

CDM Regulations 2016

Are you ready?

On 1 August 2016, Northern Ireland will catch up with Great Britain as the Construction (Design and Management) Regulations (Northern Ireland) 2007 (“*CDM (NI) 2007*”) are replaced by the new Construction (Design and Management) Regulations (Northern Ireland) 2016 (“*CDM (NI) 2016*”). New regulations were introduced in Great Britain back in April 2015.

The aim of CDM (NI) 2016 is to improve health and safety in the industry and to make the regulations shorter and simpler. As the Health and Safety Executive NI has said, “*virtually everyone involved in a construction project will have legal duties under the new regulations*”. As anticipated, CDM (NI) 2016 mirrors the new CDM Regulations in Great Britain very closely, and lessons learned across the pond should help the Northern Ireland construction industry navigate these new waters.

The Principal Designer

The biggest change that the new regulations bring about is the removal of the role of CDM Co-ordinator and introduction of a new role of principal designer. The roles are not like-for-like and there are key differences to be aware of. The principal designer will be responsible for co-ordination of health and safety during the pre-construction phase. The thought process behind this is that the appointee is sufficiently embedded in the project team from the earliest stage possible to influence the design. Thus, the principal designer is likely to be the architect in most cases.

The principal designer must ensure that all designers on the project comply with their duties and any breach of duty by a designer will be a breach by the principal designer also. The principal designer is also responsible for the pre-construction phase plan, and health and safety file.

Client Responsibility

Clients now have a greater responsibility for the health and safety arrangements for their projects. Its responsibilities can no longer be passed wholesale onto a CDM Co-ordinator or principle contractor to manage. Under Regulation 4(5) the client must ensure that:

- (a) *“Before the construction phase begins, a construction phase plan is drawn up by the contractor if there is only one contractor, or by the principal contractor; and*
- (b) *the principal designer prepares a health and safety file for the project...”*

Clients must also check that the principal designer and principal contractor are carrying out their duties and take reasonable steps to satisfy themselves that the principal designer and principal contractor have the “*skills, knowledge and experience...necessary to fulfil the role*” (Regulation 8(1)).

Under Regulation 5(3) and 5(4), if the client fails to appoint a principal designer or principal contractor then they must fulfil their duties instead.

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Which projects does CDM (NI) 2016 apply to?

CDM (NI) 2016 applies to both commercial and domestic projects being carried out in Northern Ireland. The trigger point for the application of the regulations to construction projects has changed slightly and it is no longer whether or not the project is “*notifiable*”. Instead, the regulations now apply when “*there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time*” (Regulation 5(1)).

Does notification matter anymore?

The notification of projects to the Health and Safety Executive for Northern Ireland is now less important, as CDM (NI) 2016 catches both notifiable and non-notifiable projects. However, the thresholds for notification have changed slightly and should be noted. According to Regulation 6, a project must be notified if it is (a) to last longer than 30 working days and have more than 20 workers working simultaneously at any point in the project or (b) if it will exceed 500 person days.

Transitional Arrangements

There will be a 12 month transition period which is longer than the 6 months given in Great Britain. For any projects involving more than one contractor which started before 1 August 2016 for which a CDM Co-ordinator has not yet been appointed by 1 August 2016, the client must appoint a principal designer as soon as practicable (if the construction phase has not yet begun) and if the construction phase has already started, they can appoint a principal designer but there is no legal requirement to do so.

Existing projects which commenced prior to 1 August 2016 and which currently have a CDM Co-ordinator, will need to appoint a Principal Designer within 12 months unless the project ends before that date. During the transitional period, the CDM Co-ordinator must fulfil the duties set out in Schedule 5 of the CDM (NI) 2016.



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