

The insurance industry has been slow on the uptake as far as new health and safety legislation is concerned, even though the new rules will have far reaching implications for all claims involving construction contractors. Rob Withers explains exactly what the 2007 CDM regulations will mean.

# Constructive criticism

THE HEALTH AND Safety Executive's *Construction (Design and Management) Regulations 2007* came into force on 6 April this year. The insurance industry was warned they were on the way (*Post*, 9 November 2006, p2), but no one was really up to speed with what the regulations meant in practical terms and how they would affect the claims process.

This is no surprise given that the Approved Code of Practice — which details the new regulations — was only released mid-March. So what are these regulations, what should the industry have in place now to meet their health and safety obligations, and how will they impact on insurers and those involved in claims management?

CDM regulations apply to insurance companies or their agents when appointing a contractor, directly or indirectly, to work on a claim. If there is an injury on site the insurer will be liable and may face legal action.

The very nature of the industry means insurers are risk averse and well-aware of the value of health and safety implementation. Many may believe the HSE is teaching them to 'suck eggs', but statistics within the construction industry demonstrate that health and safety in this sector must be tightened up. For example, HSE figures show a 25% increase in the death rate from 59 last year to 77.

This sector, coupled with agriculture, forestry and fishing, accounts for over 40% of all fatalities, so it is hardly surprising to see it coming under closer scrutiny. All the HSE is trying to do is ensure health and safety is integrated into the planning process, from design concept onwards.

## Strong foundations

CDM regulations force insurers to address, manage and communicate health and safety issues at the early stages of claims management, instead of later on when the onus is often on the contractor.

Those who do not want the perceived 'burden' of meeting revised HSE obligations will either need to ensure their projects do not exceed 30 days or revert back to cash settlements. Yet, with claims such as demolition, flood or subsidence, this is not likely to happen.

It has always been mandatory to provide the HSE with project information in an approved format and the introduction of a new F10 form makes this easier. This form (downloadable from the HSE) and a construction phase plan — recording all health and safety arrangements, site rules and any special measures for construction work — must now be signed by a CDM co-ordinator. This co-ordinator may work in-house with an insurer, loss adjuster, engineer or be employed independently.



Historically, a planning supervisor would have signed the forms, but this role has been replaced. While the new F10 must be signed by the client — that is, the company that originated the work — it does not necessarily have to be prepared by that firm.

Insurers must check the competence and resources of all appointees and have a mandatory process in place to ensure repair work complies with *CDM 2007*. They must also recruit a CDM co-ordinator as this person is the key adviser in the project and the catalyst for effective communication and co-ordination.

It is the CDM co-ordinator's role to ensure the appropriate forms detailing the project are signed by the insurer, designer (structural or in-house engineer) and principal contractors. If work is to be undertaken by a sub-contractor, then the secondary firm will have to sign as well.

Once the project is underway, any changes to the work proposals — for example, in the method of subsidence underpinning — must be incorporated into the health and safety plan, so all parties are aware of them. The CDM co-ordinator's role is more than administration — this person takes an active role in the safe management of the contract.

By receiving more information up-front, contractors will benefit as they are involved in the project earlier on. However, insurers must build in sufficient time for them to prepare the necessary paperwork and liaise with the CDM co-ordinator.

Construction cannot begin unless the construction phase plan and suitable welfare facilities are in place. Welfare can be a challenge in the domestic insurance market, where there is often no room for site huts, toilets and running water, so insurers have a duty to ensure co-operation in sourcing solutions.

Those who ignore the HSE and do not have the correct processes in place will be dismayed when they find their contractor is unable to 'start work tomorrow' on a

project they have delayed. But those with robust procurement processes will no doubt already have mechanisms in place to ensure all parties address health and safety issues at design concept stage, so that the contractor can start work on a pre-agreed date.

Project managers who have not followed the correct procedures will face delays until they are in place. Will those employing contractors at the last minute to speed up a claim, be comfortable in exposing their business to potential prosecution?

## Time constraints

The industry needs to build around four weeks into the claims process to ensure the relevant administration is completed by all parties and more insurers may be tempted to opt for cash settlements, heralding an increase in reserves and spend.

Even where projects are below 30 days, those involved have a duty of care to comply with health and safety legislation and to design, plan and work in a safe manner. Risk assessments and method statements will still be needed.

While insurers will ultimately be liable for any accidents, all parties are responsible for ensuring CDM regulations are followed. Contractors must satisfy themselves that clients are aware of their duties and that they have appointed a CDM co-ordinator. They should ensure the construction phase is properly planned and resourced and must be aware of the amount of time allowed for preparation.

As far as the HSE is concerned, the legislation applies to all projects — from Terminal 5 at Heathrow to repairing a small crack on a domestic property. The HSE is looking to tighten up the small-to-medium-sized enterprise market and may well look to make an example of the insurance repair sector.

POST

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