

# COVID-19: PEOPLE: CLIENT HEALTH AND SAFETY DUTIES IN RESPECT OF COVID-19 (UK)

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Legal Briefings

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This blog note provides an overview of the health and safety responsibilities of a client in respect of works being carried out pursuant to a building contract, during the implementation of UK government's social distancing rules to address the COVID-19 pandemic.

Construction sites have not been required to close in England although there has been some confusion and a number of contractors have stopped activities on sites. Clarity was provided by the Secretary for State for Business, Energy and Industrial Strategy in an open letter dated 31 March addressed to the UK construction sector which stated:-

*"The Government have advised that wherever possible, people should work at home. However, we know that for many people working in construction their job requires them to travel to their place of work, and they can continue to do so. This is consistent with the Chief Medical Officer's advice.*

*To help ensure that it is safe for you to operate in your workplace, the industry has worked to develop Site Operating Procedures (SOP), which were published by the Construction Leadership Council. These align with the latest guidance from Public Health England."*

Some however have questioned, even contradicted, the government's approach. The Mayor of London said on 8th April that all construction sites should close unless they are carrying out essential work and some industry bodies agree with him.

The Construction Leadership Council (CLC), which is leading the sector's response to the pandemic issued the SOP on 23rd March. They are essentially a list of largely common sense measures which should be implemented on sites to ensure social distancing and enhanced hygiene measures. They were updated on 2nd April when version 2 was issued. This version stated that where it was not possible or safe for workers to distance themselves from each other by 2 metres then the work should not be carried out. The CLC however withdrew this update and are reviewing it after an outcry from the industry that it would place an impossible burden on the construction sector which would lead in practice to most sites having to stop work and that the recommendation was out of step as such a practice is not being followed in the health sector. The current advice is to avoid work where a 2 metre distance cannot be maintained unless that is not possible and the CLC has asked that Version 1 be complied with whilst it conducts its review.

## **CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2015 (“CDM REGULATIONS”)**

Under the Health and Safety at Work etc Act (“the Act”) section 2 requires all employers to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all of its employees. Section 3 is wider in that it requires all employers (which includes contractors and other client parties in the chain) to conduct their undertakings safely and in such a way as to ensure, so far as is reasonably practicable, that non-employees are not exposed to health and safety risks.

In relation to premises, section 4 imposes a duty on entities who have control of premises (to any extent) in relation to persons who are not their employees but use the premises as a place of work. In that event the duty is to take measures that it is reasonable to take (which will depend upon the degree of control) to ensure, so far as is reasonably practicable, that the premises and means of access are safe and without risks to health.

The CDM Regulations form one of the many umbrella regulations made under the Act. It is the regime under the CDM Regulations which provides greater details of a construction client's obligations which, in turn, will inform the interpretation of the broad duties owed under the Act.

Breach of the requirements under the CDM Regulations can lead to a criminal prosecution resulting in a fine both under the Regulations and the Act. In certain circumstances directors and senior managers can also be subject to a personal prosecution.

A client for the purposes of the CDM Regulations owes a number of duties which includes the duty:-

*“to make suitable arrangements to ensure that the construction work can be carried out, so far as is reasonably practicable, without risks to the health or safety of any person affected by the project.”*

It is recognised that most clients are not experts in the construction process and clients are not required to take an active role in managing the work. The Regulations do, however, place a duty upon a client to take reasonable steps to ensure that the contractor complies with its duties and that means that the client should have processes and procedures in place to monitor the activities of contractors (and the principal designer).

In relation to COVID-19 related issues, the client should maintain an oversight role. In particular it should:-

- check that the contractor has modified its health and safety arrangements and site rules. It is not the client's role to impose measures or to get too involved in the detail of what the contractor has put in place. However, the client should satisfy itself that what is in place is broadly appropriate and appears to follow the Construction Leadership Council Site Operating Procedures
- satisfy itself that the contractor is taking reasonable steps to ensure that they are being implemented and enforced. Details and confirmation may be sought as part of the contractor's reporting procedures and via project progress meetings or written updates; and
- check that the contractor has consulted with workers and that they know what the requirements are.

The Health and Safety Executive has confirmed that despite the demanding circumstances, compliance with health and safety requirements remain in place, and that it will continue to investigate and prosecute, where required, incidents and near misses. The Health and Safety Executive is not immune from the difficulties everyone is facing and it has announced that, for the moment, targeted inspections of construction sites have been suspended.

In parallel with its statutory duties, a client will often contract with its contractor on terms that it will duly comply with the applicable CDM Regulations in relation to the building contract works and the site.

[More on COVID-19](#)

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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