

## **CDM 2015**

**Technical Information Note 02/2015 Revision A**

**October 2015**

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**This Information Note aims to inform Members about important changes in the CDM Regulations that have occurred, given that Members could be held criminally liable for failing to comply.**

## **1. Introduction**

- 1.1 Substantially revised CDM Regulations [Construction (Design and Management) Regulations] came into force on 6 April 2015. The main reasons for the revisions are the Government's policy for better regulation (particularly to reduce red tape and any unnecessary burden on industry), and that CDM 2007 did not comply with the EU Directive [92/57/EEC: Temporary or Mobile Construction Sites Directive (TMCSO)].
- 1.2 The 2011 review of CDM 2007 which was conducted as part of the revision process concluded that CDM 2007 was basically fit for purpose and that CDM risk management was embedded in the more organised parts of the construction industry, but not in the less organised smaller project part of the industry. Before the first CDM Regulations (1994) most fatalities were on large sites, but now 70% are on sites with less than 15 workers.
- 1.3 The rewrite of the Regulations also tries to resolve some other issues with CDM 2007, particularly the tendency for creating excessive bureaucracy and paperwork rather than concentrating on managing risk.
- 1.4 There is a commitment not to dilute standards and to maintain or improve protection of workers.
- 1.5 A consultation on draft new Regulations was undertaken in mid 2014 and the report on the consultation was issued in August 2014. Early in January 2015 HSE published draft legal guidance which included revised draft Regulations and CITB published draft industry guidance for each of the dutyholders.
- 1.6 The final version of the Regulations and HSE Legal Guidance (L153) as well as the final CITB industry guidance were issued at the beginning of April 2015 (see section 6 below). HSE has also produced a Short Guide for Clients on CDM 2015 (INDG411) and a template Construction Phase Plan (CIS80) for a small domestic project.
- 1.7 Amendment documents for JCT and JCLI Standard Form Contracts were issued at the beginning of April 2015 to accommodate CDM 2015. Other Standard Form Contracts including Consultant Appointment documents have been updated where appropriate.
- 1.8 This document is based on the final Regulations and associated HSE legal guidance (L153).

## **2. Main Changes in CDM Regulations 2015**

- 2.1 CDM 1994 created the Planning Supervisor who became the CDM Coordinator (CDM-C) with a strengthened role in CDM 2007. In CDM 2015 there is no CDM-C. Instead, if there will be more than one contractor, the client must appoint the "designer with control over the pre-construction phase" as Principal Designer (PD). See 2.5 below. The PD's role at the pre-construction phase is intended to mirror the role of the Principal Contractor (PC) at the construction phase, i.e. to plan, manage, monitor and coordinate

health and safety to ensure that (as far as reasonably practicable) the project is carried out without risks to health and safety.

- 2.2 The role of the client is strengthened. For health and safety management to be effective the client needs to be the leader and to set the standard required. For example, it is now a client duty to ensure the PD and PC comply with their duties.
- 2.3 Domestic clients had no duties in CDM 2007. However, the EU Directive applies to domestic clients and CDM 2015 applies to domestic clients. If there will be more than one contractor at any time during the construction phase, the client should appoint a PD and PC, but if the client fails to do so then the designer in control of the pre-construction phase is the PD and the contractor in control of the construction phase is the PC. Additionally, the PD will perform the other client duties if there is a written agreement between the client and PD to that effect, otherwise the PC (or contractor if there is only one) is responsible for the other client duties.
- 2.4 The 2007 Regulation requiring competence and the associated Appendix are not in the 2015 Regulations. The competence regulation resulted in the development of a third party industry to assess competence which is widely considered to be burdensome for the industry, but at the same time was not required by the regulation. The deletion of the regulation does not mean that HSE suggest that there is no need for a competent workforce. CDM 2015 requires that everyone must receive appropriate information, instruction, training and supervision to secure health and safety, and that anyone appointing a designer or contractor must ensure they have the necessary skills, knowledge, experience, and if an organisation the organisational capacity, to ensure health and safety.
- 2.5 The threshold for the appointment of coordinators (a PD and a PC) has changed. If there will be more than one contractor required at any one time then a PD and a PC are required. Appointments must be made by the client once it is reasonably foreseeable that more than one contractor will be needed and as soon as practicable. Sub-contractors count as contractors when assessing if there will be more than one contractor. This means that many more projects will require a PD and PC. The new threshold brings the CDM Regulations in line with the EU Directive.
- 2.6 CDM 2015 requires all projects to have a Construction Phase Health and Safety Plan whereas the 2007 Regulations only required one for notifiable projects.
- 2.7 The new threshold for notifying HSE of the project is whether the project involves:
  - either
  - more than 30 working days of construction work and more than 20 workers working simultaneously at any time,
  - or
  - more than 500 person days of construction work.

This means that many fewer projects will be notified to HSE. Additionally, unlike CDM 2007, notification does not trigger additional duties. The new threshold for notification brings the CDM Regulations in line with the EU Directive.

- 2.8 The Regulations include transition provisions which lasted six months (until 6 October 2015) but are no longer relevant.

### **3. Other issues**

- 3.1 The definitions of 'construction work' and 'structure' are the same (except for the stated exclusion of 'pre-construction archaeological investigation' from the definition of 'construction work') so soft landscape work is not 'construction work' but hard landscape, earthworks, pipelines and the maintenance of construction work are. The Landscape Institute has published Amendment documents for JCLI Practice Note Nos. 8 and 9 to amend the CDM items. The guidance in the Amendments has been agreed with the Health and Safety Executive (HSE) and covers the application of CDM 2015 to landscape works and landscape maintenance works and explains the CDM options in the JCLI Contract CDM Amendment documents.
- 3.2 The main duties of Designers remain essentially the same although the wording has changed.
- 3.3 The PC's duties remain essentially the same as do the Contractor duties and Part 4 (General Requirements for all Construction Sites) and Schedule 2 (Welfare Facilities). The main change for contractors is the requirement that all projects must have a Construction Phase H&S Plan.
- 3.4 There are no designer's duties in the EU Directive but HSE have retained them in CDM 2015.
- 3.5 As before, the Regulations apply to Great Britain, ie England, Scotland and Wales. Northern Ireland has their own CDM 2007 Regulations (which were substantially the same as the GB ones) and a HSENI consultation concerning revisions ended on 23 March 2015. However, the consultation was based on the GB consultation draft Regulations rather than the subsequent GB January 2015 draft Regulations.

### **4. Commentary**

- 4.1 Since sites with less than 15 workers are now responsible for 70% of fatalities, the emphasis on producing guidance which is appropriate for smaller projects is understandable. Therefore the reference to 'more than 20 workers' in the notification threshold compared to the 'less than 15 workers' referred to above should not be interpreted as any diminution in the concern for health and safety although some will understandably consider that it sends the wrong messages. See paras 1.2 and 2.7 above.

4.2 The commitment not to dilute standards is laudable. Notably HSE has retained the designer's duties (despite there being none in the EU Directive) but the Regulations appear to have been watered down in several respects:

- a) The previous emphasis on the early appointment of the CDM-C has been replaced with appointment of the PD when it is reasonably foreseeable that there will be more than one contractor. Some clients and/or designers might argue that this is not foreseeable until a contractor is selected. However the HSE legal guidance emphasises the importance of early appointment;
- b) The 2007 requirement that (post-feasibility) design work must not be undertaken until a design phase coordinator was appointed has also been removed;
- c) There appears to be no requirement in CDM 2015 for the PD to give advice and guidance to the client with respect to the client's duties, although it is included in the HSE legal guidance; and
- d) There is no requirement in CDM 2015 for the client to ensure the suitability of the Construction Phase Health and Safety Plan and proposed welfare facilities before allowing work to start on site. However the client must ensure a Plan is produced and welfare facilities provided.

4.3 The burden on the industry has increased:

- a) All construction projects (including domestic projects) must have a Construction Phase H&S Plan. Only notifiable projects had such a Plan in CDM 2007, and projects for domestic clients were never notifiable.
- b) Projects for domestic clients with more than one contractor must have a PD and PC (never the case in CDM 2007).
- c) Additionally, when the CDM Regulations were first introduced (1994) and each time they have been substantially revised (2007 and 2015) the construction industry spends significant amounts on training in order to comply.

