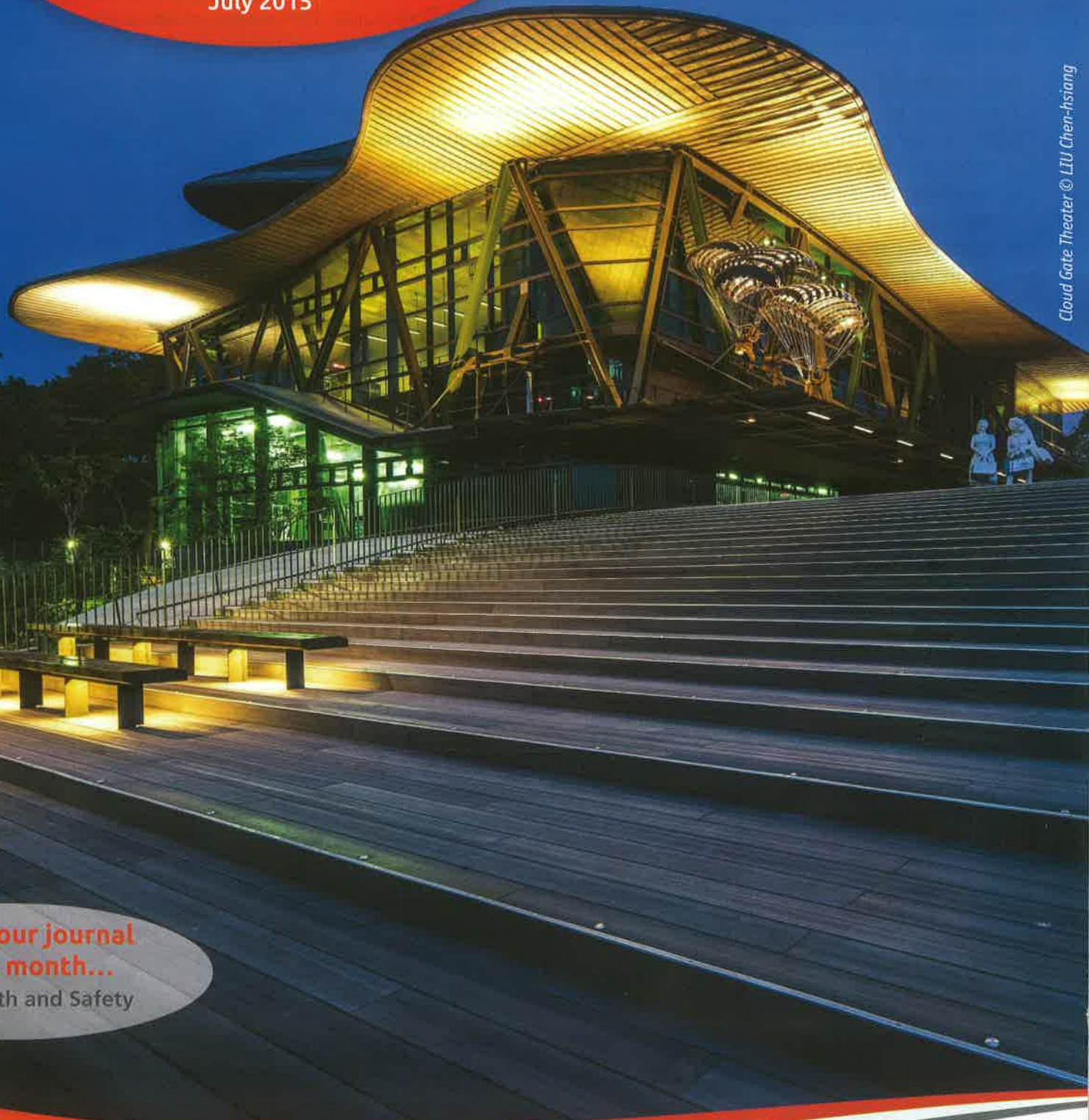




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GUIDING OUR CLIENTS SAFELY

Construction (Design and Management) Regulations 2015

By Cameron Miller MBA APAEWE RMaPS (2015) FRICS C.Build E FCABE



Three months since promulgation of the Construction (Design and Management) Regulations 2015 on 6 April 2015 and uncertainty remains on duty holders' obligations in the minds of many. As Designers, we must not commence work in relation to a project unless satisfied that the client is aware of the duties owed by the client under the Regulations. The focus of this article is on client duties, to inform Designers on the advice which must be given to clients to ensure compliance. A brief note of the Principal Designer's duties is also included, as it is a client duty to ensure that the Principal Designer is carrying these out.

