

## The Construction (Design and Management) Regulations 2007: Industry Guidance

### Annex I: Summary of duty holders

#### Summary of key changes in CDM 2007

- Regulations are re-ordered to group duties together by duty holder and to show whether individual provisions apply to all projects, only notifiable projects or only non-notifiable projects. (The definition of 'notifiable' is unchanged, but the application provision relating to fewer than five workers on site has been removed).
- Work for domestic clients no longer needs to be notified.
- The client's agents and developer's provisions are removed; under CDM 2007 a group of clients involved in a project can now elect one or more of its members to be the only client(s).
- The role of planning supervisor ceases to exist. The 'CDM co-ordinator' is introduced to support and advise the client in discharging their duties and to co-ordinate design and planning.
- The appointment of a CDM co-ordinator, principal contractor and a written health and safety plan are only required for notifiable projects (but demolition work requires a written system of work).
- Duty holders cannot arrange for, or instruct anyone, to carry out or manage design or construction work unless that person is competent (or being supervised by someone who is) and under CDM 2007 they cannot accept an appointment/engagement unless they are competent to carry it out.
- Assessment and demonstration of competence is simplified, with new core criteria and specific ACoP material on individual and corporate competence.
- There are general co-operation and co-ordination duties on everyone involved in a project (relating to others on the same or adjoining sites) and a specific requirement to implement any preventive and protective measures on the basis of the principles specified in the Management of Health and Safety at Work Regulations 1999.
- Clients now have a duty (which already exists in the Health & Safety at Work etc. Act 1974 and Management Regulations) to take reasonable steps to ensure that managerial arrangements, made by dutyholders (including time and other resources), enable construction work to be carried out (any related structure designed for use as a place of work can be used), without risk to health or safety. Clients have the duty to ensure arrangements are maintained and reviewed throughout the project.
- Clients must tell designers and contractors how much time they have, before they start work on site, for planning and preparing construction work.
- For notifiable projects designers are prohibited from doing anything more than initial design work before the CDM co-ordinator has been appointed. In preparing or modifying a design they are required, so far as is reasonably practicable, to avoid risks to the health or safety of any person using a structure designed as a workplace. They must eliminate hazards which may give rise to risks and reduce risks from any remaining hazards.
- The civil liability exemption has been removed in relation to the employer/employee relationship. The Management Regulations have already been amended along these lines.
- Various definitions have been changed, including those of 'client', 'construction phase plan', 'construction work', 'contractor', 'design' and 'designer', 'place of work' and 'structure'.

The duties of each party under CDM 2007 are given by the dutyholder. These duties are outlined in the following section. Further details and clarification can be found in the Approved Code of Practice (ACoP) entitled 'Managing Health & Safety in Construction'.

## Clients

The role of the client has been given a higher profile in CDM 2007 to ensure that the construction team is provided with leadership and to make clients clearly accountable for the impact of their approach on the health and safety of those working on, or affected by, the project.

However, it is recognised that clients may not have the expertise or resources to plan and manage projects themselves, but they are required to make sure arrangements are in place to ensure the duties of others under CDM 2007 are carried out. There is also a duty to see that the arrangements, once agreed, are working.

Clients are also expected to take an active role in co-operating with the co-ordinator in creating the pre-construction information pack. In particular, the client should consider any specific requirements they have at this point in the procurement process, in order to avoid change and possible later conflict. Issues such as access points and any rules for contracting organisations in occupied premises need to be considered.

It should be noted that in some forms of procurement the role of the client may shift to different parties, for example, in PFI/PPP (Private Finance Initiative/Public Private Partnerships) forms of contract. Clients should anticipate this and make suitable arrangements.

Where a project is notifiable under CDM 2007, the client must appoint a CDM co-ordinator and a principal contractor. It is good practice for clients to consider for all projects (notifiable or not) whether they need health and safety assistance to ensure compliance with other legislation, such as the Management of Health and Safety at Work Regulations 1999.

## What clients must do

Clients' duties and responsibilities for all projects under regulations 4-10 and for notifiable projects under regulations 14, 15, 16 and 17 are set out in the table below.

