

Revision of the Construction (Design and Management) Regulations (CDM) 1994, Construction (Health, Safety and welfare) (CHSW) Regulations 1996, Approved Code of Practice (ACoP) and Guidance

This Consultation Document closes on 29th July 2005. They advise that the key changes are:

Key changes

This section sets out the background and rationale for some of the main proposals in the draft Regulations and seeks your views.

Application and notification

The distinction in the current Regulations between their application and notification of projects is confusing. We therefore propose that, for the purposes of the Regulations, there should only be two types of construction projects: notifiable and non-notifiable. All of the proposed requirements would apply to notifiable projects, but the requirements relating to appointments, plans and other paperwork would not apply to non-notifiable projects. The practical effect of this would be that all projects would require:

- non-domestic clients to check the competence of all their appointees; ensure there are suitable management arrangements for the project; and allow sufficient time and resources for all stages;
- designers to eliminate hazards and reduce risks due to design; and provide information about remaining risks;
- contractors to plan, manage and monitor their own work and that of workers; check the competence of all their appointees and workers; train their own employees; provide information to their workers; comply with the requirements for health and safety on site detailed in Schedule 3 and other regulations; and ensure there are adequate welfare facilities for their workers;
- everyone to assure their own competence; co-operate with others involved in the project; report obvious risks; take account of the general principles of prevention in planning or carrying out construction work; and comply with the requirements in Schedule 3 and other regulations for any work under their control.

As well as the above requirements, a notifiable project would require:

- non-domestic clients to appoint a co-ordinator (CO) and ensure that job is performed properly; appoint a Principal Contractor (PC); provide information; check (before construction work starts) that there is a construction phase plan and suitable welfare facilities; and retain and provide access to the health and safety file;
- co-ordinators to advise and assist clients with their duties; notify HSE; co-ordinate design work; manage communication between client, designers and contractors; liaise with the PC on ongoing design issues; prepare and update the health and safety file;
- designers to check, before they start work, that clients are aware of their duties and a co-ordinator has been appointed; check HSE has been notified; and provide any information needed for the health and safety file;
- PCs to plan, manage and monitor the construction phase in liaison with contractors; prepare, develop and implement a written plan (the initial plan to be completed before the construction phase begins); make sure suitable welfare facilities are provided from the start and maintained throughout the construction phase; check the competence of all their appointees; provide site inductions; consult with the workers; liaise with the co-ordinator on ongoing design issues; and secure the site;
- contractors to confirm clients are aware of their duties and a co-ordinator has been appointed; co-operate with the PC in planning and managing work; check HSE has been notified; and provide any information needed for the health and safety file.

Below I pass comment on what I see as the main changes from the old CDM regulations, that may affect our members, whether they are clients, designers, or contractors, but I am not an expert and so suggest that you need to check the Consultation yourself.

A notified contract is one which the 'Construction phase' is likely to involve more than 30 days or 500 person days. With the term 'Construction phase' defined as "the period of time starting when construction work in any project starts and ending when construction work on the project is completed". Since 'construction work' includes fitting out and commissioning and many farm sites are carried out in stages. From the first clearing of the site to the completion is likely to be longer than 30 days and so these sites will be notifiable.

The Duties of the Client

The Client has to ensure that the designer and contractor they use are competent and the HSE is asking for ideas on how the client can do this and suggesting that some of the ways of doing this at present are over bureaucratic. There is an argument that Associations should be involved in assessing a member's competence. I welcome your views on this.

Overall the client's responsibilities are very large, although they are not expected to be construction or health and safety experts and so it is expected that some of the responsibilities will be passed to either the CO or the PC, but the Client is still responsible for ensuring that those who agree to carry out the tasks actually do so. In my view the responsibilities are so vast that it is unreasonable to expect an average SME client such as a farmer to be able to take responsibility for them all, even if he arranges for another party to carry out the tasks.