Introduction

The Construction (Design and Management) Regulations 2015 came into force on 6 April 2015 and apply to all building and construction projects, regardless of the size, duration and nature of the work; they replace the 2007 Regulations entirely.

Under the Regulations, clients are obliged to ensure that a construction project is set up so that it adequately controls risks to health and safety of those who may be affected from start to finish. The client has overall responsibility and the Principal Designer and Principal Contractor provide support in different phases of the project.

There are transitional arrangements running until 6 October 2015. Under particular circumstances, arrangements under the CDM 2007 Regulations are permitted to continue. The essential test for the application of transitional arrangements is the appointment of the CDM Co-ordinator prior to 6 April 2015. Schedule 4 to the CDM Regulations 2015 defines the requirements.

These arrangements continue until a Principal Designer is appointed or the project comes to an end, with the overriding condition that the client must appoint in writing a Principal Designer for the project before 6 October 2015 (unless the project comes to an end before that date).

Who is a client?

A client is the organisation or individual for whom the construction project is carried out. This includes local authorities, project originators of PFI projects and charities. Domestic clients procuring work on their own home are now included within the CDM Regulations, but special arrangements apply.

Domestic clients

Domestic clients are those having work carried out on their own home or that of a family member, which is not done in connection with a business. A domestic client is not required to carry out client duties under the CDM Regulations; these are transferred to other duty holders.

For domestic projects involving only one contractor, the client's duties are transferred to the contractor and that contractor must carry out the client's duties as well as their own. In practice, compliance with their duties as a contractor is sufficient, with notification of the HSE if the project is notifiable (which would otherwise be a client duty).

On domestic projects involving more than one contractor, the Principal Contractor shall normally take on the client's duties and they must comply with those duties as well as their own. In the absence of a Principal Contractor appointment, the contractor in control of the construction phase of the project is the Principal Contractor.

As an alternative, domestic clients may have a written agreement with the Principal Designer to transfer client's duties to the Principal Designer.

What clients must do for all projects

Make suitable arrangements for managing a project so that health, safety and welfare are secured. Suitable arrangements should focus on the needs of the project and be proportionate to the size of the project and risks arising from the work.

Assemble the project team, appointing Designers (including the Principal Designer) and Contractors (including the Principal Contractor) and ensure that the roles, functions and responsibilities of the team are clear.

Ensure sufficient time and resources are allocated for each stage of the project.

Ensure effective mechanisms are in place for members of the project team to communicate and co-operate with each other and co-ordinate their activities.

Take reasonable steps to ensure that the Principal Designer and Principal Contractor comply with their duties.

Set out the means to ensure that the health and safety performance of Designers and Contractors is maintained throughout the project.

Ensure that construction workers are provided with suitable welfare facilities for the duration of the construction work.

Notifiable projects

A project is notifiable if the construction work on a construction site is scheduled to last longer than 30 working days and has more than 20 workers working simultaneously at any time or exceeds 500 person days.

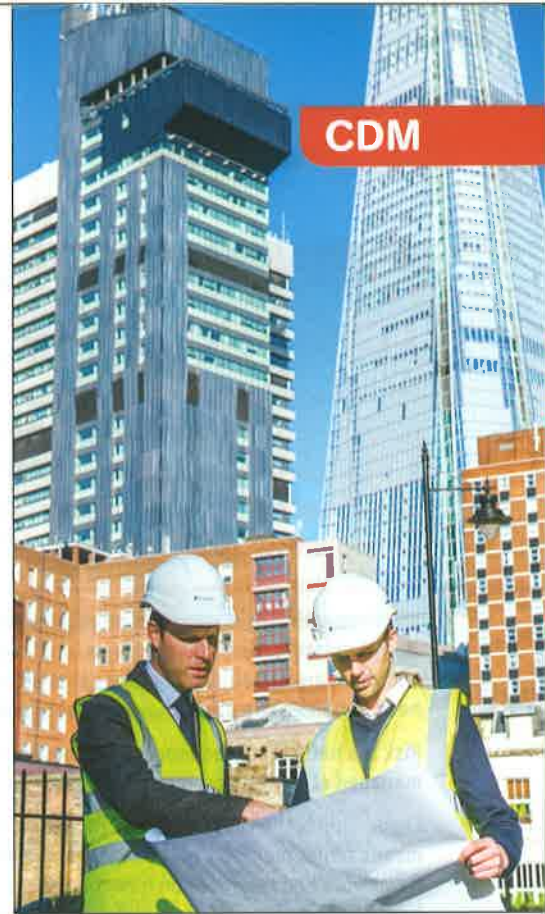
Where the project is notifiable, the client must give notice in writing to the Health and Safety Executive (or other relevant enforcing authority) as soon as is practicable before the construction phase begins; the notice must include prescribed information, as detailed in Schedule 1 to the Regulations.

