



CDM 2007

QUESTIONS & ANSWERS

PAT PERRY



CDM 2007

Q&A

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Pat Perry



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1

The Construction (Design and Management) Regulations 2007 – The Regulations Explained

1.1 What are the CDM Regulations and what is their purpose?

The CDM Regulations are the common name for the Construction (Design and Management) Regulations 2007, a set of Regulations which came into force on 6 April 2007.

The Regulations replace the Construction (Design and Management) Regulations 1994 (and amendments) and the Construction (Health, Safety & Welfare) Regulations 1996.

The purpose of the Regulations is to improve the health and safety record on construction sites by requiring all parties involved in a construction project to take responsibility for health and safety standards. By requiring better planning, design and management of a construction project, it is believed that unacceptably high accident and fatality rates will be reduced.

The Regulations are also intended to help reduce the high incident rate of occupational ill-health which is common in the construction industry e.g. chronic respiratory conditions, muscular–skeletal conditions, industrial deafness, industrial dermatitis and so on.

Those who could create health and safety risks have been made responsible for considering and controlling them during all stages of the project – conception, design, planning, construction work, future maintenance and use of the building, including demolition.

1.2 Why have the 1994 Regulations been replaced?

The CDM Regulations 1994 were instrumental in improving the overall health and safety on construction sites but they were deemed relatively ineffective in

reducing design risks, changing attitudes to the importance of planning and managing projects and so did not bring the improvements in health and safety expected.

In particular, clients and designers were slow to accept their duties and failed to understand the intent of the Regulations regarding hazard elimination, etc.

The Planning Supervisor role was seen by most parties involved in a construction project as unnecessary and ineffective, and there was very little “planning” or “supervision” of projects by them.

The 1994 Regulations also generated huge amounts of paperwork and it seemed that the volume of paperwork generated for a project would indicate how effectively they were complying with CDM.

Often, all duty holders under the 1994 Regulations would hide behind the paperwork and little improvement was seen in relation to managing, communicating and co-ordinating risk on a construction project.

The old Regulations were seen as complex and bureaucratic and divorced from the Regulations governing site safety i.e. the Construction (Health, Safety and Welfare) Regulations 1996.

There were also concerns raised by the EU Commission that the UK had not adequately adopted the relevant EU Directive and improvements were being required to ensure consistency across all EU Countries.

1.3 Do the CDM Regulations apply to all construction projects?

Yes.

The 2007 Regulations apply to all construction works irrespective of how many operatives are engaged on the project. The 1994 Regulations exempted construction projects where there were five or fewer operatives on site. The 2007 Regulations have removed this exemption because health and safety is as much a concern on smaller sites as it is on larger sites.

Not all of the 2007 Regulations apply to all construction projects – Part 3 which covers additional duties where a project is notifiable applies only if the construction phase lasts more than 30 days or more than 500 person days.

Most duties remain on clients, designers and contractors regardless of notification.

1.4 What is “construction work” under the CDM Regulations?

Construction work means the carrying out of building, civil engineering or engineering construction work.

The definition includes:

- The construction, alteration, conversion, fitting out, commissioning, renovation, repair, upkeep, redecoration or other maintenance (including cleaning which involves the use of water or an abrasive at high pressure or the use of substances classified as corrosive or toxic) de-commissioning, demolition or dismantling of a structure.
- The preparation for an intended structure, including site clearance, exploration, investigation (but not site survey), excavation, laying and installing the foundations of the structure.
- The assembly on site of pre-fabricated elements to form a structure or the disassembly on site of pre-fabricated elements which immediately before such disassembly formed a structure.
- The removal of a structure or part of a structure or any product or waste resulting from demolition or dismantling of a structure or from the disassembly of pre-fabricated elements which, immediately before disassembly, formed a structure.
- The installation, commissioning, maintenance repair or removal of mechanical, electrical, gas, compressed air, hydraulic, telecommunications, computer or similar services which are normally fixed within or to a structure.

1.5 What is not “construction work”?

The following activities are generally not classed as construction work:

- General horticultural work and tree planting
- Archaeological investigations
- Erecting and dismantling of marquees
- Erection and dismantling of lightweight partitions to divide open plan offices
- Creation of exhibition stands and displays
- Erection of scaffolds for support or access for work activities which are not classed as construction works
- Site survey works e.g. taking levels, assessing soil types, examining structures
- Work to or on ships
- On-shore fabrication of elements for off-shore installations
- Factory manufacture of items for use on construction sites.

1.6 The CDM Regulations refer to key appointments which must be made on a construction project. What does this mean?

The CDM Regulations identify key duty holders who have responsibilities for ensuring that health and safety matters are addressed during construction projects. They are:

- (1) The Client
- (2) The Designer

- (3) The CDM Co-ordinator (only for notifiable projects)
- (4) The Principal Contractor (only for notifiable projects)
- (5) Contractors.

The Client is anyone for whom a construction project is carried out.

