

## **July 2015 – some updates now that it's been a few months since CDM 2015 was implemented**



The Construction (Design & Management) Regulations 2015 (CDM 2015) came into force on 6<sup>th</sup> April of this year. It is still early days and many questions have still to be answered but there appears to be clarity of thought appearing in some areas.

There is plenty of information available online (including from the HSE) which explain the changes – which include the demise of the CDM Coordinator, the new role of Principal Designer, domestic work now covered by the CDM Regs, the enhanced role of the Client, etc.

Q. Does CDM 2015 apply to all maintenance work? The wording of the regulations has caused concern about whether the legal obligations extend to day-to-day maintenance activities.

A. The wording of the regulations (Reg 2) refers to construction work which includes renovation, repair, upkeep, redecoration and maintenance and therefore CDM 2015 would appear to apply.

The HSE has recently released a clarification which stated “The definition of maintenance work has not changed. If the task in hand looks like construction work, requires construction skills and uses construction materials, it is construction work. General maintenance of fixed plant which mainly involves mechanical adjustments, replacing parts or lubrication is unlikely to be construction work’

Although any attempt by the HSE to clarify what is and is not construction is a positive move, this latest information still leaves duty holders wrestling with the interpretation of CDM. When the aims and objectives of CDM are considered (ie to embed the principles of prevention across all phases of construction work) and where the environment or activity are non-routine and/or high risk, why would the principles of CDM not be applied? This is unlikely to be resolved until tested in the Courts.

Q. Who can fulfil the role of Principal Designer?

A. CDM Reg 5 requires a Client to appoint as Principal Designer, who must be a “Designer” with control over the pre-construction phase of a project, where the definition of a “Designer” is any person who prepares or modifies a design or arranges for, or instructs, any person under their control to do so.

If you then look at the definition of design, it not only includes documentation produced by roles you would expect such as architects and engineers but also project managers, quantity surveyors, etc. This in theory opens up the potential for the role of Principal Designer to be fulfilled by a person from any number of Designer roles.

We know the Principal Designer must be a “Designer” but the role is one largely comprising management and coordination, in that the duty holder must “coordinate matters relating to health and safety .... to ensure that, as far as reasonably practicable, the project is carried out without risks to health and safety”. This is most likely to be achieved by the Principal Designer holding regular design review meetings and acting as a conduit between designers and the Principal Contractor.

So where does this leave the old CDM Coordinators? Reg 8 requires the Client to be satisfied that any appointee has the necessary knowledge, experience and skills (and where relevant organisational capability) to fulfil the role. Whereas the CDM-C role was on the outside looking into the design team, the HSE's stated aim is for health and safety to be a core part of any design process and therefore the role of Principal Designer must be a Designer who is able to influence the pre-construction design phase.

If you need any advice or support please contact Brian at [info@elnetconsulting.com](mailto:info@elnetconsulting.com)

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

Brian Cable is a Director of elnet consulting ltd