It clearly states that if the Client does not appoint a CO or PC, then the client takes on these roles himself. On a typical farm site where some of the work will be carried out by the farmer or his men, then at least for that period of time he will be the PC and if he has not appointed a CO he will be the CO and will probably not know what his responsibilities are, if when he comes to giving the order for the erection and or fitting out of a building he does not ensure that the contractor takes on the role of the PC, then he will remain as the PC and the CO. We should of course note that the contractor has a responsibility to ensure that the Client is aware of his responsibilities under this regulation. This looks like a good one for the lawyers.

The Duties of the Co-ordinator

The term planning supervisor has been dropped but a client now has to appoint a "co-ordinator" before design work or planning begins, this CO will have the responsibility to "advise and assist the client in undertaking the measures he needs to take to comply with these Regulations" his responsibilities are broader than those of the old planning supervisor, see the list of his responsibilities below:

1. identify and extract the information specified in regulation 10;
2. advise on the suitability and compatibility of designs and on any need for modification;
3. co-ordinate design work, planning and other preparation;
4. liaise with the principal contractor in relation to any design or change to a design requiring a review of the construction phase plan, during the construction phase;
5. promptly provide, in a convenient form, to-
 - (i) every person designing the structure;
 - (ii) the principal contractor; and
 - (iii) every contractor who has been or is likely to be appointed by the client, the information specified in regulation 10 (or such of it as is relevant to him);
6. prepare, where none exists, and otherwise review and update the health and safety file;
7. at the end of the construction phase, pass the health and safety file to the client.

The Client will have to inform the executive before design work or planning has begun, and as soon as the PC is appointed and provide any further information not available at the first notification.

The Duties of the Designer

The Designer now has very specific responsibilities to ensure that his design allows the building to be built, worked in, maintained and cleaned safely. The proposals are listed below:

1. No designer shall commence work in relation to a project unless-
 - (a) the client is aware of his duties under these Regulations;
 - (b) a CO has been appointed for the project; and
 - (c) notice of the project has been given to the Executive under regulation 9.
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.
3. Every designer shall in preparing or modifying a design which may be used in construction work in the United Kingdom avoid risks to the health and safety of any person-
 - (a) carrying out construction work;
 - (b) cleaning or maintaining the permanent fixtures and fittings of a structure;
 - (c) using a structure designed as a place of work; or
 - (d) liable to be affected by such construction work.
4. In discharging the duty in paragraph (3), the designer shall-
 - (a) eliminate hazards which may give rise to risks; and
 - (b) reduce risks from any remaining hazards, and in doing so shall give collective measures priority over individual measures.
5. The designer shall provide with the design sufficient information about aspects of the design of a structure or its construction or maintenance as will adequately assist-
 - (a) other designers to comply with their duties under this regulation;
 - (b) contractors to comply with their duties under regulation 19

The Duties of the principal contractor

The PC's responsibilities are now laid out clearly and are very wide ranging. The regulation says that the client must appoint a PC or act as the PC himself. The PC's responsibilities are listed below:

- (1) The principal contractor for a project shall-
 - (a) plan, manage and monitor the construction phase in a way which ensures that, so far as is reasonably practicable, it is carried out without risks to health or safety;
 - (b) ensure that the requirements of Schedule 2 are complied with.
 - (c) where necessary for health and safety, draw up rules which are appropriate to the construction site and the activities on it (referred to in these Regulations as "site rules");
 - (d) so far as is reasonably practicable, ensure co-ordination of the work, and co-operation among contractors at work during the construction phase;
 - (e) liaise with the CO in relation to any design development which may affect planning and management of the construction work;
 - (f) give reasonable directions to any contractor so far as is necessary to enable the PC to comply with his duties under these Regulations;
 - (g) where necessary, consult a contractor before finalising such part of the construction plan as is relevant to the work to be performed by him;
 - (h) ensure that every contractor is given, in sufficient time to enable him to prepare properly, access to such part of the construction plan as is relevant to the work to be performed by him, containing sufficient detail in relation to such work;
 - (i) ensure that every contractor is given, in sufficient time to enable him to prepare properly, such further information as he needs-
 - i. to comply punctually with the duty under regulation 19(4); and
 - ii. to carry out the work to be performed by him safely;
 - (j) identify to each contractor the information specified in regulation 10(1) relating to the contractor's activity for inclusion

