

## SCHEDULE 5

Regulation 37

### TRANSITIONAL AND SAVING PROVISIONS

1. In this Schedule—
  - “CDM co-ordinator” means a person appointed under regulation 14(1) of the 2007 Regulations;
  - “competent” means competent to perform any requirement and avoid contravening any prohibition imposed on a person by or under any of the relevant statutory provisions;
  - “relevant project” means a project which began before 1st August 2016.
2. These Regulations apply to a relevant project with the modifications specified in this Schedule.

#### **Projects with no existing CDM co-ordinator or principal contractor**

3.—(1) This paragraph modifies the application of these Regulations in relation to a relevant project where, immediately before 1st August 2016—

- (a) no CDM co-ordinator or principal contractor is appointed for the project under the 2007 Regulations;
  - (b) there is more than one contractor, or it is reasonably foreseeable that more than one contractor will be working on the project; and
  - (c) the construction phase has started.
- (2) Regulation 5 does not apply to the project.
- (3) The client may appoint in writing a designer as principal designer.
- (4) The client shall appoint in writing a contractor as principal contractor as soon as is practicable after 1st August 2016.
- (5) The principal contractor shall draw up a construction phase plan or make arrangements for a construction phase plan to be drawn up under regulation 12(1) and (2) as soon as is practicable after 1st August 2016 and the requirement that the plan shall be drawn up during the pre-construction phase and before setting up a construction site is disapplied.
- (6) The client, other than a domestic client, shall ensure that the principal contractor complies with sub-paragraph (5) and the client duty in regulation 4(5)(a) is disapplied.
- (7) If the client does not appoint a principal designer, the principal contractor shall—
- (a) prepare a health and safety file under regulation 12(5) as soon as is practicable after 1st August 2016 and the requirement for the file to be prepared during the pre-construction phase is disapplied; and
  - (b) ensure that the health and safety file is reviewed, updated and revised from time to time under regulation 12(6).
- (8) If the client does not appoint a principal designer—
- (a) the references to the principal designer in regulations 4(5)(b) and 9(3)(b) are treated as references to the principal contractor;
  - (b) the client duty in regulation 4(6)(a) does not apply; and
  - (c) the principal contractor duties in regulations 12(7) and 13(5) do not apply.
- (9) Where a client, other than a domestic client, fails to appoint a principal contractor under sub-paragraph (4) the client shall fulfil the duties of the principal contractor specified in these Regulations, as modified by this paragraph.
- (10) Where the client is a domestic client—

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- (a) regulation 7(2) does not apply; and
- (b) if the client fails to appoint a principal contractor under sub-paragraph (4) the principal contractor for the project is the contractor in control of the construction phase.

#### **Projects with an existing CDM co-ordinator**

4.—(1) This paragraph and paragraphs 5 and 6 apply where, immediately before 1st August 2016, there is a CDM co-ordinator appointed for a relevant project.

(2) Where this paragraph applies, the appointment of the CDM co-ordinator continues to have effect for the purposes of these Regulations until a principal designer is appointed or the project comes to an end.

(3) The client shall appoint in writing a principal designer for the project before 1st August 2017 unless the project comes to an end on or before that date.

(4) Where the appointment of a CDM co-ordinator continues to have effect under sub-paragraph (2)—

- (a) the CDM co-ordinator shall comply with the duties in paragraph 5;
- (b) the duties in regulations 9(3)(b) and 12(7) to provide information to the principal designer are treated as duties to provide information to the CDM co-ordinator; and
- (c) the duty in regulation 13(5) to liaise with the principal designer is treated as a duty to liaise with the CDM co-ordinator.

