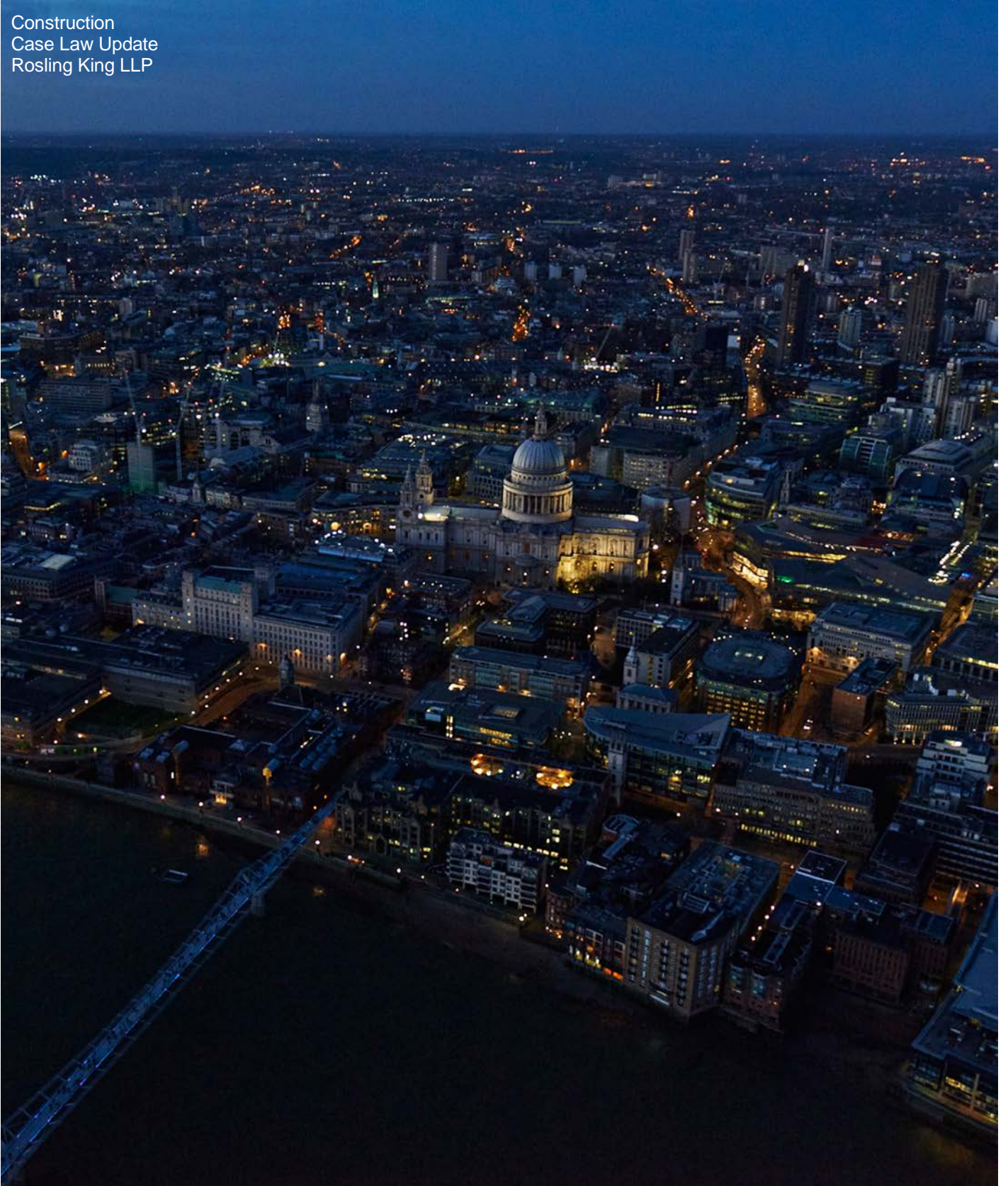


Construction  
Case Law Update  
Rosling King LLP



The Construction (Design and Management) Regulations 2015 (“CDM 2015”) shall come into force on 6 April 2015. The CDM 2015 shall replace the existing Construction (Design and Management) Regulations 2007 (“CDM 2007”) and apply to the management of health, safety and welfare for almost all construction projects in Great Britain.

