

# [Review and evaluation of cdm regulations](https://assignbuster.com/review-and-evaluation-of-cdm-regulations/)

Review and evaluate the impact of the proposed Construction (Design and Management)(CDM) Regulations 2006 in the improvement and management of risk.

The proposed changes to the Construction (Design and Management) Regulations 1994 aim to simply clarify the existing regulations; make the current regulations more flexible and compatible with procurement requirements; place the emphasis on the management of health and safety risk rather than creating paperwork and to strengthen the co-ordination and co-operation between designers and contractors. The initial Act was introduced with a view to setting a safety standard because of the large accident record prior to its introduction. The HSC produced a consultation paper explaining the proposed changes on 31 March 2005 with the consultation open until 29 July 2005, though there has been an extension to receive response documents to 31 August 2005, as many were not submitted in time by the time of the consultation on 29 July 2005. The Regulations are expected to come into force in October 2006.

The CDM Regulations were made under section 15 of the Health and Safety at Work etc. Act 1974, the principal Act dealing with securing the health and safety of people at work and those whose health and safety could be affected by work activities. The regulations came into force on 31 March 1995, and implemented provisions of European Directive No. 89/654/EEC, Temporary or Mobile Construction Sites Directive, which specifies a health and safety plan to be adhered to by five key parties to be involved in the Regulations when undertaking a project. These are the employer, planning supervisor, consultant, principal contractor and sub contractors and self-employed persons. The previous approach was statutory, with a view to avoiding unsafe situations.

Under regulation 6, the client or the developer must appoint a planning supervisor and a principal contractor. The planning supervisor must notify the Health and Safety Executive (HSE) about the project; fulfil specific requirements regarding design and ensure that the health and safety plan complies with the requirements (Regulations 14 &15). The consultant (or designer) has a duty to design to minimise risks in accordance with health and safety legislation. The principal contractor has to co-ordinate all contractors to ensure compliance with the health and safety plan. Contractors and self-employed persons have to co-operate with the principal contractor, and to advise of any risks connected with their work.

The CDM Regulations 1994 apply to construction work lasting for more than 30 days or involving more than 500 person days of work; construction work involving five or more people on site at any one time; design risk related to construction and demolition work.

Prior to the introduction of the CDM Regulations 1994, the accident statistics were 100 fatal accidents annually in the late 1980s. By 1994, the annual total of fatal accidents was reduced to 75, and thereafter, from 1994 to 2004 to between47 and 73, and furthermore for injuries lasting more than three days, the annual total was 17, 177 in 1989/1990, which reduced to 8162 in 2003/2004. However, critics of the Regulations referred to the possibility that this may be influenced by a reduction in the amount of construction activity rather than purely as a result of implementation of the CDM Regulations alone.

There were inconsistencies in case law; it was considered that a subcontractor has the duty to warn contractor of a design defect for which another party was responsible and scope of implied term as to skill and care in performing contract owed by sub contractor to contractor. In the Court of Appeal case of McCook v Lobo in which an employee was injured on a construction site falling from a ladder, it was decided that although the site owner had breached the CDM Regulations 1994 by failing to prepare a health and safety plan in advance of the commencement of the building work, it was considered that it was unlikely that such a plan would cover the securing of ladders and therefore could not be considered as having caused the injuries.

In 2002 the construction Discussion Document (DD) formally recognised that there was a need for changes with regard to the industry’s health and safety performance, and the ensuing discussions led to the conclusion that although the principles underpinning the CDM Regulations were accepted, the methods adopted to implement the CDM Regulations often resulted in the principles being obscured beneath layers of bureaucracy and paperwork.

Therefore, the HSC concluded that the CDM Regulations needed to be revised by refocusing attention on effective, but practical, planning and management of construction projects. The Health and Safety Commission launched a 4 month consultation on its proposals to replace both the current Construction (Design and Management) Regulations 1994and the Construction (Health Safety and Welfare) Regulations 1996 with a single set of Regulations.

A draft set of amended CDM Regulations has been drafted together with a draft of revisions to the Approved Code of Practice by the HSC and the Construction Industry Advisory Committee (CONIAC). The new CDM Regulations were made available for comment in the hope that a set of Regulations can be formed that properly address the industry’s concerns in relation to health and safety and the inadequacies of the current Regulations.