- (k) in the health and safety file and ensure that it is provided to the CO promptly;
 - (k) ensure that the particulars required to be in any notice given under regulation 9 are displayed in a readable condition in a position where they can be read by any worker engaged in the construction work;
 - (l) take reasonable steps to prevent access by unauthorised persons to the construction site.
- (2) The PC shall ensure so far as is reasonably practicable that every worker carrying out the construction work is provided with-
- (a) suitable site induction; and
 - (b) any further information and training which he needs for the particular work to be carried out without undue risk to health or safety.

The construction phase plan

The PC shall-

- (a) before the start of the construction phase, prepare a construction phase plan which is sufficient to enable the construction work to start without undue risk to health or safety ;
- (b) as often as may be appropriate review, revise and refine the construction phase plan; and
- (c) in preparing, reviewing, revising and refining such a plan, pay adequate regard to information provided under regulation 13(1)(f) and 14(5).

The Duties of the Contractor (sub contractors) are

- (1) No contractor shall carry out construction work in relation to a project unless-
 - (a) the client is aware of his duties under these Regulations;
 - (b) a CO has been appointed for the project;
 - (c) the contractor has been provided with the name of the PC;
 - (d) the contractor has been given access to such part of the construction phase plan as is relevant to the work to be performed by him, containing sufficient detail in relation to such work; and
 - (e) notice of the project has been given to the Executive under regulation 9.
- (2) Every contractor shall plan, manage and monitor construction work carried out by him or under his control in a way which ensures that, so far as is reasonably practicable, it is carried out without risks to health and safety and in accordance with any construction phase plan.
- (3) Every contractor shall provide every worker carrying out the construction work under his control with any information and, in the case of an employee of his, training which he needs for the particular work to be carried out safely, including-
 - (a) suitable site induction, where not provided by any principal contractor;
 - (b) information on the risks to their health and safety-
 - (i) identified by his assessment under regulation 3 of the Management of Health and Safety at Work Regulations 1999(e); or
 - (ii) arising out of the conduct by another contractor of his undertaking and of which he is or ought reasonably to be aware;
 - (c) the measures which have been identified by the contractor in consequence of the assessment as the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions;
 - (d) any site rules;
 - (e) the procedures to be followed in the event of serious and imminent danger to such workers; and
 - (f) the identity of the persons nominated to implement those procedures.
- (4) Every contractor shall ensure, so far as is reasonably practicable, that the requirements of Schedule 2 are complied with in respect of any person at work who is under his control.
- (5) Every contractor shall -
 - (a) as soon as is reasonably practicable, provide the PC with any information (including any relevant part of any risk assessment in his possession or control) which might affect the health or safety of any person at work carrying out the construction work or of any person who may be affected by it, or which might justify a review of the construction phase plan;
 - (b) comply with any directions of the PC given to him under regulation 16(1)(f);
 - (c) promptly provide the principal contractor with the information in relation to any death, injury, condition or dangerous occurrence which the contractor is required to notify or report under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995(f);
 - (d) if a construction phase plan is not complied with, take appropriate action to ensure health and
 - (e) notify any PC of any significant finding which requires a construction phase plan to be altered or added to.

Apart from the responsibilities listed above, there are also responsibilities on all to co-operate and consult with every one and in particular with the workers.

The Schedules cover: Welfare facilities, Health and safety on site.

This is an important and far ranging set of proposals and we need to consider them in depth and if necessary pass comment back by 29th July.

I would expect some of our frame manufacturer members to end up as the, Co-ordinator, Designer and Principle Contractor and so it will be critical that before a contract is agreed that responsibilities are set out in writing.

The full consultation document can be down loaded from the HSE web site or I can send a hard copy to RIDBA members.

I look forward to your views.