The Designer is anyone who carries on a trade, business or undertaking in connection with which he:

- Prepares a design, or
- Arranges for any person under his control to prepare a design,

relating to a structure or part of a structure.

The CDM Co-ordinator is a competent person or body with the overall responsibility for co-ordinating health and safety aspects of the design and planning stage and advising the client on all health and safety matters.

The Principal Contractor is appointed on notifiable projects and must be a Contractor. They must take responsibility for all site-specific safety issues, including ensuring that Contractors and Sub-Contractors are competent and have resources to carry out the work safely, that a Health and Safety Plan is developed. Principal Contractors are also responsible for providing information, training and consultation with employees, including the self-employed.

Contractors are those who manage or carry out construction work.

1.7 The CDM Regulations refer to a “notifiable project”. What is this?

The Regulations require certain projects to be notified to the Health and Safety Executive (HSE).

A construction project is notifiable to the HSE area office when:

- It will, or is expected to, last more than 30 days, or
- It will, or is expected to, involve more than 500-person days.

The HSE requires certain information which is outlined in Schedule 1 of the CDM Regulations. As long as the relevant information is given it can be supplied in any format but in order to facilitate notification the HSE have produced Form F10 (rev.) which can be used for all projects.

An example of Form F10 (rev.) is shown in Appendix 5A.

1.8 When does the construction phase start and are weekends and bank holidays counted?

The construction phase for the purposes of notification to the HSE is from the day “construction works” start.

Remember, *site clearance* constitutes construction works and must be included in the calculation.

If construction work is programmed to take place on Saturdays and Sundays and on any Bank Holiday, no matter how long the working shift will be, these days must be counted as “construction days”.

1.9 What is a “person day”?

A “person day” is any day or part of a day (no matter how short) when someone is expected to carry out construction work. A person day relates to *one* individual and includes Site Agents, Foreman and Supervisors.

They do not actually have to be carrying out any physical work to be involved in “construction work” – if they are managing the project they are included as a “person day”.

1.10 Why do the HSE need to know about these projects?

The HSE enforces health and safety laws in the construction industry. Projects lasting over 30 days are considered to be substantial building or refurbishment projects where the risks to health and safety of operatives and others can be high. The HSE has always been made aware of construction projects so that they can plan their inspection programme of enforcing the laws.

The HSE receive over 500,000 project notifications per year and use the notification process to help them target their on-site inspection priorities. In addition, they will review the F10's to try to influence the design process, enquiring about the provision for health and safety where appropriate.

1.11 What does the HSE do when they receive all these F10's?

The Construction division of the local HSE office records all forms received and allocates the projects to individual inspectors. The HSE inspectors base their routine inspections on the type of projects notified and will prioritize projects into perceived risk categories e.g. those where falls from height are likely, or which involve excavations and so on.

The Construction Inspector, or the Administration Officer, will look at key dates on the form. They are interested to note when the form is signed by the Client (or on his behalf) and received by them, and when works are proposed to start on site.

The time allowed for preparation and planning on the project will be of critical importance to the HSE.

If there are only a few days between the HSE receiving the form and works starting on site they will investigate because the essence of CDM is to involve

the CDM Co-ordinator (and Designers) in the planning process of a project in respect of health and safety and to allow the Principal Contractor adequate time to plan and prepare for the start on site.

They will want to establish whether:

- The Client appointed a CDM Co-ordinator early enough in the project i.e. as soon as he had information about the project and the construction work involved
- The CDM Co-ordinator notified the project to the HSE as soon as was practicable after their appointment.

A Client who fails to appoint a CDM Co-ordinator early enough in the project is guilty of an offence. Likewise, a CDM Co-ordinator who fails or delays in notifying a project unreasonably, is guilty of an offence.

It is not a valid excuse for either party to rely on the fact that financial resources had not been released for the project and the project was therefore not “live”.



Case Study

A Developer was undertaking “core and shell” works for new retail units and had notified HSE in the usual way. The shell unit went under offer to a restaurant company who commissioned their Designers to fit out the shell. The Developers work over-ran the timescales and legal complications delayed the Client purchase. The Client appointed the CDM Co-ordinator as soon as the legal work had been completed and the shell building was handed over. The Client wanted works of fitting out to start as soon as possible. The CDM Co-ordinator notified the HSE on Form F10, indicating that works were due to start on site in approximately 2 weeks.

The HSE wrote to the CDM Co-ordinator to enquire at what date they were appointed and why notification had only just taken place. They asked to see letters of appointment for the CDM Co-ordinator with a view to determining whether the Client had failed in their duty to appoint the CDM Co-ordinator “as soon as practicable after information about the project becomes available”. Also the Inspector wanted to know what time had been allowed for preparation and planning by the Principal Contractor – 2 weeks seemed inadequate to him for the size of the project.

If the Client had complied with his legal duty of an early appointment, the HSE wanted to establish whether the CDM Co-ordinator was dilatory in making the notification, thereby breaching their duties under Regulation 21.