The problems with the current Regulations also were argued to include the fact that many of the intended benefits were not being fully realized, contributed to by the difficulty in implementing radical change into the construction industry and the financial implications of full CDM compliance, together with the structure of the regulations themselves, the role of the planning supervisor being unsatisfactory as not being part of the core contraction team.

The complexity of the regulations themselves was a problem despite the consensus regarding the underlying ethos remaining valid. The proposed CDM Regulations are intended to be simpler and to remove any uncertainty regarding the nature of the duties imposed. They are also structured differently, setting out precisely what is expected of each duty holder.

The changes that have been introduced by the CDM Regulations 2006 include the following: for applicable projects there will be two types of construction projects, notifiable and non-notifiable, and a project will remain notifiable if it is likely to involve more than 30 days or500 person days of construction work. Notification to HSE must be made before design work, planning or preparation for construction begins; for the client, he must ensure there are suitable project management arrangements for health and safety and allocate sufficient resources, explicitly including time, to ensure that this can happen. To make sure principal contractors have sufficient time to make proper preparations for work on the site, the co-ordinator has to advise them of the minimum notice allowed between appointment and commencement of work.

The client and the principal contractor must also ensure adequate facilities are in place at the start of the construction phase of the project, by means of a document prepared by the principal contractor setting out the health and safety arrangements and site rules for a project.

The client can no longer appoint an agent to delegate these duties, as the provisions on agents will be removed as they are seen as a means to allow clients to absolve themselves of their legal obligations. Now several clients on the same project can now agree amongst themselves that one client should be the sole client, the aim being to prevent anyone retaining control and avoiding responsibility.

Furthermore, the client and the principal contractor must ensure that there are adequate welfare facilities are in place at the commencement of construction; in relation to the planning supervisor/co-ordinator, the planning supervisor has to be replaced by co-ordinator, the co-ordinator must be appointed before the design work commences and designers and contractors cannot be appointed in advance of the coordinator.

The designer must eliminate any hazards and reduce risks to the health and safety of persons carrying out construction work, cleaning or maintaining the permanent fixtures or using the structure as a place of work, and provide sufficient information about the design, construction or maintenance of the structure to assist any other designers and the principal contractor fulfil their duties.

Further requirements are specified in relation to competence, and it is stated that no appointment or engagement is to be accepted unless the particular person is competent, perhaps in relation to industry standards. In relation to a pre-tender or pre-construction plan this is to be replaced with an information pack that should focus attention on communication of the information that designers and contractors need to plan and do their work. In relation to the health and safety file, this will be required for a site rather than for each particular project. Demolition has to be planned and carried out in such a manner with a view to preventing, as far as possible, unnecessary danger, with arrangements for demolition work recorded in writing.

The civil liability that would arise from the introduction of the new Regulations is that employees (though not self-employed workers) will now be permitted to take action in the civil courts for injuries resulting from failure to comply with duties under the Regulations.

The new Regulations are regarded as representing a ‘ radical and fundamental change in construction health and safety legislation’. The Regulations can be regarded as being much more detailed and prescriptive than CDM Regulations 1994 and will impose a wide range of new duties and potential abilities with a potential significant impact on allocation of risks and responsibilities in the construction industry. It can be argued that the biggest change is in the duties of the client, who now has a number of new responsibilities for health and safety. Furthermore, wider duties have been imposed upon both designer and principal contractor than under CDM Regulations1994, and all sectors of the construction industry need to be aware of the effect of the proposed Regulations and the significantly increased risk of enforcement action, including prosecutions by the HSE, for all members of the project team.

The purpose of the Regulations is arguably to ensure that responsibility for health and safety is placed with those who are best placed to manage it and to simplify the legislation to make it easier to understand the roles, responsibilities and duties of the various members of the project team.

In evaluating the changes introduced by the CDM Regulations 2006, the consequences thereof are demonstrated by the changes to the client’s responsibilities made on the basis that the client has the greatest control and influence over a construction project, though there is significant onus upon the client in the imposition of the obligation to appoint a competent co-ordinator and a principal contractor and the obligation to ensure that the co-ordinator performs his duties under the Regulations. The additional obligation is the duty to ensure that the designer, principal contractor and contractors are given sufficient time to plan and prepare for carrying out construction work.

In relation to co-ordinator duties, it can be seen that the role of the co-ordinator is similar to that of the planning supervisor under CDM Regulations 1994, but with a number of important additional responsibilities which make the role of co-ordinator prominent in the project team.