4.4 There are a few anomalies apparent in the Regulations:

- a) Only projects with more than one contractor are required by the Regulations to have a Health and Safety File. Hence large projects with only one contractor will not have one unless the client asks for one to be produced. All projects should have a H&S File (or an existing one updated) otherwise H&S Files will get out of date and not be trustworthy. This anomaly originates from the EU Directive.
- b) The H&S File has to be prepared by the PD at the pre-construction phase, updated as necessary through the construction phase and then handed to the client at the end. Producing it so early generates more work than preparing it near the end of the construction phase before handover to the client. This also originates from the EU Directive.
- c) A project may be notifiable to HSE and have several designers but because there is only one contractor it will not have a Principal Designer or Principal Contractor. This also originates from the EU Directive.

- d) There appears to be an anomaly concerning domestic client projects where, due to transferring the client duties to the contractor (or PC or PD), the contractor is responsible for making the Health and Safety File available for inspection by anyone who might need it, and for providing the File to the new owner if the existing client sells the property. Although this is appropriate before completion of the project these duties do not appear to be transferred to the domestic client after completion.
- e) The issue of the potential conflict of interest due to the lead designer also being responsible for health and safety risk management has been raised by parts of the industry. But an essential part of the design process is the balancing of many different conflicting issues and provided designers are aware of the potential conflict it can be managed within the design and project management process. Some organisations ensure that health and safety issues are reviewed by someone other than the person responsible for the design.
- f) HSE has produced a template Construction Phase H&S Plan for small domestic projects to assist PCs and contractors to comply with their duty to produce one for all projects. The potential danger of any template is complacency, which in this case would lead to the project specific risks (which are often the unusual and problematic ones) being missed.

## **5 Key observations for LI Members**

- 5.1 Failure to comply with CDM regulations could be a criminal offence.
- 5.2 At this stage this note has been issued for information. The LI may issue guidance or advice based on it.
- 5.3 The assumption is made with this information note that Members have the necessary skills, knowledge, experience and if an organisation the organisational capacity to do the role(s) for which they are appointed and that members have received appropriate information, instruction, training and supervision to secure health and safety.
- 5.4 As with CDM 2007 the Regulations apply to all design of construction work even at the earliest stages of a project.
- 5.5 Clients are likely to ask Members to take on the PD role particularly when they are lead designer. Note that if anyone does not wish to be the PD then they may well not be appointed as the lead designer. So the following are three possible scenarios:
  - a) Members take on the role wherever possible and proactively promote themselves as PDs to clients, if necessary by appointing expert health and safety consultants as sub-consultants to advise on projects with high risks;
  - b) Members undertake the PD role for projects where they are lead designer and the risks are within their capability, but advise the client to appoint another consultant as the PD for projects with higher risks;
  - c) Members do not undertake the PD role on any project, but advise the client to appoint one direct whenever a project requires one.

- 5.6 For projects where it is foreseeable that there will be more than one contractor, it will be important that the Client has properly appointed a PD in writing.
- 5.7 There may be implications for PI insurance for anyone taking on the role of PD which Members will want to discuss with their insurers. The LI anticipates that an increased premium is unlikely, but that the risk of not being covered if PII insurers are not notified needs to be controlled.

## 6 References

[Construction \(Design and Management\) Regulations 2015](#)

[Construction \(Design and Management\) Regulations 2015 HSE Guidance: Managing Health and Safety in Construction: Construction \(Design and Management\) Regulations 2015: Guidance on Regulations. HSE L153 April 2015 \(free pdf\).](#)

[CITB Industry Guidance: April 2015](#): Six free individual documents for clients, contractors, designers, principal contractors, principal designers and workers:

[HSENI CDM 2015 Northern Ireland Consultation](#) (closed 23 March 2015)

[JCLI Amendment documents](#) for JCLI Contracts and Practice Note Nos 8 and 9 to accommodate CDM 2015

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© October 2015  
Landscape Institute  
Charles Darwin House  
107 Grays Inn Road  
London WC1X 8TZ

[www.landscapeinstitute.org](http://www.landscapeinstitute.org)

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