In this instance, the HSE advised that in their view, the Client had appointed the CDM Co-ordinator too late in the design process and that in future, the Client should appoint the CDM Co-ordinator as soon as an intended purchase had been agreed.

1.12 What happens if a project was originally going to last less than 30 days (or 500-person days) and not be notifiable but due to unforeseen circumstances it will now take longer?

First, you must review *why* you thought it would be lasting less than 30 days in the first place. The Regulations state that where it is reasonable to assume that a project may take longer than 30 days (or 500-person days) it must be notified. The HSE will view seriously any intent to evade the Regulations by avoiding notification.

If the project is only to over-run by a few days the HSE will not expect retrospective notification.

If the project will last a few more weeks, the CDM Co-ordinator should notify the HSE office on Form F10 and include a covering letter explaining the reasons for the project over-run and the late notification.

1.13 Is demolition work covered by CDM 2007?

Yes.

Demolition works are construction works and all of the Regulations apply except Part 3 – notifiable projects – when the works last for less than 30 days or involve less than 500-person days.

If demolition works are expected to last for more than 30 days or involve more than 500-person days then the project must be notified to the HSE and the Client must appoint the appropriate duty holders i.e. CDM Co-ordinator and Principal Contractor.

Specifically under CDM 2007, demolition works are required to have a written plan showing how danger is to be avoided. This plan is to be drafted by those in control of the works (Regulation 29).

1.14 What does demolition and dismantling work include?

Demolition is taken to mean the deliberate pulling down, destruction or taking apart of a structure, or a substantial part of the structure.

Dismantling is the taking down, or taking apart, of all, or a substantial part of a structure, and includes situations where the structure is carefully taken down for re-use.

A “structure” is defined as:

“Any building, steel or re-enforced concrete structure (not being a building), railway line or siding, tramway line, dock, harbour, inland

navigation, tunnel, shaft, bridge, viaduct, waterworks, reservoir, pipe or pipeline (whatever in either case it contains or is intended to contain) cable, aqueduct, sewer, sewerage works, gasholder, road, airfield, sea defence works, river works, drainage works, earthworks, lagoon, dam, wall, caisson, mast, tower, pylon, underground tank, earth retaining structure, or structures designed to preserve or alter any natural feature, and any other structure similar to the forgoing”, or

“Any formwork, false work, scaffold or other structure designed or used to provide support or means of access during construction work”.

The CDM Regulations apply to demolition and dismantling works irrespective of whether the project is notifiable and regardless of how many operatives are involved in undertaking the work.

1.15 Is there a difference between “demolition” and “dismantling” works?

Demolition is the deliberate pulling down, destruction or taking apart of all, or a substantial part of the structure.

Dismantling is the taking down, or taking apart, of all, or a substantial part of a structure.

Dismantling for re-erection or re-use will be demolition for the purposes of CDM.

The formation of openings for windows, doors and services are not in themselves demolition works.

The removal of cladding, roof tiles or scaffolding is not, in itself, demolition or dismantling works unless included in or combined with other building operations.



Case Study

A small retailer is having a brick outhouse demolished to make way for additional car parking. The building is single storey, single skin brickwork under a flat roof. The local builder can undertake the work in 2 days with 3 men on site.

The works involved fall within the definition of construction work and irrespective of their duration and number of operatives on site the works come under the control of CDM.

The Client – the Shop Owner and the Contractor have to comply with all the requirements of CDM except Part 3: Notifiable Projects.

He appoints a competent contractor and discusses with him the use of the rear yard, the previous use of the outhouse and passes to the contractor any information as to how it was constructed.

The Contractor makes notes that the rear yard is used for access to the shop by delivery vehicles but it is not used as staff access, nor does anyone else have rights of access. The information on the building to be demolished is brick, single skin, and flat-felt roof. No services are connected to the out building, no asbestos was present and the structure to be demolished is straightforward. To comply with Regulation 29 a short written Plan of Works or Method Statement is produced by the Contractor and agreed with by the Client.

He stipulates that the rear yard will be cordoned off, that the shop owner will re-schedule deliveries for later in the week, after demolition, that the skip will be positioned away from the rear emergency exit door, that his operatives will be able to use the shop WC and tea-making facilities, that waste will be removed by a licensed disposal company. In addition, the builder prepares a brief Method Statement covering the sequence of demolition, identifying hazards and risks e.g. dust inhalation, falling from height, manual handling and so on.

The shop owner is given a copy of the Health and Safety Plan and it is agreed before works start.

1.16 How do the CDM Regulations apply to Term Maintenance contracts?

If the works are “construction works” then CDM Regulations apply to those aspects of the project. Therefore, any painting, renewals, repairs, redecoration, maintenance, improvements, etc. are likely to be construction works – it is a wide ranging definition.

If the works are “construction works” and last more than 30 days or involve more than 500-person days then they will be notifiable and all CDM Regulations will apply.

Where some of the works are outside of the Regulations and some within it, it would be advisable to apply CDM to all of the works, although any management arrangements could clearly outline how both aspects of the project would be managed.

Projects involving term maintenance must be reviewed individually.

1.17 Does CDM apply to emergency works?

In any emergency, the first priority is to make sure that the premises or structure is safe and without imminent risk to the health and safety of members of the public and others.

Once the making safe has been carried out then CDM Regulations should be applied i.e. the Client should make the appointment of a CDM Co-ordinator and Principal Contractor as soon as is practicable.

Designers, once appointed, must fulfil their responsibilities under Regulation 11.

The Construction Phase Health and Safety Plan should be developed as soon as is practicable and if time does not allow a written Plan to be completed before the emergency works take place, verbal discussions and agreement should be reached regarding key health and safety issues. If possible, the key issues should be written down and the body of the Plan can then be developed as the works progress.

Emergency works that are likely to be substantial will inevitably fall under the CDM Regulations. It would be wise to consult the local HSE Office about any plans, etc. even if there is no time to prepare the paperwork.

1.18 Who are domestic Clients?

Domestic Clients are Clients who have work done which does not relate to any trade, business or other undertaking. This is usually someone who commissions work on their own home, or the home of a family member.

No duties are placed on domestic Clients by CDM. Those working for the domestic Client may have duties.

1.19 Do the Regulations apply to domestic house building or repairs?

If you commission a builder to build you a house for your own occupation then CDM Regulations do not apply, with the exception that Designers have to comply with their duties to design safely and Contractors have to comply with Part 4 of the Regulations. A domestic client has no “client” responsibilities under the Regulations.

If you have a new conservatory, extension, loft conversion or similar then CDM does not apply. If you have major renovations carried out, then CDM does not apply. Designers will have to comply with Regulation 11 and any contractors will have to ensure that health and safety requirements are met.

If you commission a house to be built to sell it to someone else, then you are likely to be a developer and CDM Regulations will apply, including the duties imposed on clients.

Notification of projects to the HSE is not required if the client is a domestic client i.e. does not carry out a business or undertaking from the premises.

1.20 What duties remain in respect of CDM when work is done for a domestic Client?

Contractors have to comply with all the duties placed on them as laid out in Part 4 and Schedule 2 of CDM 2007.

Designers have duties under Regulation 11 i.e. they must have adequate regard to health and safety when preparing their designs and must provide health and safety information to the domestic Client and contractor as necessary to ensure that health and safety standards are met.

1.21 How do the CDM Regulations apply to Developers?

When a project is carried out for a domestic Client and that person enters into an agreement with a person who carries on a business, trade or undertaking (whether for profit or not) in connection with which:

- Land or an interest in the land is granted or transferred to the domestic Client
- Construction work will be carried out on the land, and
- Following the construction work, the land will include premises which will be occupied as a residence.

then that person arranging for the construction work to be carried out will be a developer under the CDM Regulations.

All of the CDM Regulations 2007 will apply to the project.

1.22 What constitutes a “developer” under CDM?

A developer is someone who carries on a trade, business or undertaking (whether for profit or not) in connection with which:

- (a) Land or an interest in land is granted or transferred to the Client; and
- (b) The developer undertakes that construction work will be carried out.

In effect, a “developer” is a commercial developer who sells domestic premises before a project is complete and arranges for construction work to be carried out.

Developers in this category include Housing Associations, local councils, self-build companies and other such bodies, whether they are profit making or not national house builders.

1.23 What are the consequences of failing to comply with the CDM Regulations?

All “duty holders” have legal responsibilities under the CDM Regulations.

Health and Safety legislation is triable “either way” i.e. either on summary conviction or on indictment. This means prosecutions can be heard in the Magistrates Court or the Crown Court.

If prosecutions are brought in the Magistrates Court for contraventions of CDM Regulations then the maximum fine per offence is £5,000. If prosecutions are brought in the Crown Court then fines are unlimited and custodial sentences are possible.

Any of the following can be prosecuted if they fail to discharge their legal duties:

- (1) The Client
- (2) The CDM Co-ordinator
- (3) The Principal Contractor
- (4) The Designers
- (5) The Contractors
- (6) The Workers.

Since 1995 the HSE have brought 267 successful prosecutions against duty holders under the CDM Regulations 1994.

Of those 267 cases, 144 have been brought against clients, with the following contraventions:

- 20% failed to appoint a Planning Supervisor
- 20% failed to ensure that a Construction Phase Health & Safety Plan was in place
- 20% failed to ensure that Construction Phase Health & Safety Plan was suitable and sufficient
- 10% failed to provide adequate information to either contractors or designers e.g. failed to undertake an asbestos survey.

A Planning Supervisor was fined £20,000 for failing to put information about asbestos into the Pre-Tender Health & Safety Plan.



Case Studies

Number 1

Following an investigation into two accidents, one a fatality, which happened on a construction site in London, the HSE brought a prosecution against the Principal Contractor for failing to have an adequate Construction Phase Health and Safety Plan in operation over the period of the two accidents.

The HSE also prosecuted the ground works Contractor for failing to take all reasonable steps to ensure that an excavation did not collapse accidentally and for failing to take suitable and sufficient measures to prevent vehicles overrunning the edge of an earthwork.

The Construction Phase Health and Safety Plan failed to consider the hazards and risks of the ground works did not include Risk Assessments and suitable Method Statements.

The prosecutions were heard in the Crown Court due to the severity of the accidents and the Principal Contractor was fined £20,000 plus £3,000 costs. The ground works Contractor was fined a total of £20,000 for two charges under the Construction (Health Safety and Welfare) Regulations 1996 plus £3,000 costs.

Number 2

HSE Prosecution of a Client, Designer and Planning Supervisor (under CDM 1994 Regulations).

A client, designer and a planning supervisor, as well as the contractors undertaking the work, were recently prosecuted at Preston Crown Court following the fatal accident to a scaffolder from Warrington who died after falling through a fragile roof light while working on an extension to a warehouse.

According to the HSE the following were charged:

- *** plc, the clients for the work, pleaded guilty of a charge under the Regulation 11 of the Construction (Design and Management) Regulations 1994 (CDM Regulations). He was fined £2,500 and ordered to pay £1,500 costs.
- ***, a partner in a firm of architects, the project designer, pleaded guilty to a charge under Regulation 13(2) (a) (i) of the CDM Regulations. He was fined £2,500 and ordered to pay £1,500 costs.
- ***, a partner in a firm of architects, the planning supervisor for the project, pleaded guilty to a charge under Regulation 15(1) of the CDM Regulations. He was fined £2,500 and ordered to pay 1,500 costs).
- *** Ltd, the deceased's employer, pleaded guilty to a charge under Section 2(1) of the Health and Safety at Work Etc Act 1974 (HSW Act). The company was fined £35,000 and ordered to pay £20,000 costs.
- *** Ltd, the Principal Contractor for the work, pleaded guilty to a charge under Section 3(1) of the HSW Act. The company was fined £25,000 and ordered to pay £15,000 costs.

The Principal Inspector for the HSE said “This was a tragic incident in which a man lost his life in circumstances that could so easily have been prevented. The dangers presented by fragile roof materials have been well known for many years, yet were not taken into consideration in this case. Considerable time had been spent planning the job and any one of those involved had the opportunity to realize that somebody could fall through the warehouse roof. Simple steps could then have been taken to prevent this death. If this had been done, the deceased would still be alive today”.

1.24 What civil liability extends to the CDM Regulations?

The CDM Regulations constitute criminal law – it is a criminal act to contravene them. Anyone who does so incurs a criminal record.

Civil law applies to situations where an individual can sue another person (or corporate body) for damages due to their negligence i.e. failing in their common law duty of care.

Being prosecuted for criminal offences under CDM does not infer an automatic right to bring civil proceedings. A successful prosecution does not necessarily imply a failure in the duty of care under civil law and a successful civil case will depend on the facts of the case.

Regulation 45 of CDM 2007 states that breaches of certain duties may confer a right to make a civil claim e.g. in instances where the site was inadequately protected from unauthorized access, duties imposed under Regulations 26 to 44 were ignored, welfare facilities not provided, etc.

1.25 Will the CDM 2007 Regulations only be enforced by the Health & Safety Executive?

No, not necessarily. Generally, most construction sites come under the jurisdiction of the HSE for health and safety enforcement and therefore CDM enforcement.

But the changes introduced in the new CDM 2007 Regulations mean that there will be opportunity for local authorities to enforce CDM in those premises for which they have statutory inspection duties e.g. retail premises, offices, entertainment venues, sports facilities, etc. The Health & Safety (Enforcing Authority) Regulations 1998 set out which enforcement body is responsible for enforcing the law in various types of workplace.

Where works are construction works and generally, where they are not notifiable, the local Environmental Health Officer could be responsible for ensuring

that CDM is being followed – especially in relation to site safety matters e.g. working at heights, use of equipment, provision of welfare facilities and so on.

The HSE are responsible for enforcing health and safety – and fire safety – on construction sites and if the area where the work is being carried out can be described as “a place set aside for construction work” then the HSE will enforce the CDM Regulations.

Projects which are notifiable will be enforced by the HSE.

1.26 The CDM 1994 Regulations did not apply to some constructions works carried out in a workplace in which the local authority enforced the law. Has CDM 2007 changed this?

Yes.

CDM 2007 applies to *all* construction works and apart from domestic clients, has to be applied to all construction projects.

Previously, two sets of Regulations applied to construction works – CDM Regulations 1994 and Construction (Health, Safety & Welfare) Regulations 1996. It may have been the case that the CDM 1994 Regulations did not apply to a project but the “welfare” Regulations did, thereby ensuring that health and safety standards were set. So, even if they did not need to enforce CDM '94, officers could have enforced the Construction (Health, Safety & Welfare) Regulations 1996.

CDM 2007 Regulations combine both the former CDM 1994 Regulations and the Construction (Health, Safety & Welfare) Regulations 1996 in to one comprehensive set of Regulations. So there can therefore be no exemptions to the Regulations as this would mean some construction activity would be outside of the law.

1.27 Does CDM 2007 apply to all forms of building procurement such as PFI, PPP, etc.?

Yes – both because irrespective of how the project is funded or acquired works will be construction and design work will take place.

Project originators should take on the duties of clients and ensure that a CDM Co-ordinator is appointed early on into the project and that HSE notification is made in a timely manner.

The role of client can be assigned to other parties during the course of the project but there must always be someone clearly identified in that role.

Where multiple clients are discussing and agreeing a new project one of them must be appointed the Client in order to comply with CDM. It would be sensible to record this as part of the management process and communicate to all other parties.

1.28 If there are several clients involved in a project do they all have duties under CDM 2007?

Not necessarily.

Regulation 8 CDM 2007 allows for multiple clients to elect either one or more of them to be classed as the Client under the Regulations.

All clients have to agree in writing that such an election has taken place and once this has been done, no other client will be required to fulfil client duties, except that they will all be required to provide any information to other parties as appropriate.

If there is no agreement in writing or no one client wants to take on the full responsibility for everyone else, then all clients will remain as clients under CDM 2007 and their various CDM Co-ordinators will have to ensure good co-operation and co-ordination of information, etc. during the course of the project.

It would be sensible to start the initial project meetings with a review of CDM responsibilities and minute the discussion and decisions made regarding the appointment of duty holders, etc.

1.29 What are the general duties imposed on everyone under CDM 2007?

The CDM Regulations 2007 have emphasized the need for duty holders to be competent to do the jobs they are appointed to and for everyone involved in the construction project to be competent and/or properly supervised.

The Regulations contain general duties on:

- Competence
- Co-operation
- Co-ordination.

The Regulations also contain the general duty that all persons involved in planning, designing or carrying out construction work follow the principles of prevention in respect of health and safety.

1.30 What are the duties in respect of competence?

Regulation 4 requires that no person on whom the Regulations place a duty i.e. Clients, CDM Co-ordinators, Principal Contractors, Contractors, Designers, shall appoint or engage anyone to undertake the role of:

- CDM Co-ordinator
- Designer
- Principal Contractor
- Contractor.

unless he has taken reasonable steps to ensure that the person to be appointed is competent to carry out the tasks required.

No person who is offered an appointment under CDM 2007 should take on the role unless they themselves are satisfied that they are competent to undertake the role.

No person may instruct a worker to carry out or manage construction work unless he is competent or under the supervision of a competent person.

This means that anyone who wishes to appoint or engage someone to do a construction activity, or design a new building, etc., must be satisfied that the person they want to appoint has sufficient knowledge and experience to carry out the tasks.

Often accidents and major incidents occur because the people carrying out potentially complex tasks have been appointed because they are the cheapest and can do the job the quickest. There have been many incidents involving the collapse of buildings because the contractors involved have not understood the correct demolition sequences or have not been experienced enough in undertaking the job thereby being ignorant of the hazards and risks involved.

All persons have this duty so if for instance, a designer needs to engage the services of say, a structural engineer he must ensure that the person is competent and not just appoint the cheapest company.

A client should ultimately be satisfied that his whole design, procurement and implementation team is competent and should therefore ensure that if members of the project team appoint sub-contractors, etc. that they have rigorous procedures in place for assessing competencies.

1.31 What are the duties in respect of co-operation?

Regulation 5 CDM 2007 states that every person concerned in a project, on whom a duty is placed by the CD Regulations shall:

- Seek the co-operation of any other person concerned in any project involving construction work at the same or an adjoining site so far as is necessary or function under the Regulations; and
- Co-operate with any other person concerned in any project involving construction work at the same or an adjoining site so far as is necessary to enable that person to perform any duty under the Regulations.

Any person who is working on a project under the control of another person must inform that person if they believe there is any issue which could affect their own or others health and safety.

This Regulation requires everyone to co-operate with each other, whether part of the project team for the construction project or involved in a separate project which may have some influence on the main project.

Co-operation will be required for instance, in areas with shared access. The retail store may be having an extension built and the rear service yard may be used by other retailers. The Principal Contractor may need to co-ordinate his

materials deliveries with the other premises stock deliveries. The other retailers must co-operate with the Principal Contractor so as to enable the Principal Contractor to operate safely.

HSE see the improvement in co-operation between duty holders as a significant step in improving the incidents of poor health and safety e.g. often contractors will have to handball materials long distances increasing musculoskeletal risks because others have blocked the vehicle entry to the delivery area.

1.32 What are the duties in respect of co-ordination?

All persons concerned with a project on whom duties are placed by the Regulations shall co-ordinate their activities with one another in a manner which ensures, so far as is reasonably practicable, the health and safety of persons:

- Carrying out the construction work and
- Affected by the construction work.

