

The Construction (Design and Management) Regulations (NI) 2016

Briefing note on competence

Preamble

The following briefing is an assessment and interpretation of the competency requirements under CDM (NI) 2016 and is not presented as a definitive legal position on competency.

Briefing Note

Regarding the competences of persons working on construction projects the CDM 2015 (GB) regulations are now in force with the CDM (NI) 2016 coming into force on the 1st August of this year.

Regulation 4, CDM 2007 has been dropped and Regulation 8, General Duties, (reproduced at the end), is the applicable regulation in regard to competence. The regulation has 7 subsections with subsection 7 referring to subsections 3, 4 and 6 as having applicability to the person mentioned in Regulation 7(1) to the extent that they are applicable to Domestic Clients).

In GB, regulation 8 subsections 2-6 use the term “must” where-as the NI regulation uses the term “shall”. In all other respects the wording is fundamentally the same. This is likely to simplify matters when construction professionals and companies work in both jurisdictions.

8(1) General Duties is the key subsection that has regard to competence requirements, (even though the term is not specifically used). It states that;

- a) A designer or contractor appointed to work on a project shall have the *skills, knowledge and experience* [my italics] necessary to fulfil the role and complete the tasks they are appointed to undertake in a manner that secures the health and safety of any person affected by the project; and
- b) An organisation that is appointed shall also have the organisational capacity necessary to fulfil the role and complete the tasks they are appointed to undertake in a manner that *secures* the health and safety of any person affected by the project.

HSE (GB) guidance on the matter states that the person making the appointment must make sensible and proportionate enquiries to satisfy themselves of their capability to carry out the work. The guide suggests that the standard health and safety questions in PAS91:2013 Construction related Procurement. Pre-qualification Questionnaires may be a useful aid. (Note. HSENI has not produced a NI guidance document yet).

This is not a definitive requirement, but a recommendation and those making the appointments may have other health and safety questions they may wish to ask or have other means of satisfying themselves of the competence of prospective appointees. (PAS91:2013 is based on CDM 2007, an updated version may follow).

The guidance also states that those making appointments should also check that the designer (or contractor) *has enough experience and a good record* [my italics] in managing the risks involved in construction. In regard to construction professionals due weight should be given to membership of established bodies/institutions, e.g. whether those bodies have arrangements in place that will provide re-assurance that health and safety is part of the route to membership to their profession, (this is a very important consideration for RSUA and other professional institutions).

The CDM (NI) consultation document explains that rationale based on HSENI considerations that competence is most effectively promoted through cultural change and leadership in the industry. HSENI believes that relevant professional bodies/institutions should oversee and have responsibility for the competence of their own members.

The CDM Regulations (NI) 2016 closely align with the GB regulations and in the matter of professional competence and health and safety the individual must satisfy themselves of their own personal competence before accepting an appointment and an organisation must ensure that it has the capacity within the organisation to meet the health and safety duties and requirements before accepting an appointments, including the capacity to manage health and safety, (Reg. 8)

In this regard, the profession as a whole, through the professional institution has a central role in determining the nature of all the health and safety requirements and competences throughout the industry where their members have or will have a role to play and to ensure that the routes to membership, e.g. via university courses, post graduate and professional development etc. have sufficient mandatory components to equip both their members and the organisations/companies they belong to with appropriate and sufficient health

and safety skills and knowledge and experience. The professional bodies will also have a responsibility for ensuring that their members include health and safety in their continuing professional development.

Specific duties and competences

Regulation 9, Duties of designers, and Regulation 11, Duties of a principal designer in relation to health and safety at the pre-construction phase, both outline the specific duties in relation to design and in relation to the planning, management, monitoring of a project and coordination of health and safety matters. It is in the context of the application of these duties that the relevant competences are to be determined. There is the specific requirement that the designer must have regard to the general principles of prevention which are described in schedule 1 of the Management of Health and Safety at Work (NI) Regulations 2000, and Appendix 1 of the GB CDM guidance. Additionally it is important that the designer is competent in the particular area of construction that is being designed for.

The Principal Designer, in addition to being similarly competent in the relevant area of construction must also be competent in the planning and management of projects during the pre-construction phase and knowledgeable in the health and safety matters. This means being aware the work of different designers on the project and how the different designs integrate and the impact the design will have on the health and safety solutions for each design as well as for the overall project.

The Principal Designer may be an organisation and the competences necessary to fulfil the duties of the position met by a number of different persons *who are part of the one organisation* [my italics]. The task of the organisation is to ensure that it has all the necessary competences necessary to fulfil the role of principal designer.

In Summary

The professional institution must:

- (a) know all the health and safety issues relevant to the industry and the work of their members,
- (b) ensure that appropriate health and safety is included in undergraduate, post graduate and professional development programmes and courses of study,
- (c) ensure that all members/candidates can demonstrate prior to and ongoing throughout their membership an up-to-date appropriate level of knowledge and skill in health and safety, and
- (d) ensure that members, including organisations that are members, are providing services within their areas of expertise and competences.

Prepared by Dr. Philip McAleenan, Expert Ease International

March 19th 2016

Regulation 8

General duties

8. — (1) A designer (including a principal designer) or contractor (including a principal contractor) appointed to work on a project shall have the skills, knowledge and experience, and, if they are an organisation, the organisational capability, necessary to fulfil the role that they are appointed to undertake, in a manner that secures the health and safety of any person affected by the project.

(2) A designer or contractor shall not accept an appointment to a project unless they fulfil the conditions in paragraph (1).

(3) A person who is responsible for appointing a designer or contractor to carry out work on a project shall take reasonable steps to satisfy themselves that the designer or contractor fulfils the conditions in paragraph (1).

(4) A person with a duty or function under these Regulations shall cooperate with any other person working on or in relation to a project, at the same or an adjoining construction site, to the extent necessary to enable any person with a duty or function to fulfil that duty or function.

(5) A person working on a project under the control of another shall report to that person anything they are aware of in relation to the project which is likely to endanger their own health or safety or that of others.

(6) Any person who is required by these Regulations to provide information or instruction shall ensure the information or instruction is comprehensible and provided as soon as is practicable.

(7) To the extent that they are applicable to a domestic client, the duties in paragraphs (3), (4) and (6) shall be carried out by the person specified in regulation 7(1).