What clients must do	
For all projects under regulations 4-10	<p>Clients must make sure that:</p> <ul style="list-style-type: none"> <li>• the designers, contractors and other team members who they propose to engage are competent (or work under the supervision of a competent person), are adequately resourced and appointed as early as is practicable</li> <li>• they allow sufficient time for each stage of the project, from concept onwards</li> <li>• they co-operate with others involved with the project as is necessary to allow them to comply with their duties under the regulations</li> <li>• they co-ordinate their own work, with others involved with the project, in order to ensure the safety of those carrying out the construction work and others who may be affected by it</li> <li>• there are effective management arrangements in place throughout the life of the project to ensure that the construction work can be carried out safely and without risk to health. (This does not mean managing the work themselves, as few clients have the expertise and resources needed and it can cause confusion)</li> <li>• all parties understand their role and how it interfaces with other parties</li> </ul>

For all projects under regulations 4-10 continued	<ul style="list-style-type: none"> <li>• suitable welfare facilities are provided by the principal contractor for those carrying out the construction work</li> <li>• any fixed workplace (e.g. office, shop, factory, school) being built will comply with any requirements of the Workplace (Health and Safety) Regulations 1992</li> <li>• relevant information, likely to be needed by designers, contractors or others, to plan and manage their work, is passed to them in order to comply with Regulation 10</li> <li>• contractors are given sufficient notice of the minimum time they will be allowed for planning and preparation between appointment and starting work.</li> </ul>
For notifiable projects under regulations 14,15,16 and 17	<p>In addition to the duties set out above clients have to:</p> <ul style="list-style-type: none"> <li>• appoint a CDM co-ordinator to advise them and assist with their duties (mainly in the design and planning stages but to include any design changes during the construction phase)</li> <li>• appoint a principal contractor to plan and manage the construction work (if possible this should be early enough for them to advise on buildability and maintainability)</li> <li>• ensure that the construction phase of notifiable projects does not start until the principal contractor has prepared a suitably developed health and safety plan and made arrangements for suitable and sufficient welfare facilities to be present from the start of the work</li> <li>• ensure the health and safety file is prepared, reviewed or updated and ready for handover at the end of the construction work. The completed file must then be kept available for any future construction work or to pass on to a new owner.</li> </ul>

### CDM co-ordinator

A new role of CDM co-ordinator has been created by CDM 2007. It is a wider role than that of the planning supervisor (which it replaces) and may be summed up as ‘the client’s adviser in matters relating to construction health and safety’. The role involves advising and assisting the client in undertaking the measures needed to comply with CDM 2007, including, in particular, the client’s duties both at the start of the construction phase and during it.

### What CDM co-ordinators must do

Under Regulations 4 to 7, 20 and 21 the CDM co-ordinator is required to ensure that suitable arrangements are made and implemented for the co-ordination of health and safety measures during planning and preparation for the construction phase.

The CDM co-ordinators’ duties are set out in the following table.

What CDM co-ordinators must do	
For all projects under regulations 4 to 7, 20 and 21	<p>CDM co-ordinators are responsible for co-ordinating:</p> <ul style="list-style-type: none"> <li>• the contents of the health and safety file</li> <li>• the information the principal contractor needs to prepare the construction phase plan</li> <li>• any design development which may affect planning and management</li> </ul>

of the construction phase. This will include managing changes to design during the construction phase, where co-operation is needed between designers, principal contractors and contractors. CDM co-ordinators must recognise that during the construction phase the site is controlled by the principal contractor, who remains responsible for implementing good practice. A good way of carrying out this duty would be to read the construction health and safety plan as it develops. CDM co-ordinators should advise and assist clients with their duties by:

- appointing competent designers and contractors
- ensuring adequate arrangements are in place for managing the project
- notifying HSE about the project
- co-ordinating design work, planning and other preparation for construction, where relevant to health and safety
- locating the information needed by designers and contractors and advising the client if surveys need to be commissioned to fill significant gaps
- managing the flow of health and safety information between clients, designers and contractors
- advising the client on the suitability of the initial construction phase plan and the arrangements made to ensure that welfare facilities are on site from the start of the project
- producing or updating a relevant, user-friendly, health and safety file that is suitable for future use at the end of the construction phase.

