people working more than 10 days). Presently, where two or more employers share a workplace they are obliged to co-operate so far as necessary to comply with the Management of Health and Safety at Work Regulations 1999. The HSE hopes that as employers are already subject to this co-operation requirement, the additional duties imposed on a PC and a PD will not seem like too much of an additional burden. The HSE is aiming for a proportionate approach to compliance on smaller projects and will provide guidance on this. Again, the transition will depend on the quality of the guidance, especially for contractors previously unaccustomed to the CDM Regulations. The approach seems likely to increase the inspection burden on the HSE.

The removal of the competence requirements in Regulation 4 (where the client is obliged to appoint “competent” individuals) aims to respond to past criticisms of perceived bureaucracy, and the HSE cites industry concerns about the balance between the benefits and costs of compliance. The HSE views the increase in third party schemes which offer an objective assessment of “competence” as costly and bureaucratic for contractors. The HSE proposes a more general set of requirements in the new regulations. Clients will broadly have to ensure that those they have appointed have received appropriate information, instruction, training and supervision to allow them to work safely.

The new requirements are of a general nature, with the intention being to work with industry through non-regulatory approaches to promote cultural change and leadership. The idea is a clean break from the competence requirements by completely removing Regulation 4. Overall, this change looks to benefit contractors and clients alike in cutting down on pre-qualification costs and bureaucracy in the supply chain.

A new threshold for notifying projects will also be introduced. It will be where the project is longer than 30 working days and having more than 20 workers working simultaneously at any point in the project, or where the project exceeds 500 person days (i.e. 50 people working more than 10 days).

We very much look forward to receiving your feedback by **31 May 2014**.

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