#### Key changes introduced by the CDM 2015

As of 6 April 2015, the following key changes will be introduced by CDM 2015:

- The CDM co-ordinator role shall be replaced by the role of “principal designer”. The principal designer will have control over the pre-construction phase of a project;
- All projects scheduled to last longer than 30 working days and have more than 20 workers working simultaneously at any point in a project or scheduled to exceed 500 person days must be notified to the Health and Safety Executive (the “HSE”) by the client. The current CDM 2007 require notification after only 300 days or 500 person days of construction work;
- The duty to ensure competence under CDM 2007 is replaced. All persons upon whom the CDM 2015 shall apply must ensure those involved in a construction project have the information, instruction, training and supervision needed to carry out their jobs in a way that secures health and safety;
- The Approved Code of Practice which provides supporting guidance on CDM 2007 will be withdrawn and replaced with guidance on CDM 2015 to be issued by the HSE;
- A construction phase plan will need to be drawn up for all projects by the contractor (if there is only one contractor) or by the principal contractor;
- Unlike the CDM 2007, the CDM 2015 shall apply to domestic clients, though their duties may pass to others involved in the construction project;
- Where there is or there is likely to be more than one contractor, the client must appoint a principal designer and principal contractor as soon as practicable, and, in any event, before the construction phase begins. Should the client fail to do so, he shall be obliged to fulfil both roles himself; and
- The client will need to ensure that the principal designer prepares a health and safety file and passes this to the principal contractor so that it can be revised during the remainder of the project, if necessary. The principal contractor will need to keep the file up to date before it is handed to the client at the end of the project.

Though the draft CDM 2015 published by the HSE earlier this year shall be subject to Parliamentary scrutiny, substantive changes are considered unlikely. A copy of the draft CDM 2015 can be accessed by clicking [here](#).

#### Implementation

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Certain transitional arrangements may apply depending on when a construction project commences and finishes.

Where a CDM co-ordinator is appointed in relation to a construction project which starts before 6 April 2015 but ends within six months of this date, that CDM co-ordinator can continue its role without the need for a principal designer to be appointed. The rules concerning the construction phase plan and health and safety file under CDM 2015 shall need to be complied with by the CDM co-ordinator appointed under the old regime, however. A principal designer must be appointed by 6 October 2015 should the construction project continue beyond this time.

Where a construction project begins before 6 April 2015 and has only one contractor, that contractor must draw up the construction phase plan, or make arrangements for it to be drawn up, as soon as practicable after 6 April 2015. For similarly timed projects involving more than one contractor but no principal contractor, the client must appoint a principal contractor as soon as practicable after 6 April 2015. The principal contractor shall be responsible for the construction phase plan in such circumstances.

A construction project which spans 6 April 2015 will need to comply with the new CDM 2015 in the majority of other respects.

#### Discussion

The need to update building contracts and other agreements or documents referring to the CDM 2007 should be carefully considered well in advance of 6 April 2015.

For projects likely to span the implementation of the CDM 2015, clients should consider the implications and potential difficulties of replacing a CDM co-ordinator with a principal designer (where required) and appreciate the costs which may be incurred in doing so.

Under the CDM 2015, the role of the client will be fundamental to ensuring that construction work is carried out, as far as reasonably practicable, without risk to health and safety. Clients should recognise the higher level duties and responsibilities which shall be imposed on them under the new regime. Domestic clients shall also now need to appreciate the application of the CDM 2015 to them, notwithstanding the automatic outsourcing of certain responsibilities to others.

Breaching the CDM 2015 may result in criminal sanctions and should be taken seriously.

For further information, please contact [Jonathan Hyndman](#) or the Partner with whom you usually deal.