### What CDM co-ordinators do not have to do

It is essential to fully understand the role of the CDM co-ordinators and hence understand that they do not have to:

- approve the appointment of designers, principal contractors or contractors, although they normally advise clients about competence and resources
- approve or check designs, although they have to be satisfied that the design process addresses the need to eliminate and control risks
- approve the principal contractor's construction phase health and safety plan, although they need the ability to advise clients on its adequacy at the start of construction
- supervise the principal contractor's implementation of the construction phase health and safety plan
- supervise or monitor construction work (this is the responsibility of the principal contractor)
- deal directly with parties under the control of the principal contractor, who does have a duty to co-operate in order to let the CDM co-ordinators carry out their tasks.

### Designers

CDM 2007 recognises the key role designers have in construction health and safety projects.

Designers shall not commence work in relation to the project unless their client is aware of their duties under the regulations. This, in turn, will help to ensure that the client's requirements are clearly understood by encouraging discussion and co-operation.

A new duty placed on the designer is, as far as is reasonably practicable, to 'eliminate hazards which may give rise to risks' and to 'reduce risks from any remaining hazards'. This is a new requirement

and requires designers to consider if they are introducing a hazardous material or process. In practice there are potential hazards in almost everything, so a pragmatic view will need to be taken of all the factors to be considered in the design. These factors will include:

- health and safety
- cost
- fitness for purpose
- aesthetics
- buildability
- maintenance
- environmental impact.

The regulations do not prescribe design outcomes but they do require designers to consider the various factors and to reach reasoned, professional decisions. Put simply, designers must not produce designs which cannot be constructed, used and maintained in reasonable safety and with proper consideration of health issues.

Designers need to recognise that the amount of effort put in to eliminating hazards and reducing risk should depend upon the degree of risk.

### Who are designers?

Designers include everyone who prepares or specifies designs for construction work, including variations. This refers not only to the drawings, design details and specifications, but also to specifiers of quality, including lists of specific requirements and materials which they wish to prohibit.

A client may become a designer by insisting upon a specific material or design detail. A contractor may become a designer by designing specific details of their section of work or by temporary works required for the project.

Designers therefore include:

- architects, civil and structural engineers, building surveyors, landscape architects, other consultants, manufacturers and design practices (of whatever discipline) contributing to, or having overall responsibility for, any part of the design, for example drainage engineers designing the drainage for a new development
- anyone who specifies or alters a design, or who specifies the use of a particular method of work or material, such as a design manager or quantity surveyor who insists on specific material or a client who stipulates a particular layout for a new building
- building service designers, engineering practices or others who design plant which forms part of the permanent structure (including lifts, heating, ventilation and electrical systems), for example a specialist provider of permanent fire extinguisher installations
- those purchasing materials where the choice has been left open, for example those who purchase building blocks and decide the weights that bricklayers must handle in doing so
- contractors carrying out design work as part of their contribution to a project, such as an engineering contractor providing design, procurement and construction management services
- temporary works engineers, including those designing auxiliary structures, such as formwork, falsework, façade retention schemes, scaffolding and sheet piling
- interior designers, including shop-fitters who also develop the design
- heritage organisations who specify how work is to be done in detail, for example providing detailed requirements to stabilise existing structures

- those determining how building and structures are altered, for example during refurbishment where this has the potential for partial or complete collapse.

Local authority or government officials may provide advice relating to designs and relevant statutory requirements, for example the building regulations, but this does not make them designers. This is because these are ‘fixed’ requirements where the designer has no choice in respect of compliance. However, if the statutory bodies require particular features, which are not statutory requirements and included or excluded (e.g. stipulating) the use of hazardous substances for cleaning or the absence of edge protection on flat roof(s), then they are designers and must ensure that they comply with these regulations.

