

Construction (Design and Management) Regulations 2007 (CDM 2007)

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On 6 April 2007 new CDM regulations came into force which are intended to raise health and safety standards within the construction industry. CDM 2007 replaces CDM 1994 and also the Construction (Health, Safety and Welfare) Regulations 1996.

CDM 2007 applies to any "construction work" carried out in the UK. This is broadly defined and includes construction, alteration, repair, redecoration, maintenance, demolition, dismantling and high pressure cleaning.

Notifiable projects

Any construction project which is likely to involve more than 30 days, or 500 person days, of construction work is "notifiable" under CDM 2007. All of the duties under CDM 2007 apply to notifiable projects. Other projects are non-notifiable, but elements of CDM 2007 still apply.

Client

CDM 2007 defines the "client" as a person who, in the course of business, either carries out a project or appoints another to carry out a project. This means that there may be more than one client on a project, if, for example, there is both a developer and a landowner involved. The client is obliged to take reasonable steps to ensure that there are suitable arrangements to ensure health, safety and welfare on site. They are not necessarily required to manage the work but CDM 2007 makes the client liable for the adequacy of the arrangements that are in place. One important change in CDM 2007 is that the client is no longer able to delegate its duties and transfer its liabilities to an agent.

On projects where there is more than one client, a written election can be made to determine which of the clients will take the lead in meeting the obligations under CDM 2007. Election is voluntary and applies to both notifiable and non-notifiable projects. Once an election has been made, the elected client must comply with all of the client's obligations under CDM 2007. Any other client need only comply with duties to provide information and documents in their possession. However, should a client exercise control over a project, whether or not an election has been made, that client will be required to comply with the duties under Part 4 of CDM 2007 which relate to health and safety.

Other duties of the client include ensuring the competence of its appointees and providing pre-construction information to fellow duty holders. In addition, for notifiable projects, the client is obliged to appoint a "CDM co-ordinator", and a "principal contractor".

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The client is also obliged to ensure that construction work does not commence unless a "construction phase plan" has been prepared, and to take reasonable steps to ensure that the health and safety file is maintained.

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The CDM co-ordinator

This person was referred to as the "planning supervisor" under CDM 1994. The CDM co-ordinator assists the client in complying with its duties. This includes assisting the client with the appointment of competent contractors and designers, collating pre-construction information and providing it to the contractors and designers, co-ordinating design, planning and preparation. The CDM co-ordinator is also responsible for producing the health and safety file and notifying the Health and Safety Executive about the project.

Principal Contractor

The principal contractor's duties are very similar to those under the previous legislation and include preparing a suitable "construction phase plan" (health and safety plan under CDM 1994), ensuring that appropriate resources and facilities are available on site, and providing site inductions and training as appropriate.

Designers and Contractors

There are no major changes to the duties of designers and contractors, although under CDM 2007 the designers and contractors are prohibited from commencing work unless the client is aware of its duties.

Enforcement

Breaches of CDM 2007 are generally enforced by the HSE, and are punishable under the Health and Safety at Work etc. Act 1974 with a fine, which is unlimited in the higher courts. In addition, civil liability is imposed for breaches of certain duties, including the duties imposed on the client and principal contractor to meet site welfare requirements, and the duties on those controlling the works to comply with the Part 4 duties relating to health and safety.

Transitional arrangements

If a project commenced prior to 6 April 2007, the client is required appoint a CDM co-ordinator or principal contractor as soon as is practicable. In the absence of an express new appointment, a planning supervisor and principal contractor appointed pursuant to CDM 1994 will be treated as having been appointed under CDM 2007.

An agent appointed prior to 6 April 2007 may, if he consents, continue to act as agent of the client for a period of up to 5 years from 6 April 2007.

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