The co-ordinator’s role is intended to assist the client, designer and principal contractor to achieve better health and safety on site.

The client’s obligation is demonstrated by the need to appoint the co-ordinator at an early stage in the project and before any design work or preparation for construction is carried out.

The obligation of the co-ordinator is to “ identify and extract” all the information to secure the health and safety of persons engaged in construction work and those who are liable to be affected by the way in which that construction work is carried out, and he is also required to identify and extract information to assist the client, the designer and the principal contractor to perform their duties under the Regulations arguably, the co-ordinator has a broader responsibility for design and is required to advise on the “ suitability and compatibility” of designs and on any need for modification to those designs. The co-ordinator is also required to liaise with the principal contractor in relation to any design or design changes which affect the construction phase plan.

The obligations upon the designer include the requirement to “ eliminate” hazards which may give rise to risks to health and safety (e. g. not specifying the use of materials which could be hazardous, addressing design issues to minimise use of scaffolding or working at height). Furthermore, he must also take into account the risk to any person using a structure which it designs as a place of work in the future when it prepares or modifies its design.

The obligations upon the principal contractor includes the obligation obliged to ensure that every contractor is given sufficient information to carry out its obligations under the regulations and to allow the contractor to carry out the work safely. He must ensure that every worker carrying out construction work is provided with site induction and any further information and training to ensure that a particular element of work is carried out without unnecessary risk to health and safety.

There is also an obligation that there is co-operation, and duty is imposed upon everyone covered by the CDM Regulations 2006 to co-operate with each other and to seek the co-operation of others involved in any project involving construction work to enable each party to meet their obligations under the Regulations.

Criticisms of the attempt of the HSC to adapt the original Regulations include the argument that the industry’s record in focusing upon the safety rules as opposed to the paper trail has been poor, and that therefore as demonstrated by the ten year record in adopting the CDM Regulations 1994, the record of the industry in reaping the benefits from such changes are not good. It has been argued that despite the fact that implementation of such rules should be simple, as it merely relates to managing projects from concept to completion, ensuring that there are adequate resources and sufficient time, and that health and safety standards are integrated into all levels of project management and the benefits demonstrated to be ensured as a result, the industry has always chosen to focus upon the costs and the unnecessary paperwork, with a view to ignoring these benefits.

Other criticisms include the argument that the CDM Regulations 2006 do not go far enough in addressing the underlying causes of the industry’s health and safety record, argued by some sectors as being unacceptable. It has been argued that merely replacing a paper trail system with a system that focuses upon co-operation and management is not going to change much in the statistics regarding health and safety, as in many cases the designers argue that the contractors do not understand their design solutions, and contractors argue that designers do not understand how buildings are built. It is argued that although it is hoped that the planning supervisor can override these problems by bridging the gap, often they cannot because of inadequate fees, lack of authority or a lack of skill.

Therefore, the system of ‘ co-operation’ would not work because the more duties are imposed, the more unclear each individual duty appears to be.

It has been acknowledged that the CDM Regulations 2006 could improve matters to some degree in relation to the need for training and debate to increase health and safety awareness, but an alternative solution has been suggested in which the clients procuring the projects should be made ultimately responsible for health and safety issues, as the client is in the ideal position to do so. In this instance, it has been considered that the duties delegated to the client under the CDM Regulations 2006 are vague and relate to matters such as the provision of information. It is therefore argued that there cannot be a significant change of the improvement and management of risk until clients in at least the public and commercial sectors are given more direct responsibility for ensuring that projects are carried out with regard to the safety standards. In ensuring this, reference is made to the need for civil and criminal sanctions.

In conclusion, the proposals made by the HSC are merely an attempt to address many of the main problems of the current Regulations, but as the HSC is willing to admit, they do not deal with all the issues, and are intended to be a starting point, to encourage and facilitate discussion by means of responses from members of the construction industry. The delay in submitting responses by the prescribed deadline has not in theory affected the fact that the new Regulations are due to be implemented in October 2006. It can be argued that contrary to the criticisms levelled at CDM Regulations2006, the responsibilities of the client have been increased to an appropriate degree, and that in a fair and proportionate manner appropriate obligations have also been placed upon other participants in a project.

It appears that even so the ultimate onus is upon the client to ensure that a planning supervisor is employed with the correct skill and experience to ensure smooth running of the project and to effective address the concerns regarding management and risk.