Manufacturers supplying standardised products that can be used in any project are not designers under CDM 2007, although they may have duties under supply legislation. The person who selects the product is a designer and must take account of health and safety issues arising from its use. If a product is purpose made for a project, the person who prepares the specification is a designer under CDM 2007 and so is the manufacturer who develops the detailed design.

### What designers must do

Designers’ duties under regulations 4, 5, 6, 11, 12 and 18 are set out below.

What designers must do	
For all projects under regulations 4, 5, 6, 11, 12 and 18	<p>Designers must:</p> <ul style="list-style-type: none"> <li>• ensure they are competent to address the health and safety issues likely to arise from the design</li> <li>• ensure that clients are aware of their duties</li> <li>• when carrying out design work, eliminate hazards, so far as is reasonably practicable, and reduce risks associated with those hazards which remain, taking account of the information supplied by the client</li> <li>• provide adequate information about any significant risks associated with the design</li> <li>• co-ordinate their work with others in order to improve the way in which risks are managed and controlled</li> <li>• co-operate with the CDM co-ordinator, principal contractor and with any other designers or contractors as necessary to allow them to comply with their duties. This includes providing any information needed for the pre-construction information pack or health and safety file.</li> </ul>
For notifiable projects	<ul style="list-style-type: none"> <li>• ensure the client has appointed a CDM co-ordinator and notified HSE (designers must not start design work unless the client has done so).</li> </ul>

When carrying out the duties given above designers need to consider the hazards and risks to those who will:

- carry out construction work
- clean or maintain the permanent fixtures and fittings
- use a structure designed as a place of work
- demolish all or part of the structure
- or may be affected by such work, for example customers or the general public.

## What designers do not have to do

Under CDM 2007, designers do not have to:

- take into account or provide information about unforeseeable hazards and risks
- design for possible future uses of structures that cannot reasonably be anticipated from their design brief
- specify construction methods, except where the design assumes or requires a particular construction or erection sequence, or where a competent contractor might need such information
- exercise any health and safety management function over contractors or others
- be concerned about trivial risks.

Designers are not legally required to keep records of the process through which they achieve a safe design, but it can be useful to record as to why certain key decisions are made. Brief records of the points considered, the conclusions reached and the basis for those conclusions can be very helpful when designs are passed from one designer to another. This will reduce the likelihood of important decisions being altered by those who may not fully understand the implications of doing so.

Too much paperwork is as bad as too little, because useless information may hide something that is necessary. Large volumes of paperwork listing generic hazards and risks, most of which are well known to competent contractors and others who use the design, are positively harmful and suggest a lack of understanding on the part of the designer.

## The principal contractor

- Their main duty is to properly plan, manage and co-ordinate work during the construction phase in order to ensure that hazards are identified and risks are properly controlled.
- The principal contractor has a duty to liaise with all of the other CDM, In particular:
  - consulting with the workforce – directly or via their (sub)contractors;
  - co-operating with designers and co-ordinators — particularly if any changes occur to design; ensuring the clients is are aware of his their duties.
- However, whilst the principal contractor is under a duty to co-operate and have systems which allow and facilitate co-operation, the duty and responsibility for managing health and safety in the construction phase lies clearly with the principal contractor .
- Principal contractors must be competent to carry out the work they are engaged to do in a safe manner and ensuring ensure they give proper consideration of to the potential effects of their activities on everyone who may be affected by them.
- Principal contractors are required to demonstrate to the client that they have sufficient resources, including properly trained and experienced staff, to carry out the project.
- It is essential that principal contractors are fully aware of the duties of other CDM duty holders so that they know the level of information they may reasonably expect. Principal contractors must recognise that time is a resource and that they must be allowed to have reasonable time to plan activities with proper regard to health and safety.
- Good principal contractors will place health and safety at the front of their agendas and will review the health and safety implications of all decisions. This is of particular importance if changes arise during the project.
- Should design changes occur, the principal contractors must allow the CDM co-ordinator to carry out his their duties but must at all times retain responsibility for managing his their activities and those of his their contractors and sub-contractors. The principal contractor must be in control of the site for clear commercial responsibility as well as for health and safety reasons.

