

Introducing the Construction (Design and Management) Regulations (NI) 2016 (CDM)

On 1st August 2016, HSENI published the new CDM 2016 Regulations supported by the accompanying L153 series guide, 'Managing health and safety in construction'.

The guide explains what the law is seeking to achieve and what the regulations mean in practice for the various dutyholders, across all construction projects. This guide is supported by a series of industry guidance booklets, one for each dutyholder and one for workers. Written by industry groups representing the breadth of construction professionals, and hosted by CITB (Construction Industry Training Board), their focus is to provide practical advice on implementing the new legal requirements on smaller construction projects.

Both the L Series and industry guides can be freely downloaded from HSENI and CITB websites.

Simplified

The regulations provide a much more linear structure that represents the process of delivering a construction project from concept, through design and build to handover and future use of a structure. This approach provides greater clarity on the importance and influence that each dutyholder has on the way that construction hazard and risks are identified, reduced, controlled and managed, throughout a project.

A single set of requirements, applicable to all projects irrespective of size and duration. Unlike with CDM 2007 there is now only one trigger point for additional action in the new regulations.

So... Whats new?

- Simplified structure to the regulations
- Clients responsibilities strengthened and broadened
- Removal of exemption for domestic clients
- A new role of Principal Designer to co-ordinate the design stage
- Removal of the role of CDM-C
- Removal of notification as a trigger point for additional duties
- Notification threshold includes worker numbers
- Appointments threshold where there is more than one contractor on a project
- Removal of 'competence' requirement and replaced with 'skills, knowledge, experience and training' and 'organisational capability'
- All construction projects require a construction phase plan (CPP)

Commercial Clients

Recognising the importance and influence a client has over the way a project is procured and delivered and the standards to which these are done, the regulations strengthen and broaden their responsibilities.

The regulations encourage clients to actively lead construction projects, whilst recognising that their experience and abilities will be diverse.

The client is now responsible for making the arrangements by which the project will be managed and ensuring that those arrangements are maintained and reviewed throughout the life of the project.

Where there is or is likely to be more than one contractor working on a project, the client must appoint both a Principal Designer (PD) and a Principal Contractor (PC) at the earliest opportunity and before construction starts. The client is also responsible for taking 'reasonable steps' to ensure both the PD and PC comply with their duties, for providing pre construction information (PCI), ensuring the construction phase plan and health and safety file are produced and for ensuring the health and safety file is handed over to any new owner of the structure.

Domestic Clients

Although the exemption for domestic clients has been removed, the only responsibility placed upon them is to appoint the PC and PD, where there is more than one contractor. However, if this (as will be common practice) does not happen, the regulations **automatically** transfer the client duties to the contractor or principal contractor of a project. In recognising that some domestic clients may have already established a relationship with their designer before they go ahead with construction, the regulations allow the **designer** to take on the client duties where there is a written agreement between the client and designer to do so.

Principal Designer

This new role brings the function of planning, managing, monitoring and co-ordinating the design stage of the project, directly into the project team and under the control of a designer.

The PD will support the client in bringing together and providing the Pre Construction Information (PCI) and act as the conduit for disseminating that information to the various dutyholders who will need it at the right time. This will be an ongoing responsibility throughout the life of the project.

The PD is responsible for ensuring the designers working on the project discharge the duties placed upon them as designers throughout their appointment.

The role of the PD mirrors that of PC in the construction phase. This role is not limited to the design stage before construction starts, and may continue into the construction phase.

The PD will work together with the PC throughout the life of their appointment to ensure the health and safety implications of design aspects and later changes are properly considered, support the PC in drawing up the construction phase plan as well as developing the health and safety file and providing it to the client at the end of the project.

The regulations do recognise that in some projects the PD may not be contracted throughout the whole life of the project – especially when the design stage is complete and the construction phase is well advanced. If, in this situation the PD is released from the project, then the responsibility for completing the health safety file and handing it to the client at the end of the project passes to the PC.



The notification threshold for projects has changed. A project becomes notifiable where it lasts longer than **30** days AND has more than **20** workers, **working simultaneously at any one point OR** exceeds **500** person days.

Increasing the notification threshold will reduce the number of projects required to be notified significantly, and thus reduce the burden on business.

Notification is a stand-alone requirement and does not give rise to any additional duties.



Removal of 'competence'

'**Competence**' is a term that has no minimum standard of compliance, is widely misunderstood, and unhelpfully applied to both individuals and organisations. This can give rise to unintended bureaucracy, without necessarily improving the development of a competent workforce in all sectors of construction.



To address some of these issues and to make the delivery of a competent workforce clearer for dutyholders, the new regulations have disentangled 'competence' into its component parts of 'skills, knowledge (including training) and experience' and where it refers to an organisation, 'organisational capability'.

The new regulations focus attention on the work that individuals and organisations are appointed to undertake and require that those appointed have the necessary skills, knowledge and experience to deliver that work effectively and safely – each and every day.

It's therefore incumbent upon anybody appointing a contractor or designer (including PD and PC) to ensure they have the necessary skills, knowledge and experience, before they are appointed.

The regulations also provide flexibility for those employing and appointing site workers, by requiring that those employed or appointed either have or are obtaining the necessary SKE for the task in hand. By requiring contractors to provide adequate supervision for all workers under their control, the regulations allow workers to develop site skills without being put at risk or putting themselves and others at risk.

The Construction Phase Plan

All construction projects will now require a construction phase plan (CPP) – irrespective of size and duration. The purpose of this provision is to focus those undertaking even the smallest of projects (including domestic work) on the planning of the project and ensure associated risk is considered and controlled.

The plan should be proportionate to the scale of the job and the health and safety risks involved. Plans involving smaller, less risky jobs should be short and simple and should require no further consideration than is already required for well-managed activities.

To help small construction businesses complete these plans without additional burden, HSE has produced a simple template. The template CPP is available from the HSENI website and includes the necessary information to allow businesses to plan their work and consider risks quickly and efficiently.

Additionally HSE and CITB have developed a smartphone app, freely available to download from the CITB website, which allows the construction phase plan to be completed within a few minutes without any paper form filling. This app is designed for small businesses undertaking routine construction projects. Once the relevant construction activities are input – the app identifies the common health and safety risks automatically, and the control measures that should be followed. The plan is automatically generated and can be saved or emailed to others such as clients and other contractors.

HSENI encourages all small building firms to adopt this approach.

Does maintenance work need a Construction Phase Plan?

The definition of construction work has not changed and dutyholders still need to make a sensible judgement as to whether CDM 2016 applies to activities such as maintenance. For example, where the activities involve general maintenance of fixed plant involving mechanical adjustments, replacing parts or lubrication it is unlikely to be construction work and CDM 2016 will not apply. However, where the task in hand looks like building work,

requires construction skills and uses construction materials, CDM 2016 is likely to apply. In this case, the job will need planning. A practical and proportionate construction phase plan, which highlights the real risks of the work, should be prepared and kept up-to-date.

What should designers and contractors be saying to clients (domestic, inexperienced or otherwise)?

A designer can take many guises from an architect, technician or technologist through to the specific designer disciplines of structural, civil, electrical and the like. Moreover, any other discipline (including contractors) preparing or modifying a design, or arranging or instructing another under their control to do so, is a designer. Irrespective of the role, the duties on the designer remain the same. Primarily, their first obligation will be to ensure that before they start any design work that the client is aware of their obligations under CDM.

Designers' responsibilities differ little in this respect from that conferred on them by CDM 2007. A designer should have sufficient knowledge of the client's obligations in order to be able to assess their knowledge and advise them of their role. Advising the client of their obligations is a routine matter that will be part of any early discussions about the project.

The regulations do not specify any one method by which designers will discharge this responsibility and indeed it will be on a case by case basis.

Many designers have in the past, used a standard letter format to the client and this may well continue to be a sensible approach. In the smallest of commercial projects, this may prove a useful method, but it may be that verbal advice and assurance is enough. It is often helpful for a designer to have some mechanism to record that they have discussed and advised the client on this issue – but any such mechanism should minimise bureaucracy.

Messages for contractors and domestic clients

Most importantly, the regulations do not seek to make the lives of contractors more difficult. By passing the client responsibilities to the Principal Contractor or contractor in control of the project or the designer if the domestic client so wishes, the current position for domestic projects changes little.

The new regulations intend to support small business in improving health and safety standards on sites where incident rates are high. It is not the intention to increase bureaucracy or cost – quite the opposite. By providing clear guidance through the industry guides for principal contractors and contractors and supporting that guidance with the template CPP and smartphone app, HSENI believes that small construction projects can be delivered to a higher standard of health and safety and thus cost effectiveness, with minimal extra work on the part of business.

Top Tips

1. Read the industry guides – they are a great help.
2. Download the CITB smartphone CPP app and use it.
3. Make sure work is planned in a sensible and proportionate way.
4. Concentrate on the real risks involved with construction work.
5. Be aware of your possible role as a client in domestic projects.
6. Use the HSENI & HSE CDM 2015 website – it has all the information you need for free.
7. Remember – HSENI does not expect contractors to be health and safety officers – they want you to work safely.
8. Contractors and designers need to communicate and help each other in delivering a successful project.