The client must ensure that a copy of the notice is displayed in the construction site office so that it is accessible to anyone working on the site.

Further duties of the client

Provide Pre-Construction Information to Designers and Contractors at the earliest opportunity; the Information is to include relevant information which the client may have or may reasonably obtain.

Check that the Principal Designer is carrying out his or her duties and



that arrangements made for managing health and safety during the Pre-Construction Phase are working successfully.

Ensure that the Principal Contractor produces a Construction Phase Plan, setting out how they shall manage health and safety on site during the Construction Phase, which is adequate for the work. The Plan should be project specific, take into account the Pre-Construction Information provided and be proportionate to site risks.

Ensure that the arrangements made for management of health and safety during the Construction Phase are working successfully.

As the project nears its end, the client should check arrangements for its completion and handover. For partial possession, ensure that agreed measures are in place to ensure the health and safety of those in the areas that have been handed over.

After the Construction Phase, obtain and maintain the Health and Safety File and provide the information in the File to those carrying out future construction, demolition, cleaning or maintenance work on the building or structure. There is an ongoing obligation to keep the File up to date and provide it to new owners or leaseholders.

Communicating duties to the client

We can use a variety of means to communicate those duties to the client:

- Briefing Note
A simple two-page guide to client duties, which serves as an introduction to the Regulations and summarises the client's obligations
- Industry Guidance (available from CITB, see below)
The guide to client duties is based on sound industry practice and is particularly designed to help small businesses and organisations deliver building and construction projects in a way that prevents injury and ill health
- Managing Health and Safety in Construction (available from HSE, see below)
Legal Series Guidance L153 provides guidance on the legal requirements for CDM 2015. It describes the law that applies to the whole construction process on all construction projects, from concept to completion and what each duty holder must or should do to comply with the law to ensure that projects are carried out in a way that secures health and safety
- Face to face
Meeting the client in person encourages a dialogue and affords the opportunity to spend more time explaining matters of particular relevance to the client. For larger numbers, a seminar or group presentation can be appropriate.
The priority of communicating with the client must be to assist understanding of client duties. It is also useful to record communications on file so that we may demonstrate discharge of our duty as Designers to be satisfied that the client is aware of those client duties.

Principal Designer's duties

The Principal Designer's role is to plan, manage and monitor the Pre-Construction Phase, to co-ordinate health and safety. The Pre-Construction Phase is defined as any period during which design or preparatory work is carried out for a project and this may overlap considerably with the Construction Phase.

The Principal Designer must assist the client in identifying, obtaining and collating the Pre-Construction Information and provide that Pre-Construction Information promptly and in convenient form to help Designers and Contractors who are being considered for appointment or those who have already been appointed to carry out their duties.

The Principal Designer ensures that Designers comply with their

duties and co-operate with each other and ensures that foreseeable risks to health and safety are identified. Thereafter, significant risks identified should be managed in accordance with the general principles of prevention. The Principal Designer must ensure that Designers eliminate risks in the first instance. Those that cannot be eliminated must be reduced or controlled to an acceptable level, giving collective protective measures priority over those protecting individuals.

The Principal Designer must liaise with the Principal Contractor for the duration of their appointment, sharing information that may affect the planning, management, monitoring and co-ordination of the Construction Phase.

The Principal Designer prepares the Health and Safety File and ensures that it is appropriately reviewed, updated and revised from time to time to take account of the work and any changes that have occurred.

Conclusion

As Designers, our role remains largely unchanged from the previous Regulations. There are, however, significant changes to client's duties and we must ensure that the client is aware of those duties. Information is available to provide the client with guidance and this should be provided in a manner which promotes understanding, so that the client's duties are performed as they should be.

Further guidance

The Construction Industry Advisory Committee has produced guidance for clients and this is available from the Construction Industry Training Board (www.citb.co.uk/)

The CITB website includes guidance for other duty holders and is free to download

The legal (L) series guidance on the legal requirements of the CDM Regulations 2015 is available from the HSE (www.hse.gov.uk/pubns/priced/l153.pdf)

Some of the guidance does differ from the requirements of the Regulations and it is recommended to consult the Regulations, which are available from www.legislation.gov.uk/uksi/2015/51/contents/made

• Further information and advice on all aspects of CDM 2015 are available from Cameron Miller, Keegans' lead Principal Designer. E-mail: Cameron.Miller@TheKeegansGroup.com

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