## Contractors and self-employed persons

Contractors and their employees, those actually doing the construction work, are most at risk of injury and ill-health. They have a key role to play in co-operation with other duty holders, in co-ordination and by planning and managing the work to ensure that risks are identified and properly controlled.

Contractors may include utilities, specialist contractors, contractors nominated by the client and self-employed persons. Contractors are often sub-contractors to the principal contractor.

Contractors may also have duties as designers if they are involved in designing elements of their work, such as pre-cast concrete planks or curtain walling.

Anyone who directly employs or engages construction workers or who manages construction work is a contractor for the purposes of these regulations, including companies that use their own workforce to carry out construction work on their own premises.

## What contractors must do

The responsibilities and duties of contractors for all projects under regulations 4-7, 13 and 19 and notifiable projects are given in the table below.

What contractors must do	
For all projects under regulations 4-7, 13 and 19	<p>Contractors must:</p> <ul style="list-style-type: none"> <li>• plan, manage and monitor their own work to make sure that their workers are safe as soon as they start work on site</li> <li>• satisfy themselves that they and anyone they employ or engage are competent and adequately resourced</li> <li>• check clients are aware of their duties. This does not mean that every contractor has to contact the client with duplication of duty but to ensure that the CDM co-ordinator where appointed (notifiable jobs only) has made the client aware</li> <li>• provide their workers (whether employed or self-employed) with any necessary information and training, including relevant aspects of other contractors' work and site induction (where not provided by a principal contractor), which they need in order to work safely, to report problems or to respond appropriately in an emergency</li> <li>• ensure that any design work they do complies with regulation 11, which sets out the duty of designers</li> <li>• comply with any requirements listed in schedule 2 and 3 of the regulations that apply to their work (welfare and inspections)</li> <li>• co-operate with others and co-ordinate their work with others working on the project. In particular, contractors must have systems in place in order to consult their workforce on health and safety issues</li> <li>• obtain specialist advice (for example from a structural engineer or occupational hygienist) where necessary when planning high risk-work, for example, alterations that could result in structural collapse or construction on contaminated land.</li> </ul>
For notifiable projects	<p>In addition to the duties listed above contractors must also:</p> <ul style="list-style-type: none"> <li>• check that a co-ordinator has been appointed and HSE notified before starting work. This check should be made at a start-up meeting where all duties, responsibilities and management systems are agreed</li> </ul>

- co-operate with the principal contractor, co-ordinator and others working on the project
- tell the principal contractors about risks to others created by their work
- comply with any reasonable directions from the principal contractor and with any relevant rules in the health and safety plan
- inform the principal contractors of any problems with the plan or risks identified during their work that have significant implications for the management of the project
- tell the principal contractor about accidents and dangerous occurrences
- provide information for the health and safety file.

Where contractors are involved in design work, including temporary works, they also have duties as designers.

See Annex G for details of what should be in an induction and Annex H for ideas on engaging the workforce to contribute to health and safety.

**Note:** Employers of workers who suffer death, reportable injury, disease or dangerous occurrence are deemed to be the 'responsible person' and have the responsibility of providing a report to the relevant enforcing authority. For self-employed workers the 'responsible person' is the contractor they are working for or the principal contractor if working directly for them. In any case, contractors must ensure that they provide information about RIDDOR (Reportable Injuries, Diseases and Dangerous Occurrences Regulations 1995) to the principal contractor so that they can fulfil their own duties.

Details of RIDDOR 1995 and downloadable reporting forms, F2508 and F2508A, can be found on the HSE website.

### Workers

Workers, along with all others involved in the life of a project, have duties to co-operate and to co-ordinate with others. (The term 'worker' includes managers and supervisors.)

Workers need to be involved as soon as practicable and should:

- give feedback to their employer via the agreed consultation method
- provide input on risk assessments and developing a method statement from it
- work to the agreed method statement or approach their employer to discuss implementing any change or improvement
- use welfare facilities with respect
- keep tools and PPE in good condition
- be vigilant for hazards and risks and keep management and supervisors informed
- be aware of arrangements and actions to take if a dangerous situation arises
- co-operate with all other parties.