#### **Duties of CDM co-ordinator during transitional period**

5.—(1) The CDM co-ordinator shall—

- (a) cooperate with any 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 under these Regulations to fulfil that duty or function;
- (b) where the CDM co-ordinator works under the control of another, 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;
- (c) ensure that suitable arrangements are made and implemented for the coordination of health and safety measures during the planning and preparation for the construction phase, including facilitating—
  - (i) cooperation and coordination between all persons working on the pre-construction phase of the project; and
  - (ii) the application of the general principles of prevention;
- (d) liaise with the principal contractor over—
  - (i) the content of the health and safety file;
  - (ii) the information which the principal contractor needs to prepare the construction phase plan; and
  - (iii) any design development which may affect planning and management of the construction work;
- (e) where no or partial pre-construction information has been supplied to the CDM co-ordinator by the client under regulation 10 of the 2007 Regulations, assist the client to comply with regulation 4(4) of these Regulations;
- (f) unless the information has already been provided under regulation 20(2)(b) of the 2007 Regulations, provide any pre-construction information that is in the possession or control

of the CDM co-ordinator, promptly and in a convenient form, to every designer and contractor appointed, or being considered for appointment, to the project;

- (g) take all reasonable steps to ensure that designers comply with their duties under regulation 9 of these Regulations;
- (h) take all reasonable steps to ensure cooperation between designers and the principal contractor during the construction phase in relation to any design or change to a design;
- (i) if a health and safety file has not been prepared under regulation 20(2)(e) of the 2007 Regulations, prepare a health and safety file that complies with the requirements of regulation 12(5) of these Regulations;
- (j) review, update and revise the health and safety file from time to time to take account of the work and any changes that have occurred;
- (k) if the CDM co-ordinator's appointment continues to have effect immediately before the project ends, pass the health and safety file to the client at the end of the project;
- (l) if a principal designer is appointed, pass the health and safety file and all other relevant health and safety information in the CDM co-ordinator's possession to the principal designer, as soon as is practicable after the appointment.

(2) The CDM co-ordinator shall not arrange for or instruct a worker to carry out or manage design or construction work unless the worker is competent or under the supervision of a competent person.

#### **Duties disapplied pending appointment of principal designer**

6.—(1) The duties in regulations 5(1)(a) and (3) do not apply to a project referred to in paragraph 4(1).

(2) The following duties do not apply to a project referred to in paragraph 4(1) until the principal designer is appointed—

- (a) the duties in regulation 4(5)(b) and (6)(a);
- (b) the duties of the principal designer in regulations 11 and 12(3), (5), (6), (8) and (10).

(3) If a client fails to make the appointment required by paragraph 4(3) the client shall fulfil the duties of a principal designer in regulations 11 and 12 on and after 1st August 2017.

#### **Projects with only one contractor**

7. Where a relevant project has only one contractor and the construction phase has started, the contractor shall draw up a construction phase plan, or make arrangements for a construction phase plan to be drawn up, under regulation 15(5) and (6) as soon as is practicable after 1st August 2016 and the requirement that the plan shall be drawn up prior to setting up a construction site is disapplied.

#### **Savings**

8.—(1) Where, immediately before 1st August 2016 there is a principal contractor appointed for a relevant project under regulation 14(2) of the 2007 Regulations, for the purposes of these Regulations that principal contractor is treated on and after 1st August 2016 as having been appointed under regulation 5(1)(b) of these Regulations.

(2) For the purposes of these Regulations, on and after 1st August 2016—

- (a) a health and safety file prepared for a relevant project under regulation 20(2)(e) of the 2007 Regulations is treated as a health and safety file prepared under regulation 12(5) of these Regulations;

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- (b) a construction phase plan drawn up for a relevant project under regulation 23 of the 2007 Regulations is treated as a construction phase plan drawn up under regulation 12(1) or 15(5) of these Regulations;
- (c) pre-construction information provided for a relevant project under regulation 10 of the 2007 Regulations is treated as pre-construction information provided under regulation 4(4) of these Regulations;
- (d) notice given for a relevant project under regulation 21 of the 2007 Regulations is treated as notice given under regulation 6 of these Regulations