Co-ordination means to:

“bring together and cause to work together efficiently”.

If all parties involved in a project co-operated with and co-ordinated their work with each other, better planning would result and conflicts involving health and safety would be significantly reduced.

How many times do builders work and mechanical and electrical installations clash on site, often creating unsafe working conditions when one or other of the parties has to “make do” to make something work on site, usually ending up working in an unsafe way to get the job done.

Because co-ordination of activities is seen as such a critical factor in reducing health and safety incidents, the Planning Supervisor role has been replaced by the CDM Co-ordinator.

1.33 Do the CDM Regulations 2007 apply to Scottish projects?

Yes.

The Regulations, in their entirety apply in Scotland.

1.34 Do the CDM Regulations 2007 apply in Wales?

Yes.

The Regulations, in their entirety apply in Wales.

1.35 Do the CDM Regulations 2007 apply in Northern Ireland?

Yes, although the Regulations have the addition of Northern Ireland in the title. The Regulations, in their entirety apply in Northern Ireland.

1.36 Does CDM 2007 apply to term contracts?

CDM 2007 does not apply to the “term contract” but may apply to the individual projects undertaken as part of the term contract.

HSE’s general view regarding term contracts is that any F10 notification will be project specific within the general term of the contract.

Notification for a term contract for general work that may not take place is not of benefit.

HSE are interested in works of construction which will last more than 30 days or take more than 500-person days. These projects will be notifiable whenever they occur in a term contract.

CDM 2007 applies to all construction work so really the only consideration will be to decide whether the work package is notifiable.

It may be sensible to address the roles and responsibilities of CDM 2007 and outline the procedural approach for compliance within the term contract.

A practical approach to a term contract in which minor works are carried out to a range of buildings by the same team is to appoint someone in to a similar role to that of the CDM Co-ordinator i.e. someone to co-ordinate all the health and safety issues, any design issues across all the contractors teams.

2

Health and Safety Legislation

2.1 What legislation applies to the construction industry and its projects?

All legislation which places duties on employers and others to ensure the safety of their workers and those affected by their undertaking is relevant to the construction industry.

The following legislation can be applied to construction projects:

- Health and Safety at Work Etc Act 1974
- Health & Safety (First Aid) Regulations 1981
- Electricity at Work Regulations 1989
- Control of Noise at Work Regulations 2005
- Construction (Head Protection) Regulations 1989
- Personal Protective Equipment Regulations 1992
- Manual Handling Operations Regulations 1992
- Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995
- Control of Vibration at Work Regulations 2005
- The Health & Safety Signs and Signals Regulations 1996
- The Confined Spaces Regulations 1997
- The Provision and Use of Work Equipment Regulations 1998
- The Lifting Operations and Lifting Equipment Regulations 1998
- The Management of Health & Safety at Work Regulations 1999
- The Regulatory Reform (Fire Safety) Order 2005
- Control of Asbestos Regulations 2006
- Control of Lead at Work Regulations 2002
- Control of Substances Hazardous to Health Regulations (COSHH) 2002
- Working at Height Regulations 2005
- Corporate Manslaughter and Corporate Homicide Act 2007 (to be implemented April 2008).

In addition to the above list, one of the key pieces of legislation for construction safety is:

The Construction (Design and Management) Regulations 2007.

2.2 What are the main duties covered by the Health and Safety at Work Etc Act 1974?

The Health and Safety at Work Etc Act 1974 is the “underpinning” legislation which governs virtually all other health and safety law.

The Act sets out the general parameters of what is expected of employers and other persons in respect of ensuring their health, safety and welfare.

Regulations are subsidiary legislation made under the enabling powers of the Health and Safety at Work Etc Act 1974. Contravening Regulations is an offence and prosecutions can be brought regarding each offence. In addition, there may be a breach of the more general principles of health and safety enshrined in the 1974 Act and additional charges could be brought under various sections.

The main sections of the 1974 Act are as follows.

2.2.1 Section 2 General duty of employers to their employees

It shall be the duty of every employer to ensure so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

..... the matters to which that duty extends include:

- (1) Provision and maintenance of plant and equipment, and systems of work that are safe and without risks to health.
- (2) Arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances.
- (3) The provision of such information, instruction and training as is necessary to ensure the health and safety at work of his employees.
- (4) The maintenance of any place of work under the employers control in a condition which is safe and without risk to health and the provision of means of access and egress that are safe.
- (5) The provision and maintenance of a working environment that is safe, without risks to health and adequate with regards facilities and arrangements for their welfare at work.
- (6) Provision of a written statement of his policy in respect of health and safety of his employers.

2.2.2 Section 3

It shall be the duty of every employer, to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment are not exposed to risks to their health and safety.

2.2.3 Section 4

It shall be the duty of each person who has control of premises to take such measures to ensure that premises, means of access to and egress from available for use by persons using the premises are safe and without risks to health.

2.2.4 Section 7

It shall be the duty of every employee while at work :

- (1) To take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and
- (2) To co-operate with his employer so far as is necessary so as to enable the employer to undertake statutory duties.

2.2.5 Offences, penalties and prosecutions

Offences

These include the following:

- (a) Failing to comply with the general duties on employers, employees, the self-employed, persons in control of premises, manufacturers, etc.
- (b) Failing to comply with any requirement imposed by Regulations made under the Act.
- (c) Obstructing or failing to comply with any requirements imposed by inspectors in the exercise of their powers.
- (d) Failing to comply with an Improvement or Prohibition Notice.
- (b) Failing to supply information as required by a Notice served by the Health & Safety Commission (e.g. investigations into major accidents).
- (b) Failing to comply with a Court Order to remedy the cause of an offence.

Penalties

Most offences under the Health & Safety law are “triable either way” i.e. summarily or on indictment.

Breaches of employers duties under Section 2 Health and Safety at Work Etc Act 1974 carry a maximum fine of £20,000 *per offence* if tried summarily.

Breaches of employers duties under the numerous Regulations enacted under the Health and Safety at Work Etc Act 1974 carry fines of up to £5,000 per offence if tried summarily. In some circumstances, fines are up to £20,000 per offence.

Where the case is heard in the Crown Court, fines are unlimited.

Breaches of Improvement or Prohibition Notices carry either 6 months imprisonment if heard in the Magistrates Court or up to 2 years imprisonment if heard at Crown Court.

Prosecutions

(a) Offences by Companies, Corporate Bodies and Directors
(Health and Safety at Work Etc Act 1974 Section 37)

The Health and Safety statutes place duties upon limited companies and/or functional directors.

Where an offence is committed by a body corporate, senior persons in the hierarchy of the Company may be *individually liable*.

If the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the following persons, that person himself is guilty of an offence and liable to be prosecuted:

- Any functional director
- Manager
- Secretary (Company)
- Other similar officer of the company
- Anyone purporting to act as the above.

The conditions for liability under Section 37 are:

- Did the person act as the Company?
- If he acted in that capacity, did he act with neglect?

Directors, Managers and Company Secretaries are personally liable for ensuring that Corporate Safety duties are performed throughout the Company. They may be able to delegate the specific responsibilities but that does not absolve them of liability.

(b) Offences due to the act of “another person”

Section 36 of Health and Safety at Work Etc Act 1974 states that where an offence is due to the act or default of another person, then:

That other person is guilty of the offence, and

A second person (e.g. body corporate) can be charged and convicted whether or not proceedings are taken against the first-mentioned person.



Case Studies

Fatal injuries to conveyor belt worker

A 29-year-old man died after becoming trapped in a slew conveyor pit he was trying to clear.

The machine had no guard and no emergency stop button within reach.

Safety standards at the company were virtually non-existent and contraventions were found of the working at height regulations, transport safety, use of chemicals, equipment safety and the provision of welfare facilities.

An Area Manager with the Company and the Managing Director were both sentenced to imprisonment – 9 months and 12 months respectively.

Charges were brought under Section 2, Health & Safety at Work Etc Act 1974.

Construction worker dies after being hit by a dumper truck

A construction worker dies after being struck by a dumper truck when the brakes failed and it rolled out of control down a slope.

The prosecution involved both the contractors and individuals as the investigation identified an unsafe site.

The worker who dies was driving the dumper truck but he was not qualified or trained to do so.

The construction company was fined £75,000 plus costs of over £50,000 for breach of both Section 3 Health & Safety at Work Etc Act 1974 and a regulation in the 1994 CDM Regulations.

The sub-contractor was fined £100,000, with costs of £17,643, for breaches of Section 3 Health & Safety at Work Etc Act 1974.

Individual directors were fined £2,500 and £1,000 for breaches of Section 7 Health & Safety at Work Etc Act 1974.

2.3 What are the main duties contained in the Management of Health and Safety at Work Regulations 1999?

Employers must make suitable and sufficient assessment of the risks to health and safety of their employees and to non-employees affected by their work. Each risk assessment must identify the measures necessary to comply with relevant statutory provisions.

Risk assessments must be in writing where there are more than five employees and they must be reviewed regularly.

Employers must introduce appropriate arrangements for effective planning, organization, control, monitoring and review of the preventative and protective measures. These arrangements must be in writing where there are five or more employees.

Where appropriate, employees must have health surveillance if they are exposed to hazards which could affect their health and safety and well being.

Employers must establish and effect appropriate procedures to deal with emergencies e.g. evacuation, major chemical spillage, explosion and so on. Employees must stop work immediately and proceed to a place of safety, if exposed to serious imminent and unavoidable danger.

Employers must provide comprehensive and understandable information to all employees on risks identified in the risk assessments, emergency procedures, preventative and protective measures, competent personnel.

Employees must receive appropriate health and safety training on